IN THE SUPREME COURT OF THE STATE OF IDAHO

ST. LUKE'S HEALTH SYSTEM, LTD; ST. LUKE'S REGIONAL MEDICAL CENTER, LTD; CHRIS ROTH, an individual; NATASHA D. ERICKSON, MD, an individual; and TRACY W. JUNGMAN, NP, an individual,

Plaintiffs/Respondents,

vs.

DIEGO RODRIGUEZ, an individual,

Defendant/Appellant,

and

AMMON BUNDY, an individual; AMMON BUNDY FOR GOVERNOR, a political organization; FREEDOM MAN PRESS LLC, a limited liability company; FREEDOM MAN PAC, a registered political action committee; and PEOPLE'S RIGHTS NETWORK, a political organization and an unincorporated association,

Defendants.

Docket No. 51244-2023

(Ada County District Court Case No. CV01-22-06789)

RESPONDENTS' BRIEF

Appeal From the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada

Honorable District Judge Nancy A. Baskin, presiding.

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I. INTRODUCTION

Diego Rodriguez presents no valid challenge to the final judgment, reached after a jury found $52 million in damages, and the district court entered a permanent injunction ("Permanent Injunction") against Rodriguez's ongoing defamation of the St. Luke's Parties.[1] To advance his own financial interests and political agenda, Rodriguez exploited the tragic circumstances surrounding his malnourished, 10-month-old grandson ("Infant") being taken into protective care by the Idaho Department of Health and Welfare ("DHW") owing to medical neglect. Rodriguez lied about the medical neglect and engaged in a sophisticated misinformation campaign stating the St. Luke's Parties were participants in a vast conspiracy to kidnap, traffic, sexually abuse, and kill Christian children. Rodriguez, coordinating with Ammon Bundy ("Bundy") and the People's Rights Network ("PRN"), spread these lies across social media through misleadingly edited videos, defamatory posts, and dozens of appearances on extremist alternative media. Rodriguez demanded that followers disrupt and destroy St. Luke's business.

And when the St. Luke's Parties brought defamation and related claims against Rodriguez, Bundy and PRN, Rodriguez and his co-conspirators only increased the defamatory attacks. Undeterred by the Permanent Injunction, Rodriguez continues to violate the Permanent Injunction even now. As intended, the defamation, disruption, and harassment harmed his targets, put them and their families at risk, and caused millions of dollars of loss.

[1] This brief refers to Respondents collectively as the "St. Luke's Parties."

Now Rodriguez appeals, seeking relief from the just consequences of his actions. Most of Rodrigeuz's assertions in his appeal were waived; all lack merit. There was no judicial bias; the district court's rulings were appropriate and within its discretion. Rodriguez violated several court orders and refused to respond in discovery. Contrary to Rodriguez's assumption, he has no due process right to violate court orders and discovery obligations without consequence. Nor were his free speech rights violated. The First Amendment does not protect defamatory speech, and the defamation was established both through default and evidence at trial. The jurors Rodriguez challenges confirmed they could and would be fair. And if Rodriguez had wanted them off the jury, he could have shown up and exercised peremptory strikes.

Rodriguez litigates from afar, hiding from pending bench warrants in Idaho for violating court orders and the Permanent Injunction. Pursuant to the St. Luke's Parties' motion filed concurrently, the fugitive disentitlement doctrine should be applied to require Rodriguez to face the pending charges of contempt. While the St. Luke's Parties seek affirmation of the judgment on its merits, Rodriguez should be held accountable for the pending charges of contempt. Alternatively, the Court should affirm the judgment below.

II. STATEMENT OF THE CASE

A. Plaintiffs/Respondents

St. Luke's Health System is a not-for-profit health system that operates St. Luke's Regional Medical Center (collectively "St. Luke's"). Tr. p. 288, L. 6-16; Tr. p. 290 L. 1 – p. 294, L. 21. Chris Roth is President and CEO of St. Luke's. He administers the hospital network and makes no individual patient care decisions. Tr. p. 283, L. 4-20; Tr. p. 283, Ls. 10–13. Dr.

Natasha Erickson is a pediatric hospitalist who provided life-saving care to the Infant. Tr. p. 922, L. 17-21; Tr. p. 923, L. 18–p. 924, L. 11. NP Tracy Jungman is a Nurse Practitioner specializing in pediatrics who provided medical care to the Infant. Tr. p. 294, L. 22–p. 296, L. 11.; Tr. p. 1153, L. 2–p. 1154, L. 2.; Tr. p. 1158, L. 9–p. 1161, L. 13.

B. Defendants in Underlying Case

Diego Rodriguez is the only defendant in the underlying case to appeal the judgement. The other defendants include Ammon Bundy, PRN, the Ammon Bundy for Governor Campaign, Freedom Man Press LLC (Rodriguez's website Freedomman.org), and Freedom Man PAC (Rodriguez's political action committee). All Defendants were found to be co-conspirators and are jointly and severally liable for the full judgement. R. Vol. 1, p. 4284-85.[2]

C. In 2022, Rodriguez, Bundy, and PRN Possessed Status and Power

To understand the impact of Rodriguez's actions, it is important to understand the power that Rodriguez, Bundy, and PRN possessed and the threat they collectively posed.

In March of 2022, Rodriguez, Bundy, and PRN could make tens of thousands of their followers dox enemies, spread defamatory statements online, intimidate enemies at home or at work, and disrupt government functions, health institutions, and private businesses. Tr. p. 397, L. 25 – p. 398, L. 4.; Tr. p. 398, L. 22 – 25; Tr. p. 415, L. 16 – p. 417, L. 24; Tr. p. 419, Ls. 10-17; Tr. p. 420, L. 19 – p. 421, L. 19.

[2] The clerk's record consists of three pdf files. The St. Luke's Parties refer to the file made up of district court filings as Volume 1, the file made up of confidential exhibits as Volume 2, and the file made up of non-confidential exhibits as Volume 3.

An acolyte of and frequent spokesperson for Ammon Bundy, Rodriguez had status and influence, both online and in Idaho, within the Christian Nationalist movement and with Bundy's followers. Tr. p. 405, Ls. 3-8; Tr. p. 425, L. 21-p. 426, L. 6. Rodriguez founded and led the Idaho-based, for-profit entity, Freedom Tabernacle Church which worked to bring Christian Dominion over the government and sought to outlaw homosexuality.[3] Tr. p. 421, L. 23-p. 423, L. 15. Rodriguez ran a marketing company that purported to be the largest of its kind in the world, operated Dominion Books, a publishing company, which marketed several books he authored, ran and provided all content for a website (freedomman.org) used to attack his enemies and promote conspiracies, directed his own political action committee, and was a frequent guest on online extremist shows with hundreds of thousands of subscribers. Tr. p. 425, L. 21-p. 426, L. 21; Tr. p.490, L. 25-p. 493, L. 8.

Already a celebrity owing to highly publicized armed standoffs with the federal government, Bundy increased his notoriety in 2020 by staging publicized confrontations at government facilities, homes of judges and public officials, and high school football games to show his displeasure with Covid-19 mandates. Tr. p. 410, L. 21–p. 411, L. 15. In 2022, Bundy was actively campaigning and receiving broad support as an Independent candidate for Governor of Idaho. Tr. p. 1611, Ls. 1-12; Tr. p. 1612, Ls. 9-14, Vol. 3, pp 117-118. Rodriguez served as a marketing consultant and public spokesperson for the Bundy Campaign. Tr. p. 420, L. 23-p. 421,

[3] As discussed below, these beliefs were used to agitate his followers against the St. Luke's Parties.

L. 6; Tr. p. 427, Ls. 8-12; Tr. p. 427, L. 20-p. 428, L. 5; Tr. p. 428, Ls. 9-15; Tr. p. 535, L. 14-p. 536, L. 12, Vol. 3, pp. 1284-1285.

In 2020, Bundy founded PRN to increase militancy and push back against laws, judicial rulings, and governmental actions Bundy opposed. Tr. p. 397, Ls. 9-20; Tr. p. 413, L. 18-p. 414, L. 10. As designed and led by Bundy, PRN operated outside the judicial system and leveraged the collective might of network members to punish "perpetrators" for actions PRN determined violated their members' rights. Tr. p. 411, L. 25- p. 412, L. 9; Tr. p. 429, L. 10-p. 431. L. 8. Bundy trained PRN members in military-style tactics, set the network up as an on-call militia, and advocated the use of physical violence to "defend" against supposed violations of PRN members' rights. Tr. p. 412, L. 22-p. 415, L. 3; Tr. p. 429, L. 6-p.431, L. 18; Tr. p. 1709, L. 11-p. 1710, L. 15. Combining his core of far-right paramilitary supporters, built up during his armed standoffs, with a mass base of new activists attracted by his public acts of trespass defying Covid-19 health directives, Bundy built PRN into a nationwide network that, by Bundy's count, had over 60,000 members. Tr. p. 393, Ls. 9-16. Between 2020 and 2022, PRN was responsible for 273 disruptions, including 38 disruptions at hospitals and public facilities. Tr. p. 406, L. 15-p.409, L. 7. Before St. Luke's, mobs of PRN members had forced two other hospitals into lockdown. Tr. p. 407, Ls. 7–22. In just the Treasure Valley, PRN, with the support of Rodriguez and Bundy, engaged in at least 50 disruptive actions, including 33 instances targeting public officials and their families in their homes. Tr. p. 406, L. 22–p. 407, L. 1; Tr. p. 408, Ls. 2–8.

Allied with Bundy, Rodriguez was a key leader in PRN, helped coordinated PRN's marketing efforts to get new members, and frequently served as a PRN spokesperson. Tr. p, 419,

L 10-p. 424, L. 3. Rodriguez and Bundy structured PRN so that it would funnel members' "donations" into Rodriguez's Freedom Tabernacle Church and into Bundy's wholly owned corporate entity, Dono Custos, Inc. Tr. p. 476, Ls. 16-23; Tr. p. 478, Ls. 7-13, p. 481, Ls. 7-15. They shared a financial incentive to grow PRN's membership.

D. Owing to Medical Neglect, DHW Takes Infant into Protective Care

1. St. Luke's Provided Care to a Malnourished and Dehydrated Infant.

On March 1, 2022, the 10-month-old Infant's parents took him to the St. Luke's Boise emergency room because he had been vomiting for weeks and had lost about four pounds in four months. Tr. p. 928, L. 17– p. 929, L. 8; Tr. p. 957, L. 7-14; Tr. p. 1352, L. 1–p. 1353, L. 6. As the attending pediatric hospitalist, Dr. Erickson examined the Infant. Tr. p. 934, Ls. 6-11; Tr. p. 938, L. 25-p. 940, L. 21. She found that the 10-month-old Infant had fallen into the .05 percentile for his age, exhibited signs of muscle wasting, suffered from malnutrition and dehydration, and was at risk of death absent proper medical care. Tr. p. 969, Ls. 23-25; Tr. 931, L. 10-p. 932, Ls. 1-10; Tr. p. 969, Ls. 23-25; Tr. p. 930 L. 6–p. 941, L. 14; Tr. 931, L. 10-p. 932, Ls. 1-10. Because he would not breastfeed or bottle feed, the Infant received IV fluids and was fed through a nasal tube. Tr. p. 1355, L. 19–p. 1358, L. 11, Tr p. 1359, Ls. 13-16; Tr. p. 1359, L. 22–p. 1361, L. 23. At discharge, the nasal tube remained in place, and Dr. Erickson explained to the parents that the Infant would need continued nasal feeds and that it was essential that the Infant receive frequent follow-up monitoring by the Infant's primary care physician after discharge. Tr. p. 941, L. 24–p. 953, L. 5; Tr. p. 956, L. 22-p. 957, L. 20. Given the Infant had been stabilized and the parents promised to follow the prescribed aftercare, Dr. Erickson did not

report the Infant to DHW or any other government entity at any time. Tr. p. 963, Ls. 6-19; Tr. p. 1369, Ls. 16-22.

2. The Infant's Health Declined After Discharge.

The parents disregarded Dr. Erickson's directions regarding aftercare. Tr. p. 968, Ls. 2-25. In turn, the Infant lost significant weight and was not taken in for required monitoring. Tr. p. 968, Ls. 22-25. On March 11, 2022, when the parents skipped the Infant's scheduled weigh-in with his primary care provider (not affiliated with St. Luke's), the primary care provider reported the life-threatening situation to DHW. Tr. p. 1228, Ls. 13-18.

DHW directed the Meridian Police to investigate. In turn, the Meridian Police consulted with NP Jungman at Children at Risk Evaluation Services ("CARES") to assess the urgency of the situation. Tr. p. 1168, L. 15-p. 1169, L. 23. NP Jungman reviewed the records, advised that the Infant should be seen before the weekend given the risks, and said that she would stay late so the parents could bring in the Infant for examination. Tr. p. 1167, L. 6-p. 1170, L. 11. After being contacted by the officers, the parents promised to bring the Infant directly in to see NP Jungman at CARES. Tr. p. 1166, Ls. 7-11. However, the parents never showed up and stopped responding to phone calls from DHW. Tr. p. 1166, Ls. 7–11.

Given what was at risk, Meridian Police initiated a search and located the Infant that evening, traveling with his parents in a car. Tr. p. 697, L. 23 – p. 698, L. 7; Tr. p. 708, L. 16-p. 716, L. 24; Tr. p. 727, Ls. 6 – 17; Tr. p. 732, L. 25–p. 733 L. 25. Alerted by the parents, Rodriguez and a number of his followers descended on the scene, confronted the police, began livestreaming the event to bring in more followers and summoned Bundy. Tr. p. 711, Ls. 12-17.

Once the officers finally saw the Infant's condition, they immediately placed him in temporary DHW custody and took him to the Emergency Room at St. Luke's Meridian Hospital. Tr. p. 697, L. 23–p. 698, L. 7; Tr. p. 708, L. 16 - p. 716, L. 24; Tr. p. 727, Ls. 6–17; Tr. p. 732, L. 25–p. 733, L. 25. While the Infant was being transported to the hospital, Bundy contacted the police, declared that "there will be hell to pay" unless the Infant was remanded to him, and directed followers to head to the Meridian hospital to take the Infant back. Tr. p. 469, Ls. 6-9.

When the Infant arrived at Emergency Department at St. Luke's Meridian in the early hours of March 12, 2022, the emergency room doctor quickly identified the Infant suffered from severe malnutrition and dehydration and decided to transfer him to the pediatric floor of St. Luke's Boise for specialized care. Tr. p. 810, L. 2-p. 811, L. 10. Meanwhile Bundy and a mob of his followers arrived, blocked the ambulance bay, confronted hospital security and police, and demanded the Infant be released to Bundy. Tr. p. 769, Ls. 13-18. A crowd of followers grew. Tr. p. 1616, Ls. 4-25. The Emergency Department was forced to go into lockdown and diverted ambulances to other hospitals. Tr. p. 817, Ls. 11-25. Bundy refused to move away for the ambulance bay and was arrested for trespass. Tr. p. 782, Ls. 3-8; Tr. p. 787, Ls. 2-24. Bundy smiled as this arrest was livestreamed to his followers. AV Ex. 167.

E. Rodriguez Defamed, Endangered, and Harassed the St. Luke's Parties.

By the time Bundy was released on bail a few hours later, Rodriguez and Bundy had manufactured a false conspiracy and coordinated talking points. Tr. p. 1525, Ls. 2-15; Tr. p. 1625, L. 20-p. 1627, L. 12. They concocted a conspiracy theory that Dr. Erickson, NP Jungman, Mr. Roth, and St. Luke's participated in a vast kidnapping and child trafficking ring that sexually

abused and killed children for profit. Tr. p. 493, L. 19–p. 497, L. 3. Rodriguez decreed the trafficking ring had targeted the Infant. Tr. p. 966, L. 19–p. 967, L.6. They falsely represented that the Infant had been in good health and did not need medical care. Tr. p. 1126, L. 20–p. 1127, L. 2; Tr. p. 1171, L. 4–p. 1172, L. 8; Vol. 3, pp. 1276-1280, 1866-1868. Further, Rodriguez, working with the other Defendants, falsely stated the Infant was being mistreated by St. Luke's and, absent action by his followers, St. Luke's was going to harm, steal, and traffic the Infant. Vol. 3, pp. 834, 1124-1125, 1913-1915, 1930-1931, 4138. Rodriguez, together with Bundy, directed PRN to activate its thousands of members to begin harassing and disrupting St. Luke's. Rodriguez began to broadcast pictures and personal information of the judge, police, public servants, and medical professionals involved, labeling them kidnappers, child traffickers, lesbians, gropers, and pedophiles. Tr. p. 505, Ls. 9-24, Vol. 3. p. 917; Tr. p. 506, Ls. 12-16; Tr. p. 527, Ls. 7-12; Tr. p. 742, Ls. 15-21; Tr. p. 878, Ls. 7-13.

1. The Infant Was Moved to St. Luke's Boise; Rodriguez Defamed Plaintiffs and Directed Followers to Disrupt St. Luke's and Harass Plaintiffs.

When the Infant was transferred to St. Luke's Boise early on March 12, 2022, the Infant was in danger of organ failure and death. Having lost weight since he was last discharged from St. Luke's, the Infant weighed only thirteen pounds and fourteen ounces, placing him in the .02 percentile for his age. Tr. p. 1188, L. 8–p. 1189, L. 16. The Infant's feeding tube—which was in place when St. Luke's discharged him—was no longer in place. Tr. p. 1189, Ls. 17-25. The Infant's lips were cracked and dry, his fontanelle sunken, and his ribs and spine were showing.

Tr. p. 1185, L. 10-p. 1186, L. 12. The Infant had low blood sugar and kidney and liver dysfunction consistent with acute dehydration. Tr. p. 939, L. 11-p. 940, L. 14.

St. Luke's again cared for the Infant through nasal feeding and rehydration. Tr. p. 944, L. 20-p. 945, L. 1. The Infant's health improved, and he gained weight. Tr. p. 1371, L. 21-p. 1372, L. 1; Tr. p. 1382, Ls. 4-8. St. Luke's providers gave the Infant's parents detailed updates, and they consented to the treatment plan. Tr. p. 1112, L. 23-p. 1113, L. 3; Tr. p. 1202, L. 20-p. 1203, L. 12

While St. Luke's was caring for the Infant, Rodriguez orchestrated continuing attacks. As directed by Rodriguez, Bundy, and PRN, an armed mob established itself at St. Luke's Boise hospital from March 12 through March 15, harassing employees and patients. Tr. p. 297, L. 8–p. 303, L. 1, AV. Exs. 166, 166A, AV Tr. Exs. 174A, 175; Tr. p. 325, L. 18–p. 326, L. 5, Vol. 3. p. 14-15; Tr. p. 1118, L. 16–p. 1119, L. 2; Tr. p. 1119, L. 24–p. 1126, L. 19; Tr. p. 1127, Ls. 3–9. Rodriguez instructed his followers to flood St. Luke's with calls to disrupt St. Luke's business. Tr. p. 314, L. 2–p. 315, L. 15; R. Vol. 3, p. 12; Tr. p. 338, L. 13–p. 339, L. 1; R. Vol. 3. p. 16; Tr. p. 351, Ls. 2–7; R. Vol. 3. pp. 63-64; Tr. p. 1054, L. 9–p. 1063, L. 3; AV. Ex. 175; R. Vol. 3. p. 59; Tr. p. 1073, Ls. 7–14.

On March 15, 2022, St. Luke's prepared to discharge the Infant as the Infant was medically stable, gaining weight, tolerating oral feed, and healthy enough for outpatient care. R. Vol. 3, p. 59. On March 15th, upon learning of the upcoming discharge, Rodriguez, along with Bundy, issued emergency orders and calls to arms for militia members to rush to the hospital to prevent the Infant's release into DHW's care. Tr. p. 417, Ls. 15-24. The responding mob,

estimated at 500 to 600, many armed, disrupted hospital operations. AV Tr. Exs. 174A, 175; Tr. p. 325, L. 18–p. 326, L. 5; R. Vol. 3. p. 14-15; Tr. p. 1118, L. 16–p. 1119, L. 2; Tr. p. 1119, L. 24–p. 1126, L. 19; Tr. p. 1127, Ls. 3–9. As the armed mob demanded to take the Infant and began probing to push past hospital security and the 30 or so police officers on site, the entire Boise hospital went into lockdown to prevent being overwhelmed by the mob. *Id.*

2. Rodriguez Sought to Harm and to Make Money.

Rodriguez openly stated he wants to cause pain and harm to the St. Luke's Parties. Tr. p. 357, Ls. 6–18; Tr. p. 368, Ls. 1-6; Tr. p. 1522, L. 15–p. 1528, L. 18. Rodriguez bragged that he wanted to make it so St. Luke's employees would be shunned by their families and lose their careers, while St. Luke's itself would be run out of business. *Id.* His desire for financial gain was clear. He used his posts and media appearance to sell his personal brand, recruit more members to PRN (which were monetized), market his businesses, and explicitly call for donations. Tr. p. 476, L. 16–p. 477, L. 3.

III. PROCEDURAL HISTORY

A. The St. Luke's Parties Sued Rodriguez, Seeking Relief from the Ongoing Defamation and Damages.

1. Rodriguez Appeared and Participated in the Lawsuit.

Rodriguez represented himself in the lawsuit. Among other things, he filed Answers and motions, stipulated to the case management schedule (including trial dates), and attended the case management conference remotely. R. Vol. 1, pp. 280–82, 376–90, 529–33, 2090–2193, 2199–2200, 3984. The district court informed Rodriguez during a December 20, 2022, hearing, during which Rodriguez appeared remotely, that he "must request videoconference hearings and

the Court must grant that request in order to obtain a videoconference hearing." R. Vol. 1, p. 3984. Rodriguez acknowledged this requirement. *Id.*

2. Rodriguez Refused to Abide by His Discovery Obligations.

Rodriguez did not cooperate in discovery. At the outset, the St. Luke's Parties obtained an order permitting expedited discovery (five interrogatories seeking the nature of the relationship among the six Defendants). R. Vol. 1, pp. 201–02, pp. 3636–42. When Rodriguez failed to fully respond, the district court ordered him to appear for a limited deposition relating to the five interrogatories. R. Vol. 1, p. 287. The day before the deposition (October 4, 2022), Rodriguez directed his followers to flood the deposition Zoom link, calling Plaintiffs' counsel "criminal bullies . . . accustomed to getting away with murder because nobody ever fights back." R. Vol. 1, pp. 324–25, 338–40. He instructed, "[I]t's time we fought back. Please join us on the deposition tomorrow morning at 8:30am Mountain Time." R. Vol. 1, p. 339. Later, on Plaintiffs' motion, the district court entered a protective order requiring third parties obtain leave of court to attend depositions. R. Vol. 1, pp. 582–83. During the limited deposition, Rodriguez admitted that he wrote all content for the website freedomman.org, where many defamatory statements against the St. Luke's Parties appeared. R. Vol. 1, pp. 1285–97. His responses to questions relating to the five interrogatories were incomplete. R. Vol. 1, pp. 1773–74.

The case continued, and Plaintiffs served Rodriguez with requests for production and further interrogatories. R. Vol. 1, p. 1233. Rodriguez responded with incomplete, combative, and nonresponsive answers. For instance, in response to an interrogatory seeking identification of communications and correspondence with the other Defendants relating to DHW's intervention

on behalf of the Infant: "While it is true that Ammon and I have had multiple conversations in regards to the [Infant's] case, this lawsuit, the fake pandemic, the tyranny of St. Luke's and the corruption of the Idaho State government, there is no way to identify when or where we had those conversations." R. Vol. 1, p. 1242. He withheld almost all documents requested, including all communications among the Defendants, all documents showing business relationships among the Defendants, documents tending to prove or disprove Rodriguez's statements, and all communications from "whistleblowers" Rodriguez claimed to have received. R. Vol. 1, pp. 1764–78. Rodriguez withheld these documents while concurrently posting on his "Freedom Man" website that he was "holding a lot of things back" and had "stacks of research, unpublished articles, unknown details, unseen videos, and volumes of evidence" regarding the case, which he intended to gradually leak to his followers. R. Vol. 1, p. 1699. Plaintiffs moved to compel on December 6, 2022, which the district court granted on February 8, 2023. *Id.* The order required Rodriguez to supplement his discovery responses by February 22, 2023. R. Vol. 1, pp. 1779–82. Rodriguez refused to supplement, necessitating further motion practice in early March 2023, including for sanctions and appointment of a discovery referee. R. Vol. 1, pp. 2063–76, 2209–17. On April 25, 2023, the district court again ordered Rodriguez to supplement his discovery responses and granted the motion for a discovery referee. R. Vol. 1, pp. 2355–66. Rodriguez never supplemented the discovery responses. *See* R. Vol. 1, p. 3986. He also did not respond to the set of interrogatories and requests for production served after the district court granted Plaintiffs' motion to amend their Complaint to allege punitive damages. *See id.* The

district court held that Rodriguez wrongfully withheld responses to these discovery requests as well. R. Vol. 1, p. 3987.

Rodriguez violated his obligation to appear for his regular/full deposition. Plaintiffs properly noticed an in-person deposition December 8, 2022, in Orlando, Florida, where Rodriguez said he resided. R. Vol. 1, p. 1269. Rodriguez claimed without basis that he was "unavailable for the month of December," R. Vol. 1, p. 1266, unilaterally sought to limit his deposition to four hours, R. Vol. 1, p. 1269, and refused to appear in person, R. Vol. 1, p. 1267. After these refusals, Rodriguez stonewalled as to deposition scheduling, R. Vol. 1, pp. 1233, 1274–79, falling back on vile accusation and hate speech instead, R. Vol., p. 1270 (labeling Plaintiff's counsel as "probably a pedophile" and a supporter of "homosexual perversion"). The St. Luke's Parties moved to compel his deposition. R. Vol. 1, pp. 1310–27. They sought a two-day deposition due to the scope and ongoing actions Rodriguez was taking as well as his lack of cooperation in the limited deposition. R. Vol. 1, p. 1269. The district court ordered Rodriguez "to sit for an in-person two-day deposition" to take place on two consecutive days and required Rodriguez "to inform Plaintiffs' counsel . . . of two possible start dates . . . between February 25, 2023 and March 25, 2023." R. Vol. 1, p. 1775. "Rodriguez must inform Plaintiffs' counsel in what city, state and country that he will be in on those dates." *Id.* In response to the order, Rodriguez emailed Plaintiffs' counsel, claiming he would be in Curitiba, Paraná, Brazil on his only available dates. R. Vol. 1, p. 2084. Brazil does not permit international depositions; a fact Rodriguez knew and also had explained in detail to him in the meet-and-confer correspondence. *See* R. Vol. 1, pp. 2086–87, 2089. Rather than provide another location, Rodriguez called

Plaintiffs' counsel a "psychopath" and implied counsel would be raped in a Brazilian jail. R. Vol. 1, p. 2089. Plaintiffs again moved to compel his deposition, requesting Rodriguez be required to appear for his deposition in Orlando or in Boise because he refused to provide any viable location. R. Vol. 1, p. 2065. Because of Rodriguez's disobedience and gamesmanship, the district court ordered Rodriguez to sit for his deposition in Boise by May 24, 2023. R. Vol. 1, p. 2364. Rodriguez did not appear for the subsequently noticed deposition. R. Vol. 1, pp. 4018–19.

The district court awarded fees and costs for Rodriguez's discovery violations. R. Vol. 1, pp. 2445–46. Rodriguez did not pay the amounts ordered. *Id.*

3. The St. Luke's Parties Complied with All Discovery Obligations.

While Rodriguez was serially violating his discovery obligations and the district court's orders, he served interrogatories and requests for production on Plaintiffs. R. Vol. 1, pp. 3465–82. The St. Luke's Parties duly responded and produced thousands of pages pursuant to his requests for production. R. Vol. 1, pp. 3484–3629; 3835–79 (trial exhibit list showing Bates numbers from document production). If Rodriguez believed the responses insufficient, he did not meet and confer or seek anything further.

4. Rodriguez Continued to Defame Plaintiffs and Intimidate Witnesses During the Lawsuit.

During the lawsuit, Rodriguez continued to create new defamatory content against the individual Plaintiffs and cyberstalk them, as well as third-party witnesses expected to appear at trial. R. Vol. 1, pp. 2444–50, 2510–2882. Plaintiffs sought a protective order requiring Rodriguez to cease the harassment and threats against Plaintiffs and other witnesses. R. Vol. 1, pp. 88–95.

The district court entered a protective order, using the language of the witness intimidation statute. *Compare* R. Vol. 1, pp. 1727–29; *with* Idaho Code § 18-2604(1)–(2).

Rodriguez refused to obey the protective order, instead creating new posts against the district court, using covertly taken photos of Judge Norton,[4] which Rodriguez apparently altered. *See* R. Vol. 1, pp. 2883–96. Alongside the photos, Rodriguez called the judge "biased," "malicious," "unfit to preside over our case," "evil, wicked, and unjust," and "corrupt[]." R. Vol. 1, pp. 2886–87, 2892.

On May 2, 2023, Plaintiffs moved for contempt against Rodriguez for, among other things, his violations of the protective order. R. Vol. 1, pp. 2370–3124.

5. Rodriguez Filed Two Frivolous Notices of Removal in Federal Court to Delay the Case and Disrupt Contempt Proceedings Against Him.

Rodriguez attempted to remove the case to federal court, delaying the contempt hearing due to the resulting automatic stay in the state court. *See* R. Vol. 1, pp. 3194–99, 3216–25. On May 19, 2023, the federal court remanded for lack of subject matter jurisdiction, admonishing Rodriguez, and the other removing parties, "the Court takes great umbrage when parties denigrate or threaten opposing parties or counsel." R. Vol. 1, p. 3223.

A few days after the federal court's remand order, on May 22, 2023, the night before the contempt hearing, Rodriguez attempted to remove the case again. R. Vol. 1, pp. 3633–34, 3809;

[4] Use of cell phones, photography, and recording of court proceedings was prohibited by Idaho Court Administrative Rule 45 and Fourth Judicial District Admin. Order No. 21-05-21-12, which was sent to Rodriguez by the district court. R. Vol. 1, pp. 580, 4026–28; Tr. pp. 2011–12, 2107–08, 2213–15, 2246.

Tr. p. 2220, Ls. 19–21. In response to Plaintiffs' counsel's email regarding the second notice of removal, Rodriguez only responded with paragraphs of invective, including, "Stop being a fag and REPENT, Dirty Erik. Stop being Dirty Erik He/Him/His Stidham. Repent. You must repent." R. Vol. 1, p. 3632. On May 26, 2023, the federal court dismissed Rodriguez's purported notice as moot. R. Vol. 1, pp. 3809–11.

6. The District Court Found Probable Cause That Rodriguez Was in Contempt of the Order Protecting Witnesses and Issued a Warrant.

When Rodriguez again failed to appear at the re-set June 6, 2023 contempt hearing, the district court issued a warrant of attachment under Rule 75. R. Vol. 1, pp. 2, 37; Tr. p. 2221, Ls. 3–14. The court determined there was probable cause that Rodriguez had violated the protective order prohibiting threatening witnesses. *Id.* The warrant remains outstanding.

7. The District Court Sanctioned Rodriguez with Default.

By the time all this had occurred, the parties were only weeks away from trial, set to begin July 10, 2023. R. Vol. 1, p. 401. The pretrial deadline to file witness lists, exhibit lists, proposed jury instructions, and motions in limine was June 6, 2023. R. Vol. 1, pp. 4034–35. Rodriguez submitted no pretrial filings. *Id.*

The pretrial conference took place on June 6, 2023. Tr. pp. 2213, 2215–16. Rodriguez failed to appear. Tr. pp. 2220, 2223.

Due to Rodriguez's withholding of evidence in discovery, the St. Luke's Parties moved for sanctions, requesting the district court enter default and disallow any evidence withheld in discovery. R. Vol. 1, pp. 3248–56. Rodriguez filed no response. R. Vol. 1, p. 4019. On June 13, 2023, the court granted the motion, making detailed findings, entering default, and striking

Rodriguez's Answer. R. Vol. 1, pp. 3984–92, 4018–21. The order further stated, "This court will not consider opposing argument or evidence from Diego Rodriguez during a default damages hearing." R. Vol. 1, pp. 3992, 4020.

Believing the district court's June 13, 2023 order could potentially be misinterpreted as over-inclusive, Plaintiffs moved for reconsideration to clarify Defendants were still to appear at the trial on damages, present argument, and otherwise participate, subject to default and evidentiary sanction. R. Vol. 1, pp. 4040–52. The district court granted the motion for reconsideration on June 30, 2023, stating in relevant part:

> The Court hereby orders:
>
> - Default has been ordered in favor of Plaintiffs against all Defendants[;]
> - All Defendants may participate in the jury trial if they appear in person . . .
> - All Defendants are permitted to participate in jury selection, subject to the limitations and restrictions[;]
> - All Defendants will be permitted to present an opening statement and closing argument, subject to the limitations and restrictions;
> - All Defendants will be permitted to cross-examine witnesses, subject to the limitations and restrictions . . .
> - This Court will deem admitted any factual allegations pled by Plaintiffs in the Fourth Amended Complaint . . .
> - This Court will not submit to the jury any requested but previously undisclosed evidence from Defendants during the default damages trial. Defendants are prohibited from producing or introducing any previously undisclosed evidence at trial besides relevant questions in the form of cross examination.

R. Vol. 1, pp. 4069–71. The order emphasized the requirement that parties participate in person: "Trial will proceed before a jury, beginning on July 10, 2023 at 8:30 a.m. for jury selection. All parties and counsel who choose to appear must appear *in person* at this time at the Ada County Courthouse, 200 W. Front Street, Boise, ID." R. Vol. 1, p. 4072 (emphasis in original).

8. The District Court Referred to a Jury the Amount of Damages, if Any, on Default Judgment.

The issue of default damages, if any, was referred to a jury, upon the St. Luke's Parties' motion. R. Vol. 1, p. 4069.

The trial was set to commence on the date to which Rodriguez had stipulated: July 10, 2023. R. Vol. 1, pp. 389, 4069. At 10:33 pm, the night before trial, Rodriguez filed a request to appear via Zoom, despite the order specifying parties must appear in person. R. Vol. 1, p. 4072; Aug. Vol. 2, p. 1049. The court denied his request. *Id.* Rodriguez then sought the names of the selected jurors and their alternates, asserting he wanted "to determine if these jurors are truly unbiased or not." R. Vol. 1, pp. 4106–07. The district court denied his request. *Id.*

Trial proceeded. Rodriguez did not appear. Tr. pp. 19–20. Nine prospective jurors were struck for cause, including all employees and former employees of St. Luke's. Tr. pp. 23–24. There were seven days of testimony. Tr. p. 5.

9. At Trial, the St. Luke's Parties Presented Twenty-Five Witnesses, 4,594 Pages of Exhibits, and 95 Videos.

Twenty-five witnesses testified, including witnesses from DHW and the Meridian Police Department, a CPS prosecutor, and expert witnesses on pediatric medicine, marketing, extremist organizations, and how extremist campaigns create threats of violence. Tr. pp. 6–8, 633–750, 862–921. The St. Luke's Parties offered into evidence 4,594 pages of exhibits and 95 videos, including videos of Rodriguez himself repeating the defamatory statements on extremist alternative media platforms and using the false narrative to build his online profile and seek new business. R. Vol. 3, pp. 1–4350, Vol. 2, pp. 335–578, AV Exs. 12–776A. Every Freedom Man

post relating to the false kidnapping and child trafficking conspiracy against Plaintiffs was put into evidence. Vol. 3, pp. 917–2206.

The Infant's medical records were put into evidence in their entirety. Vol. 2, pp. 335–533. Two doctors who treated the Infant and the pediatrician testifying as an expert witness all testified that the Infant was at risk of dying within days when he was taken into protective care. Tr. p. 829, L. 23–p. 830, L. 4; Tr. p. 967, L. 20–p. 968, L. 25; Tr. p. 1400, L. 20-p. 1401, L. 10. An expert witnesses, Executive Director of the Institute of Research and Education on Human Rights ("IREHR") testified regarding (1) the power and reach of Rodriguez, Bundy, and PRN and (2) Rodriguez's tactic of labeling his targets as "fags," lesbians, and pedophiles in order to animate his followers to harass and attack the targets. Tr. p. 549, Ls. 9-25. Chris Roth, Dr. Erickson, NP Jungman, Dr. Thomas, police officers, the Director of DHW, and a forensic psychologist testified regarding the reality of being subject to the widespread online defamation and harassment and the resulting harm to them and their families. Tr. p. 340, L. 19–p. 348, L. 9; Tr. p. 651, L. 3–p. 654, L. 16; Tr. p. 720, L. 12–p. 727, L. 5; Tr. p. 747, L. 18–p. 749, L. 22; Tr. p. 853, L. 6–p. 858, L. 6; Tr. p. 878, L. 22–p. 881, L. 1; Tr. p. 906, L. 23–p. 917, L. 22; Tr. p. 974, L. 23–p. 980, L. 21; Tr. p. 1237, L. 25–p. 1244, L. 2; Tr. p. 1447, L. 23–p. 1465, L. 24; Tr. p. 1467, L. 18–p. 1478, L. 24; R. Vol. 3, pp. 2207-2229. Witnesses, including St. Luke's Head of Security, testified regarding the disruptions to the hospital phone systems, death threats received, mob harassment at the hospital of employees and patients, and the mobs that caused two lockdowns. Tr. p. 314, L. 6–p. 315, L. 15; R. Vol. 3, p. 12; Tr. p. 337, Ls. 9–19; R. Vol. 3, pp. 14-15; Tr. p. 364, Ls. 9-16. An expert witness in marketing and St. Luke's Vice President for

Communications and Marketing testified Rodriguez orchestrated a sophisticated misinformation campaign designed to damage St. Luke's reputation and the reputation of its providers. Tr. p. 1596, L. 23–p. 1664, L. 9; Tr. p. 1546, Ls. 6-21. An expert in managing large extremist disruptions and threats testified regarding the threats posed by the armed mobs at the hospitals and the ongoing risk of violence St. Luke's, Roth, Dr. Erickson, and NP Jungman continue to face. Tr. p. 1725, L. 10-p. 1726, L. 1; Tr. p. 1745, L. 17-p. 1746, L. 9. St. Luke's Chief Financial Officer and a CPA serving as an expert witness testified that Rodriguez and the other Defendants caused St. Luke's to suffer millions of dollars in damages relating to lost appointments, extra security, and other costs. Tr. p. 1572, L. 15-p. 1573, L. 4; Tr. p. 1827, L. 12-p. 1828, L. 6.

The jury returned a verdict against all Defendants for $52 million. R. Vol. 1, pp. 4213–23. The district court sua sponte redacted the foreperson's signature from the public record. R. Vol. 1, p. 4223; Tr. p. 1955, Ls. 20–24. The St. Luke's Parties understood the redaction was to protect the foreperson's safety.

10. The District Court Entered a Permanent Injunction and Default Judgment.

On August 25, 2023, the district court separately entered findings of fact and conclusions of law, entering a permanent injunction against Rodriguez and the other Defendants. R. Vol. 1, pp. 4243–82. On August 29, 2023, the court entered default judgment. R. Vol. 1, pp. 4283–89.

On October 4, 2023, Rodriguez appealed the default judgment. R. Vol. 1, pp. 4301–05. He had not filed a motion to set aside the default judgment.

11. Rodriguez Violated the Permanent Injunction.

Rodriguez openly violated the permanent injunction. *See* Aug. Vol. 2, pp. 2–1048. The St. Luke's Parties moved for contempt. *Id.* Rodriguez refused to appear, and the district court entered a warrant of attachment pursuant to Rule 75. *See* OB at 24 (acknowledging the warrant). The warrant remains outstanding.

IV. ISSUES PRESENTED ON APPEAL

1. Should this Court dismiss the appeal under the fugitive disentitlement doctrine?

2. Should this Court dismiss the appeal because Rodriguez did not move to set aside the default judgment?

3. Should this Court affirm because there is no evidence of judicial bias of the district court?

4. Should this Court affirm over Rodriguez's First Amendment objection because his false statements of fact are not constitutionally protected speech?

5. Should this Court affirm the district court's evidentiary sanctions and default against Rodriguez due to his repeated, intentional violations of court orders?

6. Should this Court affirm the jury's verdict because Rodriguez waived his chance to object to any jurors, and the jurors selected affirmed their ability to serve?

7. Should the St. Luke's Parties be awarded their reasonable attorneys' fees under Idaho Code section 12-121, to respond to this appeal?

V. ARGUMENT

A. Standard of Review.

"'Whether it is necessary for a judicial officer to disqualify [herself] in a given case is left to the sound discretion of the judicial officer[.]'" *Zylstra v. State*, 157 Idaho 457, 460–61, 337 P.3d 616, 619–20 (2014) (quoting *Bradbury v. Idaho Judicial Council*, 149 Idaho 107, 113, 233 (2009)). The Court reviews for abuse of discretion standard. *See id.*

"Regarding constitutional issues, [the Idaho Supreme Court] decides whether the facts in the record demonstrate a violation of the claimant's constitutional rights independently of the district court." *Willie v. Bd. of Trustees*, 138 Idaho 131, 133, 59 P.3d 302, 304 (2002).

This Court reviews the imposition of sanctions for abuse of discretion. *Erickson v. Erickson*, 171 Idaho 352, 363, 521 P.3d 1089, 1100 (2022).

Whether a juror can render a fair and impartial verdict is reviewed for abuse of discretion. *Mulford v. Union Pac. R.R.*, 156 Idaho 134, 138, 321 P.3d 684, 688 (2014).

Also, relevant here: "'Pro se litigants must conform to the same standards and rules as litigants represented by attorneys[.]'" *Owen v. Smith*, 168 Idaho 633, 647, 485 P.3d 129, 143 (2021); *Michalk v. Michalk*, 148 Idaho 224, 229, 220 P.3d 580, 585 (2009) (similar).[5]

[5] Rodriguez, appearing pro se, implies at times that he represents Ammon Bundy in the appeal. *See, e.g.*, OB at 1 ("Comes now Diego Rodriguez to make his case for the appeal of the defamation case against him and defendant, Ammon Bundy."). Rodriguez is not an attorney; he cannot represent Bundy in this appeal. *See, e.g.*, *Van Hook v. State*, 170 Idaho 24, 29, 506 P.3d 887, 892 (2022) (holding non-attorney could not represent his minor son in post-conviction litigation because the right to appear pro se "does not extend to the representation of other persons or entities") (internal quotation marks omitted); *Indian Springs LLC v. Indian Springs Land Inv., LLC*, 147 Idaho 737, 745, 215 P.3d 457, 465 (2009) ("Although a non-attorney may

B. The Court Should Dismiss Rodriguez's Appeal Because He Is Evading Bench Warrants for Contempt.

This Court should not permit Rodriguez to pursue his appeal remotely while concurrently defying the outstanding warrants issued on dozens of contempt charges for his violations of the order protecting witnesses and the permanent injunction. Many jurisdictions recognize the fugitive disentitlement doctrine, an equitable rule permitting the court to prevent injustice when a litigant simultaneously seeks relief from a court while evading a warrant. *See, e.g.*, *Ener v. Martin*, 987 F.3d 1328, 1333 (11th Cir. 2021) (affirming dismissal due to outstanding contempt and order of referral to law enforcement); *Sasson v. Shenhar*, 667 S.E.2d 555, 628 (Va. 2008) (affirming dismissal of appeal because appellant had an outstanding warrant for contempt); *Colombe v. Carlson*, 757 N.W.2d 537, 542 (N.D. 2008) (dismissing appeal due to appellant leaving jurisdiction during contempt proceedings); *Wechsler v. Wechsler*, 45 A.D.3d 470, 474 (N.Y. Ct. App. 2007) (dismissing appeal with potential for reinstatement if appellant posted security for amounts he was ordered to pay before leaving the jurisdiction); *Matsumoto v. Matsumoto*, 792 A.2d 1222, 1235 (Miss. 2002) (requiring defendant evading bench warrant to post bond for the judgment before permitting appeal to proceed on related issue); *Guerin v. Guerin*, 993 P.2d 1256, 1258 (Nev. 2000) (dismissing appeal in divorce case due to wife evading arrest under a bench warrant for contempt); *Conforte v. Comm'r*, 692 F.2d 587, 590 (9th Cir.

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appear pro se on his own behalf, that privilege is personal to him."). Accordingly, the St. Luke's Parties do not respond to arguments Rodriguez appears to make on behalf of Bundy.

1982) (applying doctrine to dismiss civil tax appeal while appellant remained a fugitive from related criminal tax conviction).

While this Court has not adopted the fugitive disentitlement doctrine, the Idaho Court of Appeals has addressed it in criminal cases. *See State v. Nath*, 137 Idaho 712, 52 P.3d 857 (2002) (declining to dismiss when fugitive no longer at large); *State v. Gottlieb*, 167 Idaho 940, 944, 477 P.3d 994, 998 (Ct. App. 2020) (dismissing appeal); *State v. Moran-Soto*, 150 Idaho 175, 179, 244 P.3d 1261, 1265 (Ct. App. 2010).

The doctrine exists to uphold the rule of law. "Permitting an appellant who is dissatisfied with the process to disregard the court's order, merely because the appellant determines that order unfair or unjust, would result in an abuse of our court system." *Columbe*, 757 N.W.2d at 542. It would be "unfair to allow a fugitive to use court resources only if the outcome is an aid to him." *Ener*, 987 F.3d at 1332 (internal quotation marks omitted). As the Ninth Circuit put it, "'heads I win, tails you'll never find me.'" *Antonio-Martinez v. INS*, 317 F.3d 1089, 1093 (9th Cir. 2003). A party should not be permitted to benefit himself by selectively submitting to the court's jurisdiction. *Sasson*, 667 S.E.2d at 624.

The fugitive disentitlement doctrine bars a litigant from seeking relief from a court when (1) the party is a fugitive in a civil or criminal proceeding; (2) the party's fugitive status is sufficiently connected to the litigation in which the doctrine is sought to be invoked; (3) invocation of the doctrine must be necessary to enforce the judgment of the court or to avoid prejudice to the other party caused by the adversary's fugitive status; and (4) invocation of the

doctrine is not an excessive response. *Matsumoto*, 792 A.2d at 1233 (reciting rule after analyzing case law nationwide).

To be a fugitive, an appellant must know that he has a warrant issued against him and decline to enter the jurisdiction where the warrant is outstanding. *Ener*, 987 F.3d at 1332 (rejecting appellant's argument that she was not a fugitive because no law prohibited her from leaving the jurisdiction, although she knew she was subject to arrest upon return).

Rodriguez's appeal presents the quintessential situation for fugitive disentitlement. First, Rodriguez is a fugitive within the meaning of the doctrine. He knows that there are pending charges of contempt and bench warrants against him in Idaho and litigates from afar to evade arrest. *See* OB at 24, n.19 (citing online record of two warrants against him). Second, the contempt actions are related to the appeal; the warrants issued because the court found probable cause that Rodriguez had threatened witnesses before the trial and because Rodriguez was violating the Permanent Injunction issued against him for his defamation. Third, the St. Luke's Parties are prejudiced by Rodriguez's refusal to present himself in the contempt proceedings so that the district court can enforce its orders against him. As it stands, he maintains the defamatory posts online and has created new ones since the permanent injunction was entered. Aug. Vol. 2, pp. 2–1048. Fourth, dismissal would not be excessive because Rodriguez manipulates the court system by selectively seeking aid of this Court while disobeying orders.

The St. Luke's Parties urge this Court to join the other jurisdictions who agree the rule of law prohibits litigants who evade a court's warrant authority from concurrently seeking related legal relief. The St. Luke's Parties request that this Court dismiss his appeal with prejudice, or in

the alternative, dismiss with leave to file a motion to reinstate (within a defined, reasonable period of time), if he appears in person and submits to the district court's jurisdiction in the two pending contempt actions.

C. The Court Can Dismiss Rodriguez's Appeal Because He Never Moved to Set Aside the Default Judgment.

"Although a judgment by default is a final judgment, no appeal lies directly from such a ruling." *Dominguez v. Evergreen Res., Inc.*, 142 Idaho 7, 13–14, 121 P.3d 938, 944–45 (2005). Rather, a party may only challenge a default judgment on appeal if he has first moved to set aside the default judgment in the district court and received an adverse ruling. *Id.* (holding appellant's failure to move to set aside the default judgment barred its appeal); *see also E. Idaho Econ. Dev. Council v. Lockwood Packaging Corp.*, 139 Idaho 492, 496, 80 P.3d 1093, 1097 (2003) (holding parties' failure to file a brief and affidavit in support of their motion to set aside default judgment precluded their appeal after judgment was entered against them).

Rodriguez did not file a motion to set aside. The Court should dismiss his appeal.

D. Rodriguez's Extra-Record Assertions Should Not Be Considered.

This Court should not consider Rodriguez's extra-record materials attached as Exhibits to the opening brief. The Court is "restricted to the record [on appeal] and may not consider matters outside the record." *Taylor v. Taylor*, 163 Idaho 910, 920, 422 P.3d 1116, 1126 (2018); *see also Groveland Water & Sewer, Dist. (GWSD) v. City of Blackfoot*, 169 Idaho 936, 941, 505 P.3d 722, 727 (2022) ("[R]eview is confined to the record before us.").

However, even if the Court were to consider the Exhibits, Rodriguez is just pushing the same falsehoods rejected by the jury and district court. His contention that his evidence was not

presented to the jury is incorrect. The St. Luke's Parties introduced all of the "Freedom Man" posts about the Infant, as well as videos of Rodriguez repeating the false conspiracy theory about child trafficking. R. Vol. 3, pp. 917–2206; R. Vol. 2, pp. 335–533. They did this to prove, among other things, the outrageousness of Rodriguez's actions, for punitive damages.

Much of Rodriguez's vitriol is not worth a response, being insults and allegations, not facts. However, highlighting some portions of the record to show how his insinuations are false may be helpful. Rodriguez's false kidnapping and child trafficking narrative arises from the central lie that the Infant was healthy when law enforcement took him to the ER at St. Luke's. But the Infant was in imminent danger. Multiple health care providers, including a pediatric expert from Saint Alphonsus, testified at length about the Infant's severe malnutrition and dehydration and the high quality of the providers' care. Tr. p. 1336, L. 20–1404, L. 19.

Far from neglecting or mistreating the Infant as Rodriguez accuses (Ex. C, Ex. N), St. Luke's, Dr. Erickson, and NP Jungman likely saved the Infant's life. If no medical intervention had occurred, given the rate of the Infant's decline in the days leading up to law enforcement taking him to St. Luke's, the Infant was at risk of death or organ failure. Tr. p. 1400, L. 20–p. 1402, L. 8; Tr. p. 829, L. 23–p. 830, L. 4; Tr. p. 967, L. 20–p. 968, L. 25. When law enforcement brought him to the St. Luke's ER in Meridian, the Infant was 0.02 percentile for weight. Tr. p. 1385, Ls. 8–24; Tr. p. 810, L. 8–p. 811, L. 5; Tr. p. 1188, L. 23–p. 1190, L. 2. He suffered from severe malnutrition and dehydration. Tr. p. 1362, L. 8–p. 1367, L. 22, p. 1380, L. 24–p. 1381, L. 22; Tr. p. 938, L. 23–p. 940, L. 14. The Infant's spine and ribs were visible. Tr. p. 1389, Ls. 14–15; Tr. p. 1185, L. 10–p. 1186, L. 12. He had lost weight since his last exam. Tr. p. 1376, L. 14–

p. 1377, L. 9; Tr. p. 814, L. 17–p. 816, L. 10. When provided regular feeding in the hospital, he steadily gained weight, indicating he was not receiving sufficient calories at home (whether breast milk or something else). Tr. p. 1360, L. 4–p. 1362, L. 2, p. 1372, Ls. 12–21, p. 1382, Ls. 4–23; Tr. p. 941, Ls. 7–14. There was no misdiagnosis. Tr. p. 1402, Ls. 9–15, p. 1403, L. 16–p. 1404, L. 2. The Infant was starving.

St. Luke's, Dr. Erickson's, and NP Jungman acted appropriately to address these medical concerns. Tr. p. 1336, L. 20–1359, L. 23, p. 1391, L. 7–p. 1391, L. 16. This care included the replacement of the Infant's feeding tube, after hours, at the parents' request. Tr. p. 1214, L. 9–p. 1220, L. 14. Replacement of a feeding tube does not require sterilization and does not cause a risk of infection. Tr. p. 1219, Ls. 5–22, p. 1403, Ls. 6–15. Dr. Erickson and NP Jungman provided excellent care while facing personal threats, false accusations of pedophilia, and having their photos, names, and contact information, including home address, published online. Tr. p.974, L. 23–p. 984, L. 7; Tr. p. 1196, L. 22–p. 1197, L. 9; Tr. p. 1215, L. 21–p. 1217, L. 7; Tr. p. 1224, L. 15–p. 1240, L. 18.

Rodriguez implies there was no imminent danger to the Infant because the child protection case was eventually dismissed. Ex. L. But dismissal of a child protection case just means the case has ended, including the parents meeting the requirements of the court-ordered plan. *See* Tr. p. 918, L. 22–p. 919, L. 22. It does not mean the case lacked merit. *Id.*

Rodriguez also takes out of context an excerpt of the medical records regarding the transport of the Infant from the Meridian ER to the Boise Children's Hospital. He highlights the language "healthy baby with no interventions, no acute life threats were noted." Ex. G. This was

a note from EMS, not the ER physician. Tr. p. 850, L. 23–p. 851, L. 1. The language Rodriguez attributes to the ER physician was written by EMS after the ER physician stated the child was previously healthy with no medical conditions other than the malnutrition and failure to thrive. Tr. p. 850, L. 23–p. 851, L. 14. "Interventions" refers to whether medication would be needed during transport. *Id.* And "[m]edically stable" in this context means for transport, no life-threatening events likely during transport. Tr. p. 837, L. 21–p. 838, L. 10.

The St. Luke's Parties provided conclusive evidence they do not financially benefit from providing medical care to children in the temporary care of DHW (much less from "child trafficking"). *See* Exs. H, K. When children are brought to St. Luke's for medical treatment in the care of DHW, the services are "almost always paid by Medicaid," but the payment from Medicaid "does not cover [St. Luke's] costs." Tr. p. 1586, L. 16–p. 1587, L. 9. The amount not reimbursed by Medicaid is a loss to St. Luke's. Tr. p. 1587, Ls. 10–25.

Rodriguez dodged his deposition for months so he would not have to say anything under oath. He withheld material evidence from document production and refused to fully answer interrogatories, instead posting threats and lies about medical providers and public servants who were just doing their jobs. The Court need not, and should not, take Rodriguez's screen shots and narrative as evidence. This is especially so when there is a robust record that includes much of Rodriguez's conspiracy narratives, which the jury and the district court rejected.

E. The Judicial Bias Issue Is Waived; Even if Considered, There Was None.

Idaho Rule of Civil Procedure 40 provides for judicial disqualification for cause under four circumstances: (1) where the judge is a party or is interested in the proceeding; (2) where

the judge is related to a party as determined by consanguinity or affinity; (3) where the judge has been an attorney or counsel for any party; or where (4) "the judge is biased or prejudiced for or against any party or the subject matter of the action." I.R.C.P. 40(b)(1)(A)–(B). To move for disqualification for cause, the party must state "the specific grounds upon which disqualification is based and the facts relied upon" within a motion supported by an affidavit. I.R.C.P. 40(b)(2). Rule 40 also provides that the "presiding judge in an action may make a voluntary disqualification without stating any reason therefore." I.R.C.P. 40(c).

The Idaho Code of Judicial Conduct, Canon 3(E)(1)(a) states that:

> A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or has personal knowledge of disputed evidentiary facts that might reasonably affect the judge's impartiality in the proceedings.

Athay v. Rich Cty., 153 Idaho 815, 821, 291 P.3d 1014, 1020 (2012) (quoting Canon 3(E)(1)(a)).

1. Rodriguez waived the issue of Judge Norton's disqualification.

Rodriguez claims Judge Norton should have been disqualified, but he did not move for disqualification. He has waived the issue. *See Owen v. Smith*, 168 Idaho 633, 647, 485 P.3d 129, 143 (2021) (declining to consider claim that trial judge acted with bias because appellant did not move to disqualify judge below); *Zylstra*, 157 Idaho at 467, 337 P.3d at 626 (same); *Hoover*, 150 Idaho at 663, 249 P.3d at 856 (holding issue not preserved when the district court did not rule on it). And in *McPheters v. Maile*, this Court considered an appellant's contention that he filed a motion to disqualify the district court judge in the underlying case. 138 Idaho 391, 396, 64 P.3d 317, 322 (2003). There was no motion to disqualify in the record. *Id.* The appellant had "accused

the judge of bias in several different documents submitted to the district court" but failed "to provide the grounds and facts upon which" the motion to disqualify was based. *Id.* Accordingly, the Court did not consider the issue on appeal. *Id.*

Rodriguez made one filing during pre-trial proceedings concerning Judge Norton's supposed bias, his July 9, 2023, "Notice of Exception." R. Vol. 1, p. 41. The Notice of Exception was filed by Rodriguez *after* Judge Baskin was assigned the case, which occurred on June 21, 2023, R. Vol. 1, p. 38. Judge Baskin denied the Notice of Exception, providing in her ruling that "[a]ny complaint alleging judicial misconduct must be filed with the Idaho Judicial Council, not the trial court." R. Vol. 1, p. 41. Rodriguez proceeded to file a complaint with the Idaho Judicial Council, which was duly denied. *See* OB at 23, Exs. R, S.

The Notice of Exception, filed after Judge Norton left the case, did not preserve the issue for appeal. Like the appellant in *Maile*, *Zylstra*, and *McPheters*, Rodriguez failed to move to disqualify the sitting judge. This Court should decline to consider this unpreserved issue.

However, even if the Court were to consider the allegation of Judge Norton's bias, the record shows that Judge Norton acted within her discretion and without bias. The record further shows that Judge Norton maintained her judicial composure and integrity while being actively harassed online by Rodriguez. R. Vol. 3, pp. 1291, 1806–22.

2. Judicial qualification requires a showing of pervasive bias, a clear inability to render fair judgment; that is far from established here.

Relating to for-cause disqualification under Rule 40, a party can disqualify a judge if "the judge is biased or prejudiced for or against any party or the subject matter of the action."

"[U]nless there is a demonstration of 'pervasive bias' derived either from an extrajudicial source or facts and events occurring at trial, there is no basis for judicial recusal." *Wiseman v. Rencher*, 553 P.3d 948, 952 (Idaho 2024) (quoting *Athay v. Rich Cnty.*, 153 Idaho 815, 820, 291 P.3d 1014, 1019 (2012) and *Bach v. Bagle*y, 148 Idaho 784, 792, 229 P.3d 1146, 1154 (2010)). "[W]hatever the source of the bias or prejudice, it must be "so extreme as to display clear inability to render fair judgment[.]" *Idaho Dep't of Health & Welfare v. Doe* (*In re Doe*), 150 Idaho 752, 764–65, 250 P.3d 803, 815–16 (Ct. App. 2011) (quoting *Bach* at 792, 229 P.3d at 1154); *see also Mendez v. Univ. Health Servs. Boise State Univ*., 163 Idaho 237, 246, 409 P.3d 817, 826 (2018) (affirming denial of motion to disqualify because allegedly biased orders were just adverse orders, self-induced by movant). Judge Norton did not demonstrate pervasive bias.

Rodriguez mounts three general attacks against Judge Norton. First, he broadly asserts Judge Norton presiding over the case resulted in a denial of his due process rights and that Judge Norton was the "sole reason" he did not present evidence at the trial. OB at 22. In truth, Rodriguez is the reason Rodriguez did not present evidence at trial. He violated court orders until sanctions were imposed against him, then declined to appear at the damages trial.

Second, Rodriguez asserts Judge Norton's adverse rulings show bias. OB at 24–25; *see* R. Vol. 1, pp. 2, 37, 201–02, 571–76, 1779–82, 2355–66, 4023–36. But even if one were to put aside that Rodriguez's knowing violation of the trial court's orders warranted adverse rulings, "[a]n adverse ruling, on its own, is insufficient evidence of bias." *Plasse v. Reid*, 172 Idaho 53, 65, 172 Idaho 53, 529 P.3d 718, 730 (2023); *Idaho Dep't of Health & Welfare v. Doe*, 161 Idaho 660, 664, 389 P.3d 946, 950 (2016) ("judicial rulings alone almost never constitute valid basis

for bias or partiality motion"). Here, Rodriguez fails to explain how the rulings demonstrated bias and not simply an application of the law in a way he dislikes. Moreover, because Rodriguez offers no argument explaining how these rulings evidenced actual and pervasive bias, the issue is waived. *State v. Zichko*, 129 Idaho 259, 262, 923 P.2d 966, 969 (1996) ("A party waives an issue cited on appeal if either authority or argument is lacking, not just if both are lacking.").

Third, Rodriguez argues Judge Norton should have recused herself due to the appearance of bias or impartiality based on her spouse's employment with BLM given that another defendant, Ammon Bundy, had conflicts with the BLM. *See* OB at 19, 21. Rodriguez invites the Court to "imagine" Judge Norton's bias based on her husband's employment with the BLM and the supposed BLM record of being "destructive and hateful towards the Bundy Family." OB at 19. Rodriguez's extra-record musings do not demonstrate Judge Norton was in any way unable to render fair judgment, much less harbored actual and pervasive bias.

The simple fact that Judge Norton is married to a BLM employee does not create an appearance of bias. But even if it did, Rodrigez's argument fails. As this Court has cautioned, "appearance of bias" should not be treated as an additional basis for disqualification outside Rule 40(b)(1)(D). *Wiseman v. Rencher*, 553 P.3d 948, 952 (Idaho 2024). While this Court has disqualified on the basis of the "appearance of bias" in one case, that disqualification occurred because the judge was actually a party to the case, as it was an original action for writ of mandamus. *Id.* at 953. That is not the situation here.

This Court should reject Rodriguez's judicial bias arguments.

F. The First Amendment Does Not Protect Rodriguez's Speech.

Rodriguez wrongly contends his right to free speech was violated. OB at 25–27. First, the First Amendment does not protect false statements of fact. Second, while Rodriguez asserts no evidence was presented that his statements were false or that he knew or should have known they were false, the factual allegations of the Fourth Amended Complaint were taken as true on default. And, perhaps more importantly, there was plenty of evidence of falsity and knowledge of falsity presented in the course of proving causation and damages.

1. The First Amendment Does Not Protect Defamatory Speech.

The United States Supreme Court has recognized categories of speech that the government can regulate based on content, as long as the government does so evenhandedly. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 382–83 (1992) (listing categories of speech properly regulated including defamation, fraud, obscenity, incitement, fighting words, true threats, speech integral to criminal conduct, and child pornography).

Courts have long recognized defamation as an exception to constitutional protection. *See id.*; *Beauharnais v. Illinois*, 343 U.S. 250, 266 (1952) (holding that defamatory statements are not "within the area of constitutionally protected speech"); *Nev. Comm'n on Ethics v. Carrigan*, 564 U.S. 117, 122 (2011) ("Laws punishing libel and obscenity are not thought to violate 'the freedom of speech' to which the First Amendment refers because such laws existed in 1791 and have been in place ever since.").

No constitutional protection exists because "'there is no constitutional value in false statements of fact.'" *Irish v. Hall*, 163 Idaho 603, 608, 416 P.3d 975, 980 (2018) (quoting

Wiemer v. Rankin, 117 Idaho 566, 571, 790 P.2d 347, 352 (1990)). After all, "[n]either the intentional lie nor the careless error materially advances society's interest in uninhibited, robust, and wide-open debate on public issues." *Id.* (internal quotation marks omitted).

The district court recognized these long-established principles in its findings of fact and conclusions of law and ruled the First Amendment did not protect Rodriguez's statements. R. Vol. 1, pp. 4269–75. There is no reason to disrupt that ruling.

2. Rodriguez is wrong that the St. Luke's Parties were obligated to, and did not, prove defamation elements of falsity and knowledge of falsity.

Rodriguez is wrong that the St. Luke's Parties had an obligation to prove falsity or that he knew or should have known his statements were false. *See* OB at 27. By operation of default, the factual allegations of the Fourth Amended Complaint were taken as true. *Dominguez*, 142 Idaho at 13, 121 P.3d at 944. The Fourth Amended Complaint alleged in detail the facts underlying both elements. *See* R. Vol. 2, pp. 536–63. Moreover, in the course of proving damages at trial, there was more than sufficient evidence to show the falsity of Rodriguez's conspiracy theory about child trafficking, his understanding of its falsity especially given his involvement as a family member of the Infant and leader in Bundy's PRN, and his personal profiteering from pushing content online about the false conspiracy theory. *See supra* Procedural History, A.9; Argument D. That the Infant was "healthy," as Rodriguez claims, when brought to St. Luke's by law enforcement was soundly disproven by testimony from the ER treating physician, the pediatric hospitalist and nurse practitioner who were charged with the Infant's care, a pediatric

specialist from Saint Alphonsus who provided expert opinion, and the full medical records of the Infant, which included photographs of the Infant's condition when brought to St. Luke's. *See id.*

G. The District Court Acted Well Within Its Discretion When Imposing Evidentiary Sanctions Against Rodriguez.

1. A district court has discretion to issue evidentiary or terminating sanctions.

Idaho Rule of Civil Procedure 37 permits a district court to sanction a party who disobeys a discovery order by "prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence." I.R.C.P. 37(b)(2)(A)(ii). Rule 37 honors the purpose of discovery, which "is to facilitate fair and expedient pretrial fact gathering." *Phillips v. E. Idaho Health Servs.*, 166 Idaho 731, 757–58, 463 P.3d 365, 391–92 (2020). "It follows, therefore, that discovery rules are not intended to encourage or reward those whose conduct is inconsistent with that purpose." *Id.*

The district court has discretion to decide to sanction, within two general guiding principles: "The trial court must [1] balance the equities by comparing the culpability of the disobedient party with the resulting prejudice to the innocent party and [2] consider whether lesser sanctions would be effective." *Noble v. Ada Cnty. Elections Bd.*, 135 Idaho 495, 499–500, 20 P.3d 679, 683–84 (2000) (internal quotation and citation omitted).

Indeed, evidentiary and terminating sanctions are regularly—and properly—imposed as a consequence for a litigant's intentional or repeated refusal to comply with discovery orders. *See, e.g.*, *Erickson*, 171 Idaho at 363, 521 P.3d at 1100 (affirming sanctions prohibiting party from presenting evidence not timely disclosed in discovery); *Nollenberger v. Nollenberger*, 122 Idaho

186, 189–90, 832 P.2d 757, 760–61 (1992) (affirming striking pleadings and imposing default as a Rule 37(b) sanction); *Ashby v. W. Council, Lumber & Indus. Workers*, 117 Idaho 684, 688, 791 P.2d 434, 438 (1990) (affirming dismissal of cause of action as a sanction for failure to comply with discovery orders).

Erickson and *Nollenberger* are particularly instructive. In *Erickson*, a party withheld retirement account information to which he maintained exclusive access. 171 Idaho at 361, 521 P.3d at 1098. The information was relevant to establishing the parties' respective property interests. *Id.* To avoid prejudice to the propounding party, the court limited the withholding party to solely using evidence timely produced in discovery. *Id.* at 361–62, 521 P.3d at 1098–99. This Court affirmed, reasoning that the withholding party's failures to comply with discovery obligations and the scheduling order warranted the sanction imposed, and he had no one to blame but himself. *Id.* at 363, 521 P.3d at 1100.

In *Nollenberger*, this Court affirmed striking pleadings and imposing default for a series of violations of orders compelling discovery responses. 122 Idaho at 186–87, 832 P.2d at 757–58. The pattern of conduct indicated the sanctioned party's intent to violate the orders, causing prejudice to the opposing party, for whom the withheld information was crucial. *Id.* at 188–90, 832 P.2d at 759–61.

2. The district court acted within its discretion when it sanctioned Rodriguez.

The court sanctioned Rodriguez by striking his Answer, entering default against him, and barring him from "present[ing] any evidence related to damages that ha[d] not previously been timely disclosed to Plaintiffs and other parties prior to the discovery cutoff." R. Vol. 1, p. 4070.

Rodriguez was permitted to participate in the trial on damages, including engaging in jury selection, presenting an opening statement, and closing argument, cross-examining witnesses, and presenting evidence he had timely disclosed in discovery. *Id.*

The district court acted well within its discretion because Rodriguez intentionally violated three discovery orders by refusing to respond fully to interrogatories and requests for production; demonstrated bad faith by failing to appear for his deposition after being ordered to do so twice and trying to set the deposition in Brazil where depositions are not lawful; refused to pay the attorneys' fees and costs his discovery misconduct had caused and the court ordered; and disobeyed the scheduling order to which he had stipulated by failing to appear at the pretrial conference. *See supra* Procedural History, A.1–A.7.

This is far more bad faith conduct than what has been previously held sufficient for evidentiary and terminating sanctions. *See Erickson*, 171 Idaho at 361–63, 521 P.3d at 1098–1100 (involving two violated discovery orders and failure to comply with scheduling order); *Nollenberger*, 122 Idaho at 186–87, 832 P.2d at 757–58 (three violated discovery orders).

Rodriguez's bad faith was established by the then-pending charges of contempt on the order protecting witnesses and the frivolous second notice of removal filed to delay the case. R. Vol. 1, pp. 2, 37, 2506–08, 3809–11; Tr. p. 2220, L. 22–p. 2221, L. 2.

The district court made detailed findings regarding Rodriguez's violations of court orders, attempts to delay proceedings, and other bad faith conduct. R. Vol. 1, pp. 3984–91. Then the court concluded:

> If Rodriguez was in good faith trying to respond to discovery, he had the opportunity to seek assistance from the Discovery Referee appointed by this Court to assist in resolving discovery disputes and he has had ample opportunities to respond. Instead, he has continued to disparage and insult opposing counsel rather than engage in this process in good faith and he has continued to avoid hearings. Given Diego Rodriguez's escalating behavior and continued behavior that is the subject of the Motion for Contempt as outlined in the Declarations filed in Support of that Motion, this Court finds that continuing to resolve discovery disputes with the Discovery Referee would be futile at this point and only provide additional delay in resolution of this case since Rodriguez seems to actually seek delay by failing to attend hearings, failing to timely respond to motions, and failing to correct his behavior or pay the awards of fees that now top $30,000 awarded as sanctions.
>
> Sanctions for discovery violations and violations of this Court's Notice of Trial Setting and Order Governing Proceedings are warranted. There is a clear record of delay by Rodriguez in responding to discovery and failing to comply with the Notice of Trial Setting, any lesser sanctions previously ordered have not been effective, Rodriguez . . . now files frivolous motions and disparages and insults opposing counsel to create delay in the orderly procession of this case. This delay has caused prejudice to the Plaintiffs through escalated costs but also because Rodriguez's delay has permitted time for additional violations of this Court's Preliminary Injunction and Protective Orders, permitted time for additional adverse online postings about the Plaintiffs in this case as discussed in the Declarations of Dr. Rachel Thomas, and Dr. Michael Wheaton, all filed May 10, 2023.

R. Vol. 1, p. 3991.

The district court acted well within its discretion, sanctioning Rodriguez as it did and providing a highly detailed, well-reasoned memorandum decision in support. R. Vol. 1, pp. 3984–91. There is no valid reason to disturb the ruling.

3. Rodriguez's contention that the St. Luke's Parties' discovery requests or responses were improper was not preserved, and in any event, is false.

Rodriguez asserts that the district court erred because the discovery requests giving rise to the orders he violated were for irrelevant information and/or constituted an invasion of

privacy. This is incorrect. The discovery requests were relevant, relating to the falsity of the statements Rodriguez made, his collaboration with the other Defendants, the information known or provided to him at the time of the incidents, and his financial state.[6] As to any privacy interest, the St. Luke's Parties sought and obtained a protective order governing confidentiality of information in discovery. R. Vol. 1, pp. 2263–73, 2341–47.

Rodriguez asserts that the St. Luke's Parties failed to comply with his discovery requests. He did not preserve this issue for appeal. *See Wechsler v. Wechsler*, 162 Idaho 900, 911, 407 P.3d 214, 225 (2017) ("Even if an issue is argued to a lower court, 'to preserve an issue for appeal there must be a ruling by the [lower] court.'"); *Hoover*, 150 Idaho at 663, 249 P.3d at 856 (similar). And his accusation is demonstrably false. The St. Luke's Parties fully responded to his discovery requests, and Rodriguez never moved to compel. *Supra* Procedural History, A.3. There is no dispute the St. Luke's Parties fulfilled their discovery obligations in the district court.

4. Rodriguez did not preserve a due process challenge to the Sanctions Order, but even if he had, his argument fails.

Arguments, including constitutional challenges, are waived if not preserved below. *See Craven*, 128 Idaho at 493, 915 P.2d at 723 (holding due process issue was not preserved and would not be considered); *Wechsler*, 162 Idaho at 911, 407 P.3d at 225 (issue not preserved if no district court ruling on it); *Hoover*, 150 Idaho at 663, 249 P.3d at 856 (similar). Rodriguez did not oppose the St. Luke's Parties' motions seeking default and evidentiary sanctions and thus has

[6] Evidence of the defendant's net worth is relevant to punitive damages. *See Weinstein v. Prudential Prop. & Cas. Ins. Co.*, 149 Idaho 299, 337, 233 P.3d 1221, 1259 (2010) (affirming district court's decision permitting evidence of defendant's net worth to be presented at trial).

failed to preserve a due process challenge. R. Vol. 1, p. 3975 (Rodriguez did not appear for the hearing); R. Vol. 1, p. 3976 ("No timely-filed opposing brief was filed by any defendant to the original motion, the amended motion, or the motion to shorten time.").

Regardless, no violation occurred. "Due process is not a rigid doctrine; rather, it calls for such procedural protections as are warranted by a particular situation." *Telford v. Nye*, 154 Idaho 606, 611, 301 P.3d 264, 269 (2013). "The procedure required is merely that to ensure that a person is not arbitrarily deprived of his or her rights." *Id.* (citing *Neighbors for a Healthy Gold Fork v. Valley Cnty.*, 145 Idaho 121, 127, 176 P.3d 126, 132 (2007)).

When a defendant is afforded notice and opportunity to be heard but repeatedly declines to participate in the process afforded and violates discovery orders, there is no basis to contest the consequent sanctions on the basis of due process. *See State ex rel. Dep't of Labor & Indus. Servs. v. Hill*, 118 Idaho 278, 285, 796 P.2d 155, 162 (Ct. App. 1990) (affirming summary judgment against defendant on the basis of factual findings entered as a sanction for refusal to comply with discovery orders and reasoning that defendant had chosen not to participate in the process afforded, including hearings).

The court afforded Rodriguez ample notice and process. He participated in the litigation at first but chose to violate multiple orders, make untimely and frivolous filings, absent himself from hearings, and take other bad faith and dilatory actions that ultimately resulted in default and evidentiary sanctions against him. There is no due process right to participate in a lawsuit solely by one's own terms and violate court orders with impunity.

H. Rodriguez's Challenges Regarding the Jury Are Waived; the District Court Did Not Prejudicially Influence the Jury or Abuse Its Discretion by Retaining Allegedly Biased Jurors.

Rodriguez advances two jury-based arguments in support of his contention that the Court should "throw out" the lawsuit. *See* OB at pp. 19–39. He asserts the jury was prejudiced by Judge Baskin when she stated that Rodriguez chose to be absent from the trial. OB at pp. 33–35. He also claims certain jurors were biased by their own experience or associations. OB at pp. 13, 36–39. He did not preserve either issue for appeal. And, regardless, Rodriguez's assertions are false. The district court only stated the facts when saying Rodriguez chose not to be at the trial, and any potential question of juror bias was resolved in the negative with follow-up questioning.

1. Rodriguez's challenge regarding the district court's explanation of Defendants' absence from trial is waived; moreover, the explanation was true and proper.

Rodriguez claims the district court prejudicially erred by stating, "the defendants have elected not to participate in the jury trial." Tr. p. 33, Ls. 9–11. The issue was not preserved, as Rodriguez never raised it in the district court. *See, e.g.*, *In re Craven*, 128 Idaho at 493, 915 P.2d at 723 (declining to consider issue because it had not been raised in the district court); *Hoover*, 150 Idaho at 663, 249 P.3d at 856 (holding issue not preserved when the district court did not rule on it); *Michalk v. Michalk*, 148 Idaho 224, 229, 220 P.3d 580, 585 (2009) ("It is well established that a litigant may not remain silent as to claimed error during a trial and later raise objections for the first time on appeal."). In any event, there is no merit in Rodriguez's contention. The district court made an accurate statement regarding legal procedure, not a comment on the weight of the evidence. There was no error.

The district court has discretion to instruct the jury on matters of procedure. *See* I.R.C.P. 51(h) ("Prior to the presentation of evidence, the court may instruct the jury on the role of the court, counsel and jury; the elements of all claims in dispute and any known defenses; and any other matter it believes necessary and appropriate to aid in resolution of the issues at hand.").

On the other hand, a trial judge's statements are prejudicial if they "comment on the weight of the evidence[.]" *State v. White*, 97 Idaho 708, 711–12, 551 P.2d 1344, 1347–48 (1976). Statements that tend to prejudice the jury are those that are "beyond the bounds of mere elucidation," those that express the judge's "opinion about the evidence in the presence of a jury." *Id.* at 712, 551 P.2d at 1348. When "a statement reflects the court's opinion as to the evidence in a clear and unambiguous manner, and when it relates to a critical issue in the case, then that statement constitutes prejudicial error." *Id.*; *see also Safaris Unlimited, LLC v. Jones*, 163 Idaho 874, 883, 421 P.3d 205, 214 (2018) (holding instruction was not prejudicial because "[i]t is not as if the district court expressed an opinion on the weight or credibility of evidence").

For instance, a judge who stated, "we needed to focus on that point of view" after asking the defense expert's "point of view" on the standard of care, constituted an impermissible, "explicit endorsement" of the defense's expert evidence. *Secol v. Fall River Med., PLLC*, 168 Idaho 339, 348, 483 P.3d 396, 405 (2021).

In contrast, this Court held a district court did not err when counsel objected to admission of a document on the basis it bore erasures and correction ink and was thus, according to counsel, "definitely a self-serving instrument." *First Realty & Inv. Co. v. Rubert*, 100 Idaho 493, 498, 600 P.2d 1149, 1154 (1979). The trial judge responded, "I appreciate that, but that's for the

jury to give the weight to it. I think it is corroborative. I'll allow the document to be admitted." *Id.* The comment left the weight of the evidence to the jury and was not improper. *Id.*

In this case, when the venire entered, the district court explained, "This case is somewhat unusual as the defendants have elected not to participate in the jury trial." Tr. p. 33, Ls. 9–11. Defendants had the opportunity to be present at trial and to participate but chose not to be there. Tr. p. 130. This did not opine on the weight of the evidence—it was a true statement explaining Defendants' conspicuous absence from the courtroom. R. Vol. 1, pp. 4069–72; Tr. pp. 18, 20, 37.

And there is nothing improper about proceeding in a party's absence. "In a civil case, a trial can commence and proceed in the absence of a party who fails to appear at the trial." *Pierce v. McMullen*, 156 Idaho 465, 469, 328 P.3d 445, 449 (2014). "Parties must be given an opportunity to be present, but if that opportunity is given, their absence during the trial does not affect the right to proceed." *Id.* (quoting 75 Am. Jur. 2d Trial § 162 (2007)).

Rodriguez attempts to challenge the accuracy of the district court's statement to the jury on the basis that he requested to participate in the trial via video the night before trial began. OB at 33–35, Ex. R. But the district court's denial of Rodriguez's (literally) eleventh-hour request was simply enforcement of the order expressly requiring in-person attendance. R. Vol. 1, p. 4072. In-person attendance at an evidentiary proceeding is required under I.R.C.P. 7.2 absent stipulation of the parties. I.R.C.P. 7.2(a). By requiring in-person attendance, the district court merely enforced the law, a far cry from Rodriguez's claim that it "tampered with the administration of justice" and was "judicial misconduct." OB at 35.

Moreover, the district court's own words refute Rodriguez's accusation of intentional prejudice. The court admonished the jury pool any jurors need to treat the willfully absent Rodriguez fairly. During voir dire, the district court stated, "we need people who are going to be fair to all the parties, even if they're not present." Tr. pp. 94–95.

2. Rodriguez waived the right to challenge jury selection; even if he had not, he has shown no abuse of discretion in jury selection.

Rodriguez asserts the district court erred by empaneling four jurors (20, 25, 42, and 47) and expressed bias during voir dire. OB at 36–39. Essentially, Rodriguez argues the court abused its discretion by failing to disqualify these jurors for cause.[7] *Id.* He waived this issue by failing to challenge the four jurors for cause. *See Mulford*, 156 Idaho at 138–39, 321 P.3d at 688–89 (declining to consider waived, for-cause challenge); I.R.C.P. 47(h)(1) (limiting timing of for-cause challenges). Even if this Court were to consider the issue, it has no merit. The district court acted within its discretion and determined each juror could be fair and impartial. While a juror may be challenged if they have "a state of mind showing hostility or bias to or against any party," I.R.C.P. 47(h)(2)(G), follow-up questioning can effectively resolve concern about bias. For example, in *Quincy v. Joint School District*, this Court held the trial court had not abused its discretion in denying a party's for-cause motion to strike a juror who stated that he would have a

[7] Rodriguez also argues he was denied his Sixth Amendment right to a fair and impartial jury. OB at 33. This contention should be rejected. The Sixth Amendment supplies rights to defendants in criminal prosecutions—not civil proceedings. *Ward v. State*, 166 Idaho 330, 333, 458 P.3d 199, 202 (2020) ("[C]ivil proceedings . . . do not trigger the Sixth Amendment."); *White v. Idaho Transp. Dep't*, 549 P.3d 1077, 1084 (Idaho 2024) ("[B]y its plain language, the Sixth Amendment applies to 'criminal prosecutions,' not civil proceedings.").

hard time being unbiased, and he would probably have pressure from his spouse to discuss the case before it had been submitted. 102 Idaho 764, 768, 640 P.2d 304, 308 (1981). The trial court questioned further, asking if the juror could make his decision based solely on the evidence, the juror responded, "Yes, I think." *Id.* And when asked if he could "cut off the conversation with [his] wife" if pressured to discuss the case, the juror affirmed, "I imagine." *Id.*

And in *State v. Hall*, this Court found no abuse of discretion in denying a motion to strike for cause, when a juror indicated they "would likely b[e] leaning towards" the death penalty. 163 Idaho 744, 770, 419 P.3d 1042, 1068 (2018). Upon further questioning whether the juror could analyze the evidence, both aggravating and mitigating, and be fair and impartial, the juror confirmed they would "try to be fair about it." *Id.*

First, any supposed bias Rodriguez mentions was not against him. None of the jurors knew Rodriguez or had any preconceived views about him:

> Diego Rodriguez is an individual. Does anyone know Diego Rodriguez? Seeing none. Does anyone think that they have views that would be such about Mr. Rodriguez, even though they don't know him personally, that would cause them to be an unfair juror or not be able to be impartial? Seeing none.

Tr. p. 97, Ls. 6–13.

Second, like in the above cases, the district court acted well within its discretion in declining to excuse each of the four jurors Rodriguez attempts to challenge for the first time on appeal. Like in *Quincy* and *Hall*, the jurors assured the district court they would endeavor to be fair and impartial in their judgment:

Juror 20. Juror 20 indicated they were "navigating" whether they could hold certain bias aside, which was identified as the fact that "St. Luke's saved [their] life in a battle with cancer four years ago and [that they] also [had] some negative bias towards the defendant." Tr. p. 104, Ls. 12–22. The district court asked Juror 20 whether they felt they could be impartial. Tr. p. 104, L. 23–p. 105, L. 6. The juror responded, "I'll certainly do my best." Tr. p. 105, Ls. 7–11.

Juror 25. Juror 25 disclosed they worked for the Ada County Sheriff's office and part of their work related to at one point dealing with property of "some of the defendants" but also that they did not believe it would pertain to the case. Tr. p. 125, L. 16–p. 126, L. 1. The district court followed up to determine whether the Juror had any personal interactions with the parties—there were none. Tr. p. 126, Ls. 2–15.

Juror 42. Juror 42 indicated they had seen a story in that morning's news, about the case. Tr. p. 98, L. 22–p. 99, L. 3. That juror indicated it would be difficult to be impartial because they had family that worked in the healthcare industry. Tr. p. 99, Ls. 4–11. The district court again, followed up, asking if the fact of the common experience of having family members working in health care could be set aside. Tr. p. 99, Ls. 12–24. The juror indicated they would do their best to set it aside. Tr. p. 99, L. 25. The district court then pressed whether they actually could set it aside, and Juror 42 said they thought so. Tr. p. 100, Ls. 1–2.

Juror 47. Juror 47 indicated they did work for a legislative agency, and because of the work had certain views about Bundy. Tr. p. 89, L. 22–p. 90, L. 13. The district court then explained in follow up that "it's okay to have views, people have views." Tr. p. 90, Ls. 14–15. The question is would those views impact your ability to serve as a fair and impartial juror

knowing that Mr. Bundy's conduct may discussed even as a part of the damages, jury trial." Tr. p. 90, Ls. 16–18. Juror 47 responded they thought they could "be fair in the proceedings[.]" Tr. p. 90, Ls. 19–21. The juror was appropriately then, not excused. Tr. p. 90, Ls. 22–24.

The jurors' responses resolved any potential issue, like the responses in *Quincy*, 102 Idaho at 768, 640 P.2d at 308 ("I think" and "I imagine") and *Hall*, 163 Idaho at 770, 419 P.3d at 1068 (I will "try"). And as to Juror 25, vague involvement with irrelevant property of "some of the defendants" does not constitute bias. Moreover, it cannot be overstated that Rodriguez could have participated in jury selection and chose not to do so. He could have used peremptory strikes on each of the above jurors but waived all challenges by absenting himself.

Rodriguez argues that the district court showed bias by excusing Jurors 34 and 51 for cause. *See* OB at 39–50. But unlike Jurors 20, 25, 42, and 47, Jurors 34 and 51 expressed firm convictions. Juror 34 disclosed they were in active litigation against St. Luke's, which was "not going well." Tr. p. 47, Ls. 5–7. Juror 51 expressed they had a "very personal" very specific reason why they "would be very much against St. Luke's" and that they could tell the judge "that right off the bat." Tr. p. 85, Ls. 5–12. There was no abuse of discretion.

I. The St. Luke's Parties Are Entitled to Idaho Code § 12-121 Attorneys' Fees.

Attorneys' fees and costs on appeal should be awarded under Idaho Code § 12-121. Idaho Code § 12-121 provides, "In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties when the judge finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation."

Fees may be awarded "if the Court believes that the proceeding was brought, pursued, or defended frivolously, unreasonably or without foundation." *Kelly v. Kelly*, 171 Idaho 27, 49, 518 P.3d 326, 348 (2022). Fees are warranted if an "appeal merely invites this Court to second guess the findings of a lower court without providing any new argument or authority demonstrating how the lower court erred[.]" *Id.* Further, raising issues that were not properly preserved in the court below satisfies the standard of frivolousness. *See id.* (awarding fees and noting that appellant had urged issues not properly preserved); *Herr v. Herr*, 169 Idaho 400, 405, 496 P.3d 886, 891 (2021) (same); *Ballard v. Kerr*, 160 Idaho 674, 720, 378 P.3d 464, 510 (2016) (same).

The § 12-121 standard is met. Rodriguez raises no meritorious issue, challenging only the district court's findings leading to the sanctions against him, leading to the permanent injunction, and arguing issues not properly preserved and without legal basis.

VI. CONCLUSION

For all the foregoing reasons, the St. Luke's Parties request this Court dismiss the appeal or affirm the judgment and grant them fees and costs under Idaho Code § 12-121.

DATED: March 6, 2025.

HOLLAND & HART LLP

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March, 2025, I caused to be filed and served, via iCourt, a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Diego Rodriguez
1317 Edgewater Dr., #5077
Orlando, FL 32804

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☑ Email/iCourt/eServe:
freedommanpress@protonmail.com

/s/ Jennifer M. Jensen
Jennifer M. Jensen for Holland & Hart LLP

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