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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 Case No. CV01-22-06789 **REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL**

Plaintiffs/Respondents, St. Luke's Health System, Ltd., St. Luke's Regional Medical Center, Ltd., Chris Roth, Natasha D. Erickson, M.D., and Tracy W. Jungman, NP ("St. Luke's

Parties"), by and through their attorneys of record, Holland & Hart LLP, hereby submit this Reply in Support of their Motion to Dismiss Appeal.

I. INTRODUCTION

The Court should grant the St. Luke's Parties' Motion to Dismiss. Rodriguez's response includes irrelevant, unfounded assertions and accusations, which the St. Luke's Parties need not answer. His response brief raises no legitimate reason why the fugitive disentitlement doctrine should not be applied to him.

Rodriguez is a fugitive within the meaning of the common law doctrine. He knows of the warrants and has remained absent from the State of Idaho, where he is subject to arrest.

The U.S. Supreme Court has not held the doctrine cannot be applied—only that in the two instances Rodriguez cited, the doctrine was not applicable due to lack of prejudice to the opposing party. In contrast, the St. Luke's Parties suffered and continue to suffer prejudice from being unable to enforce the permanent injunction against Rodriguez while he remains out of reach of Idaho law enforcement and the Idaho district court presiding over the contempt actions.

This Court should grant the St. Luke's Parties' Motion to Dismiss.

II. ARGUMENT

A. RODRIGUEZ IS A FUGITIVE WITHIN THE MEANING OF THE DOCTRINE.

1. Rodriguez Meets the Definition of Fugitive.

To be a fugitive within the meaning of the fugitive disentitlement doctrine, an individual must know he has a warrant issued against him and remain absent from the jurisdiction where the warrant is outstanding. *See Ener v. Martin*, 987 F.3d 1328, 1332 (11th Cir. 2021); *see also Sasson v. Shenhar*, 667 S.E.2.d 555, 628 (Va. 2008); *Colombe v. Carlson*, 757 N.W.2d 537, 542 (N.D. 2008); *Wechsler v. Wechsler*, 45 A.D.3d 470, 474 (N.Y. Ct. App. 2007); *Matsumoto v.*

Matsumoto, 792 A.2d 1222, 1235 (Miss. 2022); *Guerin v. Guerin*, 993 P.2d 1256, 1258 (Nev. 2000); *Conforte v. Comm'r*, 692 F.2d 587, 590 (9th Cir. 1982).

Rodriguez is a fugitive. He knows there are outstanding bench warrants against him in Idaho. OB at 24, n. 19. And he continues to decline to enter the State of Idaho, while simultaneously seeking relief from this Court. It is irrelevant when he moved to Florida. *See* Resp. Br. at 2, 4.

Rodriguez's allegations about the timing of his move and residency are irrelevant. The timing of his move and residency status do "not change the realities" that make Rodriguez a fugitive: he knows police are entitled to arrest him if he returns to Idaho, and he remains absent. *See e.g.*, *Ener*, 987 F.3d at 1332. Rodriguez's actions do not reflect acceptance of the authority of the courts. *See id.* Instead, Rodriguez litigates his appeal from outside this jurisdiction to evade legal process on the pending contempt charges and the probability of his arrest upon return to Idaho. Rodriguez "has neither surrendered nor complied with …various orders, and thus remains a fugitive in every sense required in the particular context of this" appeal. *Sasson*, 667 S.E.2d at 563.

2. The St. Luke's Parties Do Not Contend the Federal Crime of Fleeing to Avoid Prosecution Applies.

Rodriguez asserts that because his actions do not meet the elements of 18 U.S.C. § 1073, he is not a "fugitive" under the doctrine. Resp. Br. at 2. The statute is irrelevant; it does not define fugitive. Instead, it provides the elements of the federal crime of fleeing to avoid prosecution or giving testimony. *See id.* The St. Luke's Parties do not seek prosecution under the federal statute. They urge application of a common law doctrine available in civil cases.

3. Rodriguez's Disingenuous Denial of His Knowledge of the Warrants Does Not Preclude Application of the Doctrine.

Rodriguez wrongly claims that the doctrine does not apply because he did not have sufficient knowledge of the two warrants issued against him. *See* Resp. Br. at 5-7.

He admitted he knew of the warrants in his own opening brief on appeal. OB at 24, n. 19. And to be clear, there is no requirement that he know of both; it is enough he knew of one to be a fugitive. *See supra.*

There is also no requirement that he knew what the warrants were for to be a fugitive. *See supra*. Rodriguez's attempt to add this requirement is particularly ironic when the warrants were issued because he failed to appear for arraignment on the contempt charges, the very proceeding which is designed to provide him with a complete understanding of the contempt charges he faces. *See* I.R.C.P. 75(e).

But in any event, he did know the basis for the warrants. His opposition to this motion demonstrates he knew the contempt action related to his violation of the protective order, not a failure to pay fees. *See* Resp. Br., Ex. A (Rodriguez's July 3, 2023 letter to the Idaho Judicial Council complaining of the warrant against him and the parallel contempt action against Bundy for violating the protective order). And he was properly served (via U.S. Mail and iCourt) with the affidavits showing the basis for the contempt actions. *See* Vol. 1, R. pp. 2451-52; Aug. Vol. 2, R. p. 24; *Carr v. Pridgen*, 157 Idaho 238, 242, 335 P.3d 578, 582 (2014) (The affidavit of contempt is the charging document, alleging specific facts constituting the alleged violations of the court's order.).

B. THE CASE LAW RODRIGUEZ CITES DOES NOT APPLY.

In response to the Motion to Dismiss, Rodriguez cites two U.S. Supreme Court cases, asserting, "The U.S. Supreme Court has likewise already ruled on this issue in at least two

cases[.]" Resp. Br. at 3 (citing *Degen v. United States*, 517 U.S. 820 (1996), *overruled by statute*, 28 U.S.C. § 2466, and *Ortega-Rodriguez v. United States*, 507 U.S. 234 (1993)). Neither case affects this Court's application of the fugitive disentitlement doctrine.

Importantly, *Degen*, which vacated a lower court's application of the fugitive disentitlement doctrine in a civil forfeiture case, was overruled by statute. The statute (28 U.S.C. § 2466) codified the fugitive disentitlement doctrine in civil forfeiture cases.

And even if *Degen* had not been overruled, it is readily distinguishable. In *Degen*, a criminal defendant's property was alleged to be the proceeds of criminal activity, subject to civil forfeiture. 517 U.S. at 821. Because of the defendant's absence from the jurisdiction, the criminal prosecution could not proceed. *See id.* at 822. But the parallel civil forfeiture case could proceed despite the defendant's physical absence, and the defendant answered the complaint. *Id.* The *Degen* court held that the doctrine should not have been applied to strike the answer and grant the government summary judgment on the civil forfeiture claim. *Id.* at 829. There was no prejudice to the government arising from the defendant's absence from the jurisdiction because (1) the real property subject to potential forfeiture was secured, (2) the case was not on appeal—rather it was early in the proceedings, when a court could enter a protective order to prevent undue advantage in discovery, and (3) the defendant would be subject to sanctions if he violated civil rules of procedure requiring his in-person participation in court proceedings. *Id*. at 825-27.

The holding in *Degen* was confined to the circumstances specific to that case. *Id.* at 829 ("There was no necessity to justify the rule of disentitlement **in this case**[.]") (emphasis added); *see also id.* at 825 (explaining that the facts of the case would be analyzed because the Court was not "rul[ing] out the possibility of . . . disentitlement where necessary to prevent actual prejudice

to the Government from the fugitive's extended absence"). The court did not reject the fugitive disentitlement doctrine as a matter of law. *Id.*

In contrast, Rodriguez has used his absence from the jurisdiction to prejudice the St. Luke's Parties. Unlike the opposing party in Degen, the St. Luke's Parties have no security in the remedy they have secured. Instead, Rodriguez has continued to violate the permanent injunction, refusing to remove the defamatory posts and re-publishing them repeatedly in order to continue the defamation campaign. Aug. Vol. 2, pp. 2-1048. By remaining outside Idaho, he has avoided arrest and accountability for these willful violations of the permanent injunction. Moreover, this case is not in its beginning stages like in *Degen*, where any prejudice was speculative and there was opportunity for the district court to prevent potential prejudice through protective orders and use of sanctions. Protective orders and sanctions have already proven ineffective against the absent Rodriguez. R. Vol. 1, pp. 3984-92, 4018-21; *see also* St. Luke's Parties' Resp. Br. at 11-18 (describing Rodriguez's violations of orders and bad faith conduct in district court and citing record evidence of same).

Ortega-Rodriguez is even more easily distinguished. The *Ortega-Rodriguez* court declined to apply the fugitive disentitlement doctrine because the defendant had been brought into custody. 507 U.S. at 244. Because he was no longer at large, there were no judgment enforceability concerns. *Id.* Here, Rodriguez remains absent from the jurisdiction where the warrants are pending, creating the enforceability concerns underlying the doctrine.

C. RODRIGUEZ CANNOT AVOID THE DOCTRINE BY CHALLENGING THE UNDERLYING ARREST WARRANTS.

Rodriguez implicitly challenges the validity of the warrant issued by Judge Norton on the basis she was biased. Resp. Br. at 6. Such argument is properly rejected. *See Sasson*, 667 S.E.2d at 556 (holding that a party's disobedience of an order because he asserts it is void is no defense

to the fugitive disentitlement doctrine). If all a fugitive need do is assert some argument that the warrant is invalid, then any defendant could refuse to submit to the court's authority based on nothing more than his own assertion. *See id.*

And in any event, the second warrant was not issued by Judge Norton. *See* Vol. 1, R. p. 38 (June 21, 2023 entry of Notice of Judge Assignment Change assigning Judge Baskin to the case); OB at 24 n.19 (acknowledging both warrants, which are dated June 7, 2023 and July 17, 2024 respectively). Rodriguez's insinuation about bias additionally fails because it does not affect the second warrant, which was issued by Judge Baskin.

III. CONCLUSION

For all the foregoing reasons, the St. Luke's Parties request that this Court dismiss Diego Rodriguez's appeal with prejudice, or in the alternative, dismiss with leave to file a motion to reinstate (within a reasonable, set amount of time) if he appears and submits to the district court's jurisdiction in the two pending contempt actions.

DATED: May 15, 2025.

HOLLAND & HART LLP

By: */s/ Jennifer M. Jensen*
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Counsel for Plaintiffs-Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2025, I caused to be filed via iCourt and served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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