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Counsel for Plaintiffs

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

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,

vs.

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

Defendants.

Case No. CV01-22-06789

**MEMORANDUM IN SUPPORT OF
MOTION FOR SANCTIONS AND
PROTECTIVE ORDER RELATING TO
LIMITED DEPOSITION OF DIEGO
RODRIGUEZ SET FOR OCTOBER 5,
2022**

Plaintiffs, 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 (“Plaintiffs” or “St. Luke’s
Parties”), by and through their attorneys of record, Holland & Hart LLP, hereby submit this

Memorandum in support of their Motion for Sanctions and for Protective Order Against Defendant Diego Rodriguez (“Rodriguez”).

I. INTRODUCTION

Representing himself *pro se*, Defendant Diego Rodriguez flouts the authority of this Court, disrupts the litigation process, seeks to intimidate Plaintiffs and their counsel, continues to make defamatory statements, and purposefully acts to increase the cost of the litigation.

Counsel for St. Luke’s Parties just learned that earlier today Rodriguez broadcast a defamatory email to an undisclosed number of his followers directing them to log onto tomorrow’s deposition. *See* Declaration of Erik Stidham, Ex. C. Using defamatory language and falsified facts, Rodriguez sent out an email telling them to fight back against “these criminal bullies like Erik Stidham” by logging into his Zoom deposition. *Id.* Rodriguez further tells his supporters that that they must fight back against St. Luke’s and its counsel who financially support “sexual perversion.” *Id.* He directs them to disrupt the proceedings as it is a battle against “evil.” *Id.* The intent of the email is clear: defame, incite, intimidate, and disrupt.

Further, Rodriguez’s conduct the day before his deposition is a continuation of the disruption and evasion that played out in correspondence earlier in the week. *See id.*, Ex. A, Ex. B. Repeatedly, Rodriguez refused to respond without evasion regarding his whereabouts and indicated he was objecting to the Court’s order. He repeatedly refused, until yesterday, to state that he would be participating in the deposition.

Given that the deposition occurs within 24 hours of the filing of this motion, the Plaintiffs attempted to meet and confer with Rodriguez. Despite the Plaintiffs’ efforts to meet and confer, Rodriguez reaffirmed his tactics. To mitigate Rodriguez’s improper conduct, Plaintiffs will provide a new Zoom link to Rodriguez shortly before the deposition on October 5, 2022 and will

ask the court reporter to limit the attendees to legal counsel, the individual parties, and a designated representative for any of the legal entity parties.

Further, as Plaintiffs wish to avoid issues with future depositions, Plaintiffs move for a protective order pursuant to I.R.C.P. 26(c) limiting attendance at any deposition, absent leave from the Court, to legal counsel, the individual parties, and a single designated representative of the legal entity parties. The Plaintiffs also request sanctions under I.R.C.P. 37 against Rodriguez in the form of their fees and costs incurred to counter the obstruction tactics and attempted intimidation of the Plaintiffs and Rodriguez's continued objections to the deposition that this Court rightly ordered him to undergo. The Plaintiffs also request that this Court, with the updated information provided with this motion, grant the pending Motion for Protective Order filed at the outset of this litigation. Absent the Court's intervention, Rodriguez will continue to treat this litigation as a game, will continue to be evasive, will continue to use efforts to intimidate, and will continue to waste resources with his gamesmanship.

II. ARGUMENT

A. LEGAL STANDARD

Idaho Rule of Civil Procedure 26(c)(1) authorizes this Court to issue a protective order "designating the persons who may be present while the discovery is conducted." This includes prohibiting non-parties from attending depositions to protect the parties and other participants from annoyance, oppression, and undue burden or expense. *Id.* Rule 30(d) on the conduct of depositions states that any person "present during the deposition must not impede, delay or frustrate the fair examination of the deponent." I.R.C.P. 30(d)(2). The St. Luke's Parties have good cause to believe that any non-parties who received Rodriguez's email and who attend the deposition will impede, delay, and frustrate the deposition and will not comply with the Rules of

Civil Procedure, thereby causing annoyance, oppression, and undue expense. Absent an order from the Court, Plaintiffs reasonably anticipate Rodriguez will continue to try to disrupt and intimidate in this manner.

Good cause exists to exclude non-parties from attending Rodriguez’s deposition. This Court has broad discretion over the control of discovery. *Wechsler v. Wechsler*, 162 Idaho 900, 908, 407 P.3d 214 (Idaho 2017). The United States Supreme Court has recognized that “pretrial depositions and interrogatories are not public components of a civil trial.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984). The Court made explicit that “[d]iscovery rarely takes place in public.” *Id.* at 33 n.19 (emphasis added). Although that case addressed a litigant’s freedom of speech to share information obtained pursuant to court order, the Court recognized that pretrial depositions have “a significant potential for abuse.” *Id.* at 34. Following this reasoning, courts across the country have recognized that depositions are not matters of public record; instead, they are protected by privacy interests implicated by Rule 26(c).¹

In *E.E.O.C. v. Original Honeybaked Ham Co. of Georgia*, 2012 U.S. Dist. LEXIS 114206 (D. Colo. Aug. 13, 2012), the court held that members of the public were “not necessarily ‘entitled’ to attend the private depositions” and excluded an individual whose previous attendance upset and distressed the witness. In *Batt v. Kimberly-Clark Corp.*, 2006 U.S. Dist. LEXIS 37482 (N.D. Okla. June 6, 2022), the court excluded the plaintiff’s wife because

¹ Idaho Rule of Civil Procedure 26(c) is nearly identical to Federal Rule of Civil Procedure 37(b). “Thus, [the Idaho Supreme Court] look[s] not only to Idaho authority, but also to cases interpreting the federal rule to establish the legal standards applicable to the specific choices available to the district court.” *Nelsen v. Nelsen*, 508 P.3d 301, 314 (Idaho 2022) (citation omitted); see also *Westby v. Schaefer*, 157 Idaho 616, 622, 338 P.3d 1220, 1226 (2014) (“We prefer to interpret the Idaho Rules of Civil Procedure in conformance with interpretations of the same language in the federal rules.”).

there was no authority suggesting that a non-party who would not be deposed had any right to attend a deposition, and the plaintiff failed to show prejudice from her exclusion. *See also Bal v. Hughes*, 1995 U.S. Dist. LEXIS 4566 (S.D.N.Y. Apr. 26, 1995) (excluding press from deposition); *Kimberlin v. Quinlan*, 145 F.R.D. 1 (D.D.C. 1992) (same).

Secondary sources support these conclusions. “Members of the public generally have no right to attend depositions.” 1 *Discovery Proceedings in Federal Court* § 9:6 (3d ed. 2017). “[N]either the public nor representatives of the press have a right to be present at the taking of a deposition.” 8A *Fed. Prac. & Proc. Civ.* § 2041 (3d ed. 2017). Even the *Federal Civil Rules Handbook* states that “[t]he Court may exclude the public, the press, other witnesses, or other nonparties from a deposition.” *Federal Civil Rules Handbook*, 786 (2017).

Rodriguez’s deposition is not open to the public and the freedomman.org followers have no right to attend his deposition, or any other deposition in this case. And future depositions are likewise not open to the public. While the fruits of discovery may be used in public proceedings the deposition process is not in and off itself something for the public to participate in or attend.

B. GOOD CAUSE EXISTS TO EXCLUDE THE PUBLIC FROM RODRIGUEZ’S DEPOSITION.

Rodriguez’s intent is clear from his email. Rodriguez incites his followers to disrupt the deposition and to intimidate the participants. This type of interference is sufficient to exclude a party or other witness from attending a deposition, even though parties and other witnesses are generally allowed to appear at depositions. *See Bell v. Bd. of Educ.*, 225 F.R.D. 186, 196 (S.D. W.Va. 2004). Therefore, this type of interference is more than sufficient to exclude the public, who do not have a right to attend, from the deposition. Good cause exists to believe that Rodriguez’s followers will act coercively or disruptively during the deposition and should therefore be excluded. *Id.*

Rodriguez sent the Zoom information for his deposition to unknown members or followers of freedomman.org. Stidham Decl., Ex. C. In effect, he made the Zoom link public. He encouraged those followers to log into the Zoom deposition to show support. *Id.* Rodriguez then misled his followers with false assertions regarding the Court's authority to order him to sit for a deposition, whether he received notice of the September 6, 2022 hearing, and the St. Luke's Parties' motivations for taking the deposition. *Id.* He further accused counsel of being a criminal bully and encouraged his followers to fight back. *Id.* Rodriguez did not ask the freedomman.org followers to respect the legal process. Rather, he incited them to fight back against the justice system. Rodriguez further inflamed his supporters by characterizing counsel as evil and comparing this litigation to "a spiritual battle." *Id.*

Rodriguez has used his followers to disrupt private business in the past and the St. Luke's Parties have good cause to believe he and they will engage in the same conduct during his deposition. *See, e.g.*, Amended Complaint at ¶¶ 63, 75-95. There is no legitimate purpose for the freedomman.org followers to attend this deposition. Rodriguez requested support at the deposition in an attempt to intimidate and harass the parties and counsel and to disrupt this court-ordered discovery. The presence of Rodriguez's followers at the deposition will impede, delay, or frustrate the progress of the deposition and will cause undue burden and expense.

C. THE ST. LUKE'S PARTIES ATTEMPTED TO MEET AND CONFER PRIOR TO BRINGING THIS MOTION.

The St. Luke's Parties attempted to comply with Idaho Rule of Civil Procedure 26(c)(1) by meeting and conferring with Rodriguez prior to bringing this motion. Counsel sent an email to Rodriguez at his known email address explaining that the public does not have a right to attend the deposition and requesting that Rodriguez withdraw his request for the public to attend

tomorrow. Stidham Decl., Ex. D. Because of the short time within which to resolve this issue, counsel requested a response by 1:30 pm. *Id.* Rodriguez responded to the email, refusing the St. Luke's Parties' demands. *Id.*, Ex. F.

D. RODRIGUEZ SHOULD BE SANCTIONED FOR HIS OBSTRUCTIONIST CONDUCT AND VIOLATIONS OF THIS COURT'S ORDERS.

Rodriguez continues to violate the Court's order and refuse to comply with the discovery process. Pursuant to I.R.C.P. 37(b) and (f), the St. Luke's Parties request their reasonable fees and costs in dealing with his obstructionist behavior, including the preparation of the emails attached to the Stidham Declaration and the instant Motion and supporting papers.

III. CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court grant their Motion.

DATED: October 4, 2022.

HOLLAND & HART LLP

By: /s/ Erik F. Stidham

Erik F. Stidham

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2022, 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:

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P.O. Box 370
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/s/ Erik F. Stidham

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