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*pro se*

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT**

**STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ST. LUKE'S HEALTH SYSTEM, LTD, et al.,	)	
ST.LUKE'S REGIONAL MEDICAL	)	<b>CASE NO. CV01-22-06789</b>
CENTER,LTD; CHRIS ROTH, an individual;	)	
NATASHA D. ERICKSON, MD, an individual;	)	
and TRACY W. JUNGMAN, NP, an individual,	)	VERIFIED MOTION TO CANCEL OR
	)	RECONSIDER THE COURT'S ORDER
Plaintiffs,	)	ON MOTIONS FOR SANCTIONS AND
	)	MEMORANDUM IN SUPPORT
vs.	)	
	)	
AMMON BUNDY, an individual;	)	
AMMONBUNDY FOR GOVERNOR, a	)	
political organization; DIEGO RODRIGUEZ, an	)	
individual; FREEDOM MAN PRESS LLC, a	)	
limited liability company; FREEDOM	)	
MANPAC, a registered political action	)	
committee; and PEOPLE'S RIGHTS	)	
NETWORK, apolitical organization,	)	
	)	
Defendants	)	
	)	
	)	

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**MOTION TO CANCEL OR RECONSIDER**

COMES NOW, Diego Rodriguez ("Rodriguez") and humbly asks this Court to cancel or reconsider its September 8, 2022, Order on Motions for Sanctions pursuant to Rule 11.2(b)(1) of the Idaho Rules of Civil Procedure.

VERIFIED MOTION TO CANCEL OR RECONSIDER THE COURT'S ORDER ON  
MOTIONS FOR SANCTIONS AND MEMORANDUM IN SUPPORT – 1

## **MEMORANDUM IN SUPPORT OF MOTION TO CANCEL OR RECONSIDER**

Included within this motion is a memorandum supporting the facts and law for this request as well as a verification from Diego Rodriguez that the statements contained herein are true.

### **LEGAL STANDARD**

“A motion to reconsider any order of the trial court entered before final judgment may be made at any time prior to or within 14 days after the entry of a final judgment.” I.R.C.P. 11.2(b)(1). “This Court has repeatedly held that I.R.C.P. 11(a)(2)(B) provides a district court with authority to reconsider and vacate interlocutory orders so long as final judgment has not been entered.” *Elliott v. Darwin Neibaur Farms*, 138 Idaho 774, 785 (2003). “When district court decides motion to reconsider, ‘the district court must apply the same standard that the court applied when deciding the original order that is being reconsidered.’” *Westby v. Schaefer*, 157 Idaho 616, 621. Idaho Rule of Civil Procedure 37(b)(2)(A) states allows the Court to issue “further just orders” if a party “fails to obey an order to provide or permit discovery.” Generally, where a party has not been served with process or was improperly served with process, any judgment [or order] against such party is void. *Thiel v. Stradley*, 118 Idaho 86, 87 (1990). As the Idaho Supreme Court noted in *Garren v. Rollis*, 85 Idaho 86, 90 (1962):

Under the due process clause of the Constitution of the United States, a personal judgment rendered without service of process on, or legal notice to, a defendant, in the absence of a voluntary appearance or waiver is void, and not merely voidable.

### **ARGUMENT**

#### **A. I was not a resident of Idaho at the time this complaint was filed in this case.**

I was not a resident of Idaho when the original Complaint in this matter was filed on May 11, 2022. On April 10, 2022, I moved to Florida. Because of the ongoing issues with my

grandson, I returned to Idaho to advocate for my grandson's freedom. On May 4, 2022, Ada County realized its mistake and dismissed the CPS case involving my grandson. On May 10, 2022, I again left Idaho to permanently reside in Florida. I was not personally served with a copy of the complaint or amended complaint at my residence in Florida pursuant to Idaho Code § 5-515. I am not aware of any attempts to personally serve me in Florida. According to Idaho state statute § 5-508 and § 5-509, a defendant can be served via publication in a newspaper for 4 consecutive weeks if personal service cannot be made. This appears to be what St. Luke's has attempted to do in order to serve me.

**B. I received notice that an Amended Complaint had been filed through the publication in the Orlando Weekly online edition and filed an answer with this Court within the timeframe provided by the public notice.**

On July 27, 2022, the following summons was published in the Orlando Weekly online edition.

Erik F. Stidham (ISB #5483) HOLLAND & HART LLP 800 W. Main Street, Suite 1750  
Boise, ID 83702-5974 Telephone: 208.342.5000 Facsimile: 208.343.8869 E-mail:  
[efstidham@hollandhart.com](mailto:efstidham@hollandhart.com) Counsel for Plaintiffs IN THE DISTRICT COURT OF THE  
FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA Case No. CV01-22-06789 Judge Lynn Norton SUMMONS -  
PUBLICATION ST. LUKE'S HEALTH SYSTEM, LTD; ST. LUKE'S REGIONAL MEDICAL  
CENTER, LTD; CHRIS ROTH, an individual; and 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. TO: **DIEGO  
RODRIGUEZ** You have been sued by 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, in the District Court in and for Ada County, Idaho, Case No. CV01-22-  
06789. The nature of the claims against you are: defamation; invasion of privacy;  
intentional infliction of emotional distress; trespass; unfair business practices;  
wrongful charitable solicitations; and civil conspiracy to commit defamation, invasion  
of privacy, intentional infliction of emotional distress, trespass, unfair business  
practices, and wrongful charitable solicitations. Any time after 21 days following the  
last publication of this summons, the court may enter a judgment against you without  
further notice, unless prior to that time you have filed a written response in the proper  
form, including the Case No., and paid any required filing fee to the Clerk of the Court  
at Ada County Courthouse, 200 West Front Street, Boise, Idaho 83702 (208) 287-  
6900 and served a copy of your response on the Plaintiffs' attorney at Holland & Hart  
LLP, 800 West Main Street, Suite 1750, Boise, ID 83702 (208) 342-5000. A copy of the  
Summons and Amended Complaint can be obtained by contacting either the Clerk of  
the Court or the attorney for Plaintiffs. If you wish legal assistance, you should  
immediately retain an attorney to advise you in this matter. DATED 7/27/2022.  
CLERK OF THE DISTRICT COURT Phil McGrane By /s/ Eric Rowell, Deputy Clerk.

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It was published again on August 3, 2022, August 10, 2022, and August 17, 2022.<sup>1</sup> This legal publication provided me notice that I was to respond within 21 days of August 17, 2022. This gave me until September 7, 2022 to file my answer and notice of appearance with this Court.

Here, I filed my Answer to the Amended Complaint and Notice of Appearance on August 6, 2022 at 2:48 PM. At that time, I was unaware of the August 6, 2022 hearing. However, this Court's September 8, 2022, Order on Motions for Sanctions stated:

Neither Ammon Bundy or Diego Rodriguez has filed a notice of appearance or any responsive pleading as of the time of the hearing. Neither Ammon Bundy nor Diego Rodriguez personally appeared at the hearing. (page 1 of September 8, 2022, Order on Motions for Sanctions).

This oversight was likely due to the lag in the filing and acceptance process and the fact that the envelope I filed with my documents in Odyssey was rejected before it was eventually accepted. Notwithstanding, this does not change the fact that I responded within the legal timeframe provided by the notice in summons to the Amended Complaint.

Because I filed my response within the time period given in the legal notice published in the Orlando Weekly, this Court should reconsider the rationale used in granting its order. As discussed below, any Orders entered by this Court, which related to me, before the deadline for me to appear in this case were void.

**C. This Court lacked jurisdiction to enter its July 12, 2022, Amended Order Granting Motion to Expedite Discovery against me.**

The district court did not have jurisdiction over me when it entered its July 12, 2022,

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<sup>1</sup> <https://www.orlandoweekly.com/legal-advertising/legal-public-notice-7-27-2022-32100636>  
<https://www.orlandoweekly.com/legal-advertising/legal-public-notice-8-3-2022-32148715>  
<https://www.orlandoweekly.com/legal-advertising/legal-public-notice-8-10-2022-32196384>  
<https://www.orlandoweekly.com/legal-advertising/legal-public-notice-8-17-2022-32247402>

Amended Order Granting Motion to Expedite Discovery. As of July 12, 2022, I had not been personally served. “Service of process is the due process procedure that vests a court with jurisdiction over a person, with the power to require such person to comply with the court's orders.” *McGlooin v. Gwynn*, 140 Idaho 727 (2004). The United States Supreme Court has indicated that due process in this context is:

notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. (citations omitted). The notice must be of such nature as reasonably to convey the required information ..., and it must afford a reasonable time for those interested to make their appearance. (citations omitted). *McGlooin v. Gwynn* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314).

Here, the Court found “there [was] no meet and confer requirement between the parties” because “the Court [had] already issued an order related to discovery. However, the July 12, 2022, Order issued by the Court against me was void because, at the time of the Order, the Court lacked jurisdiction to issue an order against me because I had not been properly served the Amended Complaint and Summons. Thus, the Court should reconsider the Order for Sanctions because, absent the July 12, 2022 Order for Expedited Discovery, Plaintiff was required to meet and confer prior to requesting sanctions. Therefore, the Court should cancel or reconsider its September 8, 2022, Order on Motions for Sanctions and deny Plaintiff’s Motion for Sanctions.

**D. I have already sent the information it requested in Plaintiffs’ 5 interrogatories in the Expedited Discovery.**

The Plaintiff is already in possession of the responses to the 5 interrogatories it issued in the Expedite Discovery. I received an enormous packet of information in the mail. It was delayed because it was first sent to my Idaho address and then it was forwarded it to me at the forwarding address I left with the mail forwarding service, though at the time I was outside of the country. Anyhow, once I discovered the Expedited Discovery, I sent a response to Plaintiffs’ counsel with

my responses to the 5 questions via email. I later sent a formalized response with the case caption to Plaintiffs' counsel via email. Thus, there is nothing for Plaintiff to gain in this deposition and would just be a way for counsel for the Plaintiffs to churn hours and bill them to me.

**E. The September 8, 2022, Order on Motions for Sanctions is confusing and vague.**

The September 8, 2022, Order on Motions for Sanctions is functionally confusing and no reasonable citizen could be expected to understand what the order is demanding. To be specific, the order states,

Motion for Sanctions against Diego Rodriguez. For reasons stated from the bench on September 6, 2022, the Court GRANTS IN PART the Motion for Sanctions against Diego Rodriguez filed Aug. 19, 2022 and finds it appropriate to order Ammon Bundy to sit for a Deposition to answer the questions posed in Interrogatories numbers 1, 2, 3, 4, and 5 that were granted in the Court's Order issued on June 3, 2022 and the Court's Amended Order issued July 12, 2022 since no response to the Interrogatories were received by Plaintiff by the August 5, 2022 deadline."

First of all, this order plainly states that "Ammon Bundy" must sit for a deposition, and not "Diego Rodriguez." That is both confusing and inappropriate since no reasonable citizen could be expected to understand who is being ordered to do what. Second, this decision is predicated on the claim that "no response to the interrogatories were received by Plaintiff by the August 5, 2022 deadline." However, as explained above, this violated my constitutional rights to due process as this Court did not have jurisdiction over me at the time of the July 12, 2022 Order.

**F. The Court's current jurisdiction over me does not retroactively cure the lack of jurisdiction to issue the prior orders.**

Finally, I acknowledge that I have now appeared in the case and submitted to the Court's

jurisdiction. However, this does not retroactively cure or un-void this Court's prior orders. "In cases where a party in default is said to have waived a lack of personal jurisdiction by failure to timely raise the defense in a motion or pleading, that "waiver" does not operate retroactively so as to validate a void judgment." *Fisher v. Crest Corp.*, 112 Idaho 741, 744 (Ct. App. 1987). Thus, this Court must reconsider its September 8, 2022 Order and deny Plaintiff's August 19, 2022 Motion for Contempt and Sanctions because it was based on a void July 12, 2022 Order.

### **CONCLUSIONS**

For the reasons stated above, I respectfully ask this Court to reconsider its September 8, 2022 Order and deny Plaintiff's August 19, 2022 Motion for Contempt and Sanctions.

DATED this 4th day of October, 2022.

By: /s/ Diego Rodriguez  
Diego Rodriguez  
Defendant



## VERIFICATION OF DIEGO RODRIGUEZ

I, Diego Rodriguez, do swear under the penalty of perjury that the following is true and correct:

1. On April 10, 2022, I moved to Florida.
2. Because of the ongoing issues with my grandson, I temporarily returned to Idaho to advocate for my grandson's freedom.
3. On May 4, 2022, Ada County realized its mistake and dismissed the CPS case involving my grandson.
4. On May 10, 2022, I left Idaho to permanently reside in Florida.
5. I was not personally served with a copy of the complaint or amended complaint at my residence in Florida pursuant to Idaho Code § 5-515.
6. On September 6, 2022 at 2:48 PM, I filed my Answer to the Amended Complaint and Notice of Appearance in the Odyssey/iCourts system.
7. I was unaware of the September 6, 2022 hearing.
8. I received a large stack of paper from Plaintiffs' counsel. It took me a long time to go through all of the documents in the stack.
9. I discovered the Expedited Discovery sent by Plaintiffs' counsel and I emailed responses to the to the 5 questions to Plaintiffs' counsel.
10. I later sent a formalized response with the case caption to Plaintiffs' counsel via email.
11. I am currently unaware of any remaining questions Plaintiffs could have regarding my responses as they were thorough.

DATED this 4th day of October, 2022.

By: /s/ Diego Rodriguez  
Diego Rodriguez  
Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the DATED this 4th day of October, 2022, I caused to be served a true and accurate copy of the foregoing document upon the following attorney(s) by the method indicated:

Erik F. Stidham HOLLAND & HART LLP 800 W. Main Street, Suite 1750 Boise, ID 83702	<input type="checkbox"/> U.S. Mail, postage pre-paid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile (208) 954-5950 <input checked="" type="checkbox"/> iCourt: <a href="mailto:efstidham@hollandhart.com">efstidham@hollandhart.com</a>
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/s/ Diego Rodriguez \_\_\_\_\_  
Diego Rodriguez  
Defendant