

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

St Lukes Health System LTD, St
Lukes Regional Medical Center LTD,
Chris Roth, Natasha Erickson, MD,
Tracy Jungman

Plaintiff,

vs.

Ammon Bundy, Ammon Bundy for
Governor, Diego Rodriguez,
Freedom Man PAC, Peoples Rights
Network, Freedom Man Press LLC
Defendant.

Case No. CV01-22-06789

ORDER GRANTING IN PART,
DENYING IN PART MOTION FOR
FURTHER SANCTIONS AND
RENEWED MOTION FOR CONTEMPT
AGAINST AMMON BUNDY

Plaintiffs' Motion for Further Sanctions and Renewed Motion for Contempt Against Ammon Bundy, filed September 26, 2022, came before the Court for hearing on October 11, 2022.

Appearances: Erik Stidham and Erica Jensen appeared for all Plaintiffs.

Ammon Bundy did not appear and no one appeared at this hearing on behalf of Ammon Bundy for Governor, Peoples Rights Network,¹ or Freedom Man PAC for Freedom Man Press LLC.²

Diego Rodriguez appeared for the scheduling conference portion of the hearing,³ made it clear that he was only representing himself as a self-represented litigant and did not remain on the videoconference for any motions related to Ammon Bundy.

Plaintiffs requested expedited discovery related to their Motion for Preliminary Injunction in Plaintiffs' Motion to Expedite Discovery, with its memorandum filed in support, both filed May 12, 2022. The court entered its Order Granting Motion to Expedite Discovery on June 3, 2022 and then entered an Amended Order for Expedited

¹ An Order of Default was entered on Sep. 2, 2022 against Ammon Bundy, Ammon Bundy for Governor, and People's Rights Network.

² An Order of Default was entered on Sep. 13, 2022 Freedom Man PAC and Freedom Man Press LLC.

³ Diego Rodriguez filed an Answer as a self-represented litigant on Sep. 6, 2022.



Discovery on July 12, 2022, in part, requiring Ammon Bundy to respond to Interrogatories 1 through 5 of Plaintiffs First set of Interrogatories to Defendant Ammon Bundy by August 5, 2022. That order was served on Ammon Bundy.

Ammon Bundy did not respond to those interrogatories by August 5, 2022. In fact, Ammon Bundy did not file any responsive pleading in this matter and an Order for Entry of Default against Ammon Bundy, Ammon Bundy for Governor, and the People's Rights Network was entered on September 2, 2022. An Order of Default of Freedom Man PAC and Freedom Man Press LLC was entered on September 13, 2022.

Plaintiffs filed a Motion for Sanctions and for Contempt and on September 8, 2022, Ammon Bundy did not appear for that hearing. The Court heard Plaintiffs' arguments and the Court issued an Order on the Plaintiffs' Motion for Sanctions and Contempt. The Court granted the request for discovery sanctions to the extent that it permitted the Plaintiffs to notice a deposition to ask those five interrogatories of Ammon Bundy and ordered Defendant Bundy to sit for that deposition at his expense. Plaintiffs provided deposition dates but Ammon Bundy did not select a deposition date. So, no deposition of Ammon Bundy occurred.

The Court's Order informed the parties that "If Defendant Bundy d[id] not respond to Plaintiffs' proposed dates by the Court-ordered deadline or does not attend the subsequently scheduled deposition, he will be subject to additional sanctions without a hearing or notice and may be held in contempt of Court and fined accordingly."

Plaintiffs filed a Motion for Further Sanctions and Renewed Motion for Contempt against Ammon Bundy, with a memorandum⁴ and Affidavit of Sara M. Berry⁵ in support, all filed September 26, 2022. The Plaintiffs now ask to expand the Ammon Bundy deposition beyond the limited discovery initially requested in their Motion for Expedited Discovery, asks the Court for an order re-noticing an in-person videotaped deposition of up to seven hours, and requests a warrant of attachment and bail under Idaho Rule of

⁴ Memorandum in Support of Motion for Further Sanctions and Renewed Motion for Contempt Against Ammon Bundy ("Pls' Memo"), filed Sept. 26, 2022.

⁵ Affidavit of Sara M. Berry in Support of Motion for Further Sanctions and Renewed Motion for Contempt Against Ammon Bundy ("Berry Aff"), filed Sept. 26, 2022.



Civil Procedure 75(e) for Ammon Bundy and to hold Bundy in contempt Idaho Rule of Civil Procedure 75 or Idaho Code § 7-610 for not attending the earlier-ordered deposition or responding to the expedited interrogatories.

LEGAL STANDARD

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.” The Court finds there is no meet and confer requirement between the parties when the Court has already issued an order related to discovery. See *generally* IDAHO RULE CIV. PRO. 37. See also 27 C.J.S. *Discovery* § 69; see also 7 MOORE’S FEDERAL PRACTICE - Civil § 37.40 (2022). “Instead of or in addition to” any further orders or sanctions by the Court, “the court must order the disobedient party...to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.” IDAHO R. CIV. PRO. 37(b)(2)(C). “The imposition of sanctions for discovery violations is committed to the discretion of the trial court.” *Roe v. Doe*, 129 Idaho 663, 666, 931 P.2d 657, 660 (Ct. App. 1996).

Any sanctions imposed by the court must be appropriate and consider if the sanction’s effect will “impose liability on the offending party, establish the outcome of or preclude evidence on a central issue, or end the litigation entirely.” 27 C.J.S. *Discovery* § 69. The Idaho courts have determined that an “award of costs and explicit warnings are among ‘the appropriate preliminary measures’ which the trial court may take to attempt to force compliance before resorting to” more drastic measures and sanctions.” *Roe v. Doe*, 129 Idaho 663, 667, 931 P.2d 657, 661 (Ct. App. 1996) (quoting *Ashby v. W. Council, Lumber Prod. & Indus. Workers*, 117 Idaho 684, 687, 791 P.2d 434, 437 (1990)).

ANALYSIS

1. Motion for Further Sanctions

Plaintiffs argue (and are correct) that Ammon Bundy failed to comply with this Court’s September 8, 2022 Order on Motions for Sanctions. The Order informed Bundy: “If Defendant Bundy does not respond to Plaintiffs’ proposed dates by the Court-ordered



deadline he will be subject to additional sanctions without a hearing or notice and may be held in contempt of Court and fined accordingly.”

First, the Court notes that an Order of Default was entered on September 2, 2022 against Ammon Bundy, Ammon Bundy for Governor, and against People’s Rights Network and that Order of Default was entered after the Order for Expedited Discovery and the Amended Order for Expedited Discovery.

Second, the Court has re-read the Plaintiffs’ Motion for Expedited Discovery and the basis upon which this Court granted expedited discovery – which was related to the Motion for Preliminary Injunction, filed May 11, 2022.

The Court has also considered the Motion for Preliminary Injunction, with the memorandum in support, and the Declarations of Dr. Natasha Erickson, Chris Roth, and Erik Stidham also filed in support, all filed May 11, 2022.

Idaho Rule of Civil Procedure 37(b)(2)(A) includes a permissible (although not exclusive) list of sanctions where an action is pending but a party does not obey a discovery order. It includes:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;
- (vi) rendering a default judgment against the disobedient party; or
- (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination and initiating contempt proceedings

IDAHO RULE OF CIVIL PROCEDURE 37(b)(2)(A)(i) – (vi). Considering these permissible sanctions and the Orders of Default already entered, the Court will sanction Ammon Bundy for failing to answer the limited interrogatories or sit for the ordered deposition by directing that designated facts outlined in the declarations filed in support of the Motion for Preliminary Injunction are taken as established for purposes related to the Motion for



Preliminary Injunction as the prevailing party claims and the Court will prohibit Ammon Bundy from opposing the Motion for Preliminary Injunction. Therefore, the Court will enter the proposed Order for Preliminary Injunction against all defendants except for Diego Rodriguez.

Pursuant to Idaho Rule of Civil Procedure 65(d), it appears by the Amended Complaint and supporting Declarations filed in this matter that the Plaintiffs are entitled to the injunctive relief requested in the proposed Order for Preliminary Injunction, that continuance of the acts complained of during this litigation will produce great or irreparable injury to the Plaintiffs before a hearing on default damages can be held and default judgments can be entered. Since Orders of Default against these defendants have been entered, the Court will waive security for the Order for Preliminary Injunction that will be issued. The Order for Preliminary Injunction is binding only upon parties who have an Order for Entry of Default entered against them which include Ammon Bundy, Ammon Bundy for Governor, the People's Rights Network, Freedom Man PAC, and Freedom Man Press LLC, or their officers, agents, servants, employees, and attorneys. However, the Order for Preliminary Injunction may be personally served on others to make it enforceable against those who are not parties to this litigation.

Considering the sanction stated above for failure to respond to the expedited discovery order, Plaintiffs' request for an order mandating another deposition of Ammon Bundy that is longer and unlimited in scope at this stage of proceedings is DENIED.

Since the Court has denied the request for the expanded deposition, the Court also denies the request for Bundy to pay for that deposition.

2. Renewed Motion for Contempt

Plaintiffs renew their motion for contempt against Bundy in contempt pursuant to I.C. § 7-601 *et seq.*, Idaho Rule of Civil Procedure 37(b), and Idaho Rule of Civil Procedure 75(c), (e)

Lesser sanctions are available under Idaho Rule of Civil Procedure 37(b)(2)(A)(i) and (ii) and are ordered above. The Court finds those sanctions are adequate to address the failure to respond to the expedited discovery requested before the Court's consideration of the motion for preliminary injunction since an Order of Default has been entered against all defendants except for Diego Rodriguez. While the Court could treat



the failure to answer the interrogatories or sit for a deposition to answer those five questions permitted as expedited discovery, the Court denies Plaintiffs' request for a warrant of attachment and bail for Ammon Bundy under Idaho Rule of Civil Procedure 75(e) since an adequate remedy is available under Idaho Rule of Civil Procedure 37.

Therefore, the Motion for Contempt against Ammon Bundy is DENIED at this time.

3. Request for Attorney Fees and Costs

Since the Court has awarded attorney fees in the Order for Attorney Fees entered October 12, 2022, and the Court has denied most of the further sanctions and the motion for contempt requested by Plaintiffs, and because the proposed order for preliminary injunction and other matters related to that motion were filed in May and not as the result of Ammon Bundy's failure to comply with the prior order, the Court DENIES Plaintiffs' request for Ammon Bundy to pay costs and attorneys' fees associated with bringing the Motion for Further Sanctions and Renewed Motion for Contempt Against Ammon Bundy, filed September 26, 2022.

CONCLUSION

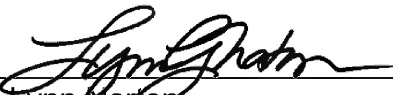
The Court GRANTS IN PART Plaintiffs' Motion for Further Sanctions and Renewed Motion for Contempt Against Ammon Bundy, filed September 26, 2022. The Court will prohibit Ammon Bundy from defending against the Motion for Preliminary Injunction. The Court will sign the proposed Order for Preliminary Injunction to the extent that order applies to all defendants except for Diego Rodriguez.

The Court DENIES the remainder of the Plaintiffs' Motion for Further Sanctions and Renewed Motion for Contempt Against Ammon Bundy, filed September 26, 2022.

Since Ammon Bundy has not appeared in this action, the Plaintiffs must serve a copy of this Order Granting in Part, Denying in Part Motion for Further Sanctions and Renewed Motion for Contempt Against Ammon Bundy on Ammon Bundy pursuant to Rule 5(a)(2) and Rule 4(d).

IT IS ORDERED.

Dated: 10/12/2022 10:13:35 AM



Lynn Norton
District Judge



CERTIFICATE OF SERVICE

I certify that on this day I served a copy of the attached to:

Erik F. Stidham

efstidham@hollandhart.com

E-mail

Diego Rodriguez
1317 Edgewater Drive #5077
Orlando, FL 32804
freedommanpress@protonmail.com

By E-mail By mail
 By fax (number)
 By overnight delivery / FedEx
 By personal delivery

Phil McGrane
Clerk of the Court

Dated: 10/12/2022

By: Janine Korsen
Deputy Clerk

