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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  
PLAINTIFFS' MOTION FOR AWARD  
OF ATTORNEYS' FEES AGAINST  
DIEGO RODRIGUEZ PURSUANT TO  
COURT'S SEPTEMBER 8, 2022,  
ORDERS ON MOTIONS FOR  
SANCTIONS**

COME NOW Plaintiffs, by and through their attorneys of record, Holland & Hart LLP,  
and submit this Memorandum in support of their Motion for Award of Attorneys' Fees Against  
Diego Rodriguez Pursuant to Court's September 8, 2022, Orders on Motions for Sanctions.

## I. INTRODUCTION

This Court has ordered Defendant Diego Rodriguez to pay attorneys' fees and costs incurred in bringing their Motion for Sanctions Against Rodriguez ("Motion for Sanctions"), filed on August 19, 2022, and heard on September 6, 2022. Rodriguez's repeated refusals to follow this Court's orders led to the Court's September 8, 2022 order granting sanctions.

Plaintiffs seek to recover only a limited amount of their attorneys' fees and costs incurred in bringing their Motion for Sanctions against Rodriguez, in taking his limited deposition, and in preparing and filing this Motion for Award of Attorneys' Fees: \$5,945.55.

As explained further below, this amount is not the total amount actually incurred but rather a core, conservative amount of the fees unquestionably caused by Rodriguez's disobedience to the Court. Plaintiffs respectfully request that this Court enter an order granting them attorneys' fees, to be paid within 14 days of this Court's order on Plaintiffs' Motion for Attorneys' Fees Against Rodriguez, or by a date certain to be set by the Court.

## II. BACKGROUND

This Court required Rodriguez to respond to interrogatories on or before August 5, 2022.

August 5 came and went, and Rodriguez did not respond. Accordingly, Plaintiffs filed on August 19, 2022, their Motion for Sanctions. Rodriguez did not respond to the Motion for Sanctions. The Court held a hearing on the Motion for Sanctions on September 6, 2022. Mr. Rodriguez did not appear, nor did he have counsel appear on his behalf.

The Court granted Plaintiffs' Motion for Sanctions and set forth the following timeline for coordinating and taking Rodriguez's deposition:

1. By **September 16, 2022** Plaintiffs must provide Defendant Bundy [sic] with three possible dates for the deposition between September 27, 2022 and October 7, 2022.

2. Defendant Rodriguez must respond with his choice of date for the deposition by **September 22, 2022**;

3. St. Luke's must then file a notice of deposition with the chosen date by **September 23, 2022**.

Defendant Rodriguez is **ORDERED** to attend the deposition on the date and time provided on the filed Notice of Deposition. . . . The Court also **ORDERS** that Defendant Rodriguez is to pay the costs of the deposition that are costs that would not have been incurred but for Mr. Rodriguez's failure to respond to the Interrogatories proposed by Plaintiffs since Mr. Rodriguez was on notice of Plaintiffs' intent to seek this discovery and was mailed the Court's Orders for at least three months prior to the hearing on September 6, 2022.

Order at 4.

Pursuant to the Court's order, on September 14, 2022, Plaintiffs duly filed and served a Notice of Potential Deposition Dates for Rodriguez, providing potential dates of October 3, 4, or 5. Declaration of Erik F. Stidham ("Stidham Decl."), ¶ 6. On September 16, 2022, Rodriguez sent an email stating that he would be available on October 5, 2022. *Id.*, ¶ 7. Pursuant to the Court's order, Plaintiffs duly filed a notice of service of deposition on September 21, 2022. *Id.*, ¶ 8. Although Rodriguez's email correspondence continued to obstruct any in-person deposition, as he refused to disclose his location so that St. Luke's counsel could hold the deposition where he claims to currently reside or be located, the deposition went forward via Zoom on October 5, 2022. *Id.*, ¶ 9.

Plaintiffs now file the instant Motion for Attorneys' Fees.

### **III. PLAINTIFFS' COUNSEL'S FEES ACTUALLY INCURRED IN RELATION TO THE MOTION FOR SANCTIONS AND CONTEMPT AGAINST RODRIGUEZ ARE REASONABLE.**

This Court has already found that attorneys' fees and costs should be awarded to Plaintiffs. Accordingly, this memorandum solely focuses on the reasonableness of the fees and costs incurred.

Once a court determines that a party is entitled to an award of attorneys' fees, it then considers the factors set out in Idaho Rule of Civil Procedure 54(e)(3) to determine the amount of attorneys' fees to be awarded. The Rule 54(e)(3) "factors guide the trial court in fixing the amount to be awarded as reasonable attorney fees." *Nalen v. Jenkins*, 113 Idaho 79, 83, 741 P.2d 366, 369 (Ct. App. 1987). "Under Rule 54(e)(3) the trial court is required to consider the existence and applicability of each factor." *Id.* But "[n]o element is to be given undue weight or emphasis." *Id.* Under Rule 54(e)(3), the factors are:

- (A) the time and labor required;
- (B) the novelty and difficulty of the questions;
- (C) the skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law;
- (D) the prevailing charges for like work;
- (E) whether the fee is fixed or contingent;
- (F) the time limitations imposed by the client or the circumstances of the case;
- (G) the amount involved and the results obtained;
- (H) the undesirability of the case;
- (I) the nature and length of the professional relationship with the client;
- (J) awards in similar cases;
- (K) the reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case;
- (L) any other factor which the court deems appropriate in the particular case.

I.R.C.P. 54(e)(3). Although the Court must consider the Rule 54(e)(3) factors, a specific written finding on each of the various factors is not necessary. *See State v. Baeza*, 161 Idaho 38, 383

P.3d 1208, 1213 (2016). Applying those Rule 54(e)(3) factors that bear the most weight in the instant matter, Plaintiffs are entitled to all of their attorneys' fees requested in this Memorandum.

**A. THE TIME AND LABOR REQUIRED**

The Motion for Sanctions required consideration of the discovery rules, attendant case law, and the specific circumstances of this lawsuit. As demonstrated in Exhibit A to the Stidham Declaration filed concurrently with this brief, Plaintiffs' legal team devoted an appropriate amount of time to the Motion for Sanctions and the deposition. Plaintiffs' counsel worked efficiently.

Additionally, Plaintiffs do not seek all of their fees incurred in preparing and arguing the Motion for Sanctions. Rather, they solely seek some of the fees incurred pursuing the Motion for Sanctions by lead counsel and the other attorneys. *See* Stidham Decl., ¶¶ 13-20. Plaintiffs seek their attorneys' fees and costs incurred in preparing for and in taking the deposition of Mr. Rodriguez. *Id.*, Ex. A.

Plaintiffs also seek their attorneys' fees incurred in preparing this request for attorneys' fees. *BECO Constr. v. J-U-B Eng'rs Inc.*, 149 Idaho 294, 298, 233 P.3d 1216, 1220 (2010) (holding that "courts may award reasonable attorney fees incurred in connection with the effort to secure a reasonable amount of attorney fees"), *overruled in part on other grounds by Keybank Nat'l Ass'n v. PAL I, LLC*, 155 Idaho 287, 311 P.3d 299 (2013).

**B. THE SKILL REQUIRED TO PERFORM THE LEGAL SERVICE**

The Plaintiffs in this matter were represented by counsel with experience litigating similar complex commercial disputes. *See* Stidham Decl., ¶ 16. Erik F. Stidham, a partner at Holland & Hart's Boise office, was the most senior attorney on the litigation. *Id.* He manages the representation in this matter, working with other attorneys from Holland & Hart from the

commercial litigation practice group. *Id.*, ¶ 16. For the Motion for Sanctions, he primarily relied on the research and drafting assistance of a more junior attorneys,<sup>1</sup> whose work he directed. *Id.*, ¶¶ 16, 19, Ex. A. Mr. Stidham appeared at the hearing and argued the Motion for Sanctions. *Id.*, Ex. A. The instant motion for attorneys' fees voluntarily foregoes certain fees incurred by the attorneys, in an effort to seek only the most conservative, core amount of fees, although all fees incurred were reasonable. *See id.*, Ex. A.

The lawyers on the case team did not duplicate work. *Id.*, ¶ 18. Their experience in handling litigation of this sort allowed them to avoid duplicate billing by timekeepers and efficiently delegate work to the appropriate level, as reflected in Exhibit A. *Id.*

### **C. PREVAILING CHARGES FOR LIKE WORK**

The hourly rates charged for the services provided to Plaintiffs are reasonable for the type of work performed and are comparable to those for similar services in the Treasure Valley performed by attorneys of comparable skill and experience. *See Stidham Decl.*, ¶ 17. The rates charged are Holland & Hart's standard hourly rates reduced by 10 to 18%. *Id.*, ¶ 12.

Moreover, courts have repeatedly found Holland & Hart's standard rates to be reasonable and in accord with the market. *See Edmark Auto Inc. v. Zurich Am. Ins. Co.*, No. 1:15-cv-00520-BLW, 2021 U.S. Dist. LEXIS 39160, at \*10 (D. Idaho Mar. 1, 2021) ("It has [] been this Court's experience that attorneys at regional firms, such as Holland & Hart, charge hourly rates at or near, but not above, the high end of acceptable rates for the Boise area.") (citation omitted); *see also Bank of Am. v. Neef*, No. CV-OC 13-19726 (Idaho Fourth Judicial District, Ada County)

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<sup>1</sup> Due to safety concerns, this Motion does not identify by name the other Holland & Hart timekeepers who have worked on this case. These concerns were raised in Plaintiffs' pending Motion for Protective Order, which was filed and heard at the outset of this case. If the Court believes additional information is required, Plaintiffs will work to address those concerns.

(allowing the hourly rates of the attorneys representing the receiver of \$385 for a senior partner; \$300 for a junior partner; and \$245 for an associate in 2013); *Cnty. House, Inc. v. City of Boise, Idaho*, No. 1:05-cv-00283-CWD, 2014 WL 1247758, at \*6 (D. Idaho Mar. 25, 2014) (approving rate of \$400 per hour in 2014); *Lakeview Cheese Co. v. Nelson-Ricks Creamery Co.*, No. 4:13-cv-00361-BLW, 2015 WL 769960 (D. Idaho Feb. 23, 2015) (permitting the following rates in 2015: \$455 for a senior litigation partner; \$310 for a junior litigation partner).

**D. WHETHER THE FEE IS FIXED OR CONTINGENT**

The fee agreement in this case is based on an hourly rate. Stidham Decl., ¶ 10. Such an agreement is an appropriate basis for attorneys' fees. *Id.*

**E. RESULTS OBTAINED**

Plaintiffs filed a Motion for Sanctions and obtained the result they requested—an order that Mr. Rodriguez be required to sit for deposition and to pay the fees and costs incurred as a result of his refusal to answer the interrogatories the Court had previously ordered him to answer.

**IV. CONCLUSION**

Based on the foregoing, Plaintiffs respectfully request this Court enter an award in their favor for reasonable fees and costs in the amount of \$5,945.55, to be paid within 14 days of this Court's order on Plaintiffs' Motion for Attorneys' Fees Against Rodriguez, or by a date certain to be set by the Court.

DATED: October 19, 2022.

HOLLAND & HART LLP

By: /s/ Erik F. Stidham

Erik F. Stidham

*Counsel for Plaintiffs*

## CERTIFICATE OF SERVICE

I hereby certify that on this 19th 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:

Ammon Bundy for Governor	<input checked="" type="checkbox"/> U.S. Mail
P.O. Box 370	<input type="checkbox"/> Hand Delivered
Emmett, ID 83617	<input type="checkbox"/> Overnight Mail
	<input type="checkbox"/> Email/iCourt/eServe:

Ammon Bundy for Governor	<input checked="" type="checkbox"/> U.S. Mail
c/o Ammon Bundy	<input type="checkbox"/> Hand Delivered
4615 Harvest Ln.	<input type="checkbox"/> Overnight Mail
Emmett, ID 83617-3601	<input type="checkbox"/> Email/iCourt/eServe:

Ammon Bundy	<input checked="" type="checkbox"/> U.S. Mail
4615 Harvest Ln.	<input type="checkbox"/> Hand Delivered
Emmett, ID 83617-3601	<input type="checkbox"/> Overnight Mail
	<input type="checkbox"/> Email/iCourt/eServe:

People's Rights Network	<input checked="" type="checkbox"/> U.S. Mail
c/o Ammon Bundy	<input type="checkbox"/> Hand Delivered
4615 Harvest Ln.	<input type="checkbox"/> Overnight Mail
Emmett, ID 83617-3601	<input type="checkbox"/> Email/iCourt/eServe:

People's Rights Network	<input checked="" type="checkbox"/> U.S. Mail
c/o Ammon Bundy	<input type="checkbox"/> Hand Delivered
P.O. Box 370	<input type="checkbox"/> Overnight Mail
Emmett, ID 83617	<input type="checkbox"/> Email/iCourt/eServe:

Freedom Man Press LLC	<input checked="" type="checkbox"/> U.S. Mail
c/o Diego Rodriguez	<input type="checkbox"/> Hand Delivered
1317 Edgewater Dr. #5077	<input type="checkbox"/> Overnight Mail
Orlando, FL 32804	<input type="checkbox"/> Email/iCourt/eServe:

Freedom Man Press LLC	<input checked="" type="checkbox"/> U.S. Mail
c/o Diego Rodriguez	<input type="checkbox"/> Hand Delivered
9169 W. State St., Ste. 3177	<input type="checkbox"/> Overnight Mail
Boise, ID 83714	<input type="checkbox"/> Email/iCourt/eServe:

Freedom Man PAC	<input checked="" type="checkbox"/> U.S. Mail
c/o Diego Rodriguez	<input type="checkbox"/> Hand Delivered
1317 Edgewater Dr., #5077	<input type="checkbox"/> Overnight Mail
Orlando, FL 32804	<input type="checkbox"/> Email/iCourt/eServe:



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

- U.S. Mail
- Hand Delivered
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- Email/iCourt/eServe: [dr238412@me.com](mailto:dr238412@me.com);  
[freedommanpress@protonmail.com](mailto:freedommanpress@protonmail.com)

*/s/ Erik F. Stidham*

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Erik F. Stidham  
OF HOLLAND & HART LLP

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