

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**

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

**PLAINTIFFS' MEMORANDUM IN  
SUPPORT OF MOTIONS FOR LEAVE  
TO FILE THIRD AMENDED  
COMPLAINT**

Plaintiffs, by and through their attorneys of record, Holland & Hart LLP, hereby submit this Memorandum in Support of their Motions for Leave to File a Third Amended Complaint.<sup>1</sup>

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<sup>1</sup> These motions are submitted for the Court's contemporaneous consideration of Plaintiffs' Motions to for Leave to File a Second Amended Complaint to add a Claim for Punitive Damages.

## **INTRODUCTION**

The Plaintiffs seek to amend their Complaint to add new allegations in support of all claims. The allegations relate to Defendants' ongoing defamation Plaintiffs, engagement in unfair business practices and solicitation of charitable contributions, and ongoing civil conspiracy regarding the same. The actions of these Defendants occurred or were discovered by Plaintiffs after the filing of the Complaint and thus could not have been included in the original filing. Under Idaho Rule of Civil Procedure 15's liberal standard for amendment of pleadings, this Motion should be granted because it has been brought in good faith and without undue delay. No prejudice to the Defendants will result.

## **PROCEDURAL BACKGROUND**

The Complaint was filed on May 11, 2022, and contains eight claims: defamation, invasion of privacy, intentional infliction of emotional distress, common law trespass, statutory trespass, unfair business practices, violations of the Idaho Charitable Solicitation Act, and civil conspiracy to commit defamation, invasion of privacy, intentional infliction of emotional distress, common law trespass, statutory trespass, unfair business practices, and to violate the Idaho Charitable Solicitation Act. Complaint at 22-32. An Amended Complaint was approved and filed on June 2, 2022. The Amended Complaint includes the same eight claims as the original Complaint.

Diego Rodriguez filed an Answer to the Amended Complaint on September 6, 2022. The remaining defendants, Ammon Bundy, Ammon Bundy for Governor, Freedom Man Press LLC, Freedom Man PAC, and People's Rights Network ("Default Defendants"), failed to timely

appear and file a responsive pleading and were defaulted September 13, 2022 under the Court's Orders for Entry of Default.

The case is in the discovery stage. Plaintiffs have served written discovery on Defendants, as well as specific requests for written discovery to individual defendants. Defendant Rodriguez's discovery responses are the subject of a pending Motion to Compel before the Court. Plaintiffs have also proceeded with discovery by deposition, and have noticed up the deposition of Rodriguez as well as the depositions duces tecum of numerous third parties.

### ARGUMENT

#### **1. Idaho Rule of Civil Procedure 15(a) Strongly Favors Granting Leave to Amend.**

A party may amend its pleading after a responsive pleading has been filed “with the opposing party’s written consent or the court’s leave.” Idaho R. Civ. P. 15(a)(2). While the district court has discretion in deciding a motion to amend under Rule 15(a), the standard favors amendment. *See Hayward v. Valley Vista Care Corp.*, 136 Idaho 342, 345, 33 P.3d 816, 819 (2001) (“In the interest of justice, district courts should favor liberal grants of leave to amend a complaint.”) (internal quotation marks omitted).

This means that “[i]n the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be ‘freely given.’” *Smith v. Great Basin Grain Co.*, 98 Idaho 266, 272, 561 P.2d 1299, 1305 (1977) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

For instance, the Idaho Supreme Court has reversed denial of leave to amend, even when the motion was filed long after litigation commenced and could have the effect of “changing the

focus of [the] lawsuit.” *Spur Prods. Corp.*, 142 Idaho at 44-45, 122 P.3d at 303-04 (reversing denial of motion to amend when plaintiff sought to add a new malpractice claim two years into the lawsuit); *see also Thomas v. Med. Ctr. Physicians, P.A.*, 138 Idaho 200, 204, 211, 61 P.3d 557, 561, 568 (2002) (reversing denial of motion seeking to add claims for intentional and negligent infliction of emotional distress a year and a half after litigation commenced); *Carl H. Christensen Family Trust v. Christensen*, 133 Idaho 866, 871, 993 P.2d 1197, 1202 (1999) (reversing denial when plaintiff sought to add fraud claims almost ten months after the original complaint and there was no prejudice to defendants because “the basic facts giving rise to their claims were already known”).

“The purpose behind allowing a party to amend its [pleading] is so all claims will be decided on their merits and to provide notice of the claim and the facts at issue.” *Iron Eagle Dev., LLC v. Quality Design Sys., Inc.*, 138 Idaho 487, 492, 65 P.3d 509, 514 (2003). Indeed, “[g]iven the policy of the Idaho Rules of Civil Procedure to provide a ‘just, speedy and inexpensive determination in every action,’” it would be “manifestly unreasonable” to deny amendment and effectively force a litigant to file a whole new lawsuit in order to resolve the entire controversy. *Clark v. Olsen*, 110 Idaho 323, 326-27, 715 P.2d 993, 996-97 (1986) (reversing denial of motion to amend).

## **II. In this Case, Justice Requires Leave to Amend.**

The Court should permit amendment because none of the circumstances warranting denial exist in this case. *See Great Basin Grain Co.*, 98 Idaho at 272, 561 P.2d at 1305 (motion should be granted unless there is bad faith or dilatory motive, undue delay, prejudice to the opposing party, repeated failure to cure deficiencies by amendment previously allowed, or futility of amendment).

First, Plaintiffs seek to amend in good faith. The additional allegations in the proposed Third Amended Complaint are based either on (1) acts attributable to the various Defendants that have occurred since the filing of the First Amended Complaint; and/or (2) are factual allegations related to Defendants that have been discovered since the filing of the First Amended Complaint through Plaintiffs' discovery efforts in this case. Declaration of Erik F. Stidham ("Stidham Decl."), ¶ 2.

Second, Plaintiffs have no dilatory motive and have not unduly delayed moving to amend. They bring this Motion during the course of discovery and in concert with their Motion for Leave to Amend to Add a Claim for Punitive damages.

Third, Defendants will not be prejudiced by amendment. The amendment provides Defaulted Defendants a renewed opportunity to respond to the allegations in this lawsuit and thus does not cause prejudice. The amendment also will not prejudice Diego Rodriguez, who has appeared. He is aware of the newly added allegations because they concern his own acts or the acts of his affiliates and affiliated entities. Stidham Decl., ¶ 2.

Fourth, amendment would not be futile. Plaintiffs seek to add further factual allegations to their already-existing cause causes of action. The newly discovered and added allegations provide important details regarding the ongoing nature of the defamation and conspiracy perpetuated by and profited off of by Defendants.

### **CONCLUSION**

For the above reasons, Plaintiffs respectfully request that the Court grant their Motion for Leave to Amend.

DATED: January 10, 2023.

HOLLAND & HART LLP

By: /s/Erik F. Stidham

Erik F. Stidham

*Counsel for Plaintiffs*

## CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of January, 2023, 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  
P.O. Box 370  
Emmett, ID 83617

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email/iCourt/eServe:

Ammon Bundy for Governor  
c/o Ammon Bundy  
4615 Harvest Ln.  
Emmett, ID 83617-3601

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email/iCourt/eServe:

Ammon Bundy  
4615 Harvest Ln.  
Emmett, ID 83617-3601

- U.S. Mail
- Hand Delivered via Process Server
- Overnight Mail
- Email/iCourt/eServe:

People's Rights Network  
c/o Ammon Bundy  
4615 Harvest Ln.  
Emmett, ID 83617-3601

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People's Rights Network  
c/o Ammon Bundy  
P.O. Box 370  
Emmett, ID 83617

- U.S. Mail
- Hand Delivered via Process Server
- Overnight Mail
- Email/iCourt/eServe:

Freedom Man Press LLC  
c/o Diego Rodriguez  
1317 Edgewater Dr. #5077  
Orlando, FL 32804

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email/iCourt/eServe:

Freedom Man Press LLC  
c/o Diego Rodriguez  
9169 W. State St., Ste. 3177  
Boise, ID 83714

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email/iCourt/eServe:

Freedom Man PAC  
c/o Diego Rodriguez  
1317 Edgewater Dr., #5077  
Orlando, FL 32804

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email/iCourt/eServe:

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

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email/iCourt/eServe:  
[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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