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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  
EXTENSION OF TIME TO DISCLOSE  
EXPERT WITNESSES**

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”), by and  
through their attorneys of record, Holland & Hart LLP, hereby submit this Memorandum in  
Support of their Motion for Extension of Time to Disclose Expert Witnesses.

## I. INTRODUCTION

There is good cause for the requested 28-day extension of time to disclose expert witnesses in this case. Plaintiffs and their retained and unretained experts have completed a substantial amount of work on their disclosures but require a few weeks' more time to complete their reports for disclosure. Declaration of Erik Stidham ("Stidham Decl."), ¶ 2. Plaintiffs make this request in good faith. *Id.*, ¶ 3. They have pursued this case diligently and require more time to complete expert disclosures due to the complexity of the case, number of fact witnesses, Defendants' obstruction of discovery, and one of the retained expert's having to deal with a family emergency. *Id.*, ¶ 4. No prejudice to Defendants would result. The Defendants in default will not even be affected. And Mr. Rodriguez will not be prejudiced because the requested extension is short, Plaintiffs concurrently request commensurate extensions for his expert deadlines, and he is responsible for a significant portion of the frustration of Plaintiffs' efforts to complete expert reports. *See id.*, ¶ 5.

## II. CURRENT EXPERT DEADLINES

The current scheduling order provides the following relevant deadlines:

### A. EXPERT WITNESSES

#### **(Plaintiff's experts—retained or non-retained)**

1. 150 days (**at least 120**) before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.
2. 150 days (**at least 120**) before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.
3. 90 days before trial, defendant shall complete any depositions of the plaintiff's initial expert witnesses.

#### **(Defendant's experts—retained or non-retained)**

4. 120 days (**at least 95**) before trial, defendant shall disclose each person defendant intends to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.

5. 120 days (**at least 95**) before trial, defendant shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.
6. 50 days before trial, plaintiff shall complete any depositions of the defendant's expert witnesses.

**(Plaintiff's rebuttal experts—retained or non-retained)**

7. 90 days before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial to rebut new information or issues disclosed or raised by the defendant.
8. 90 days (**at least 42**) before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding the rebuttal expert witnesses.
9. 40 days before trial, defendant shall complete any depositions of the plaintiff's rebuttal expert witnesses.

**(Defendant's rebuttal experts—retained or non-retained)**

10. 60 days before trial, defendant shall disclose each person defendant intends to call as an expert witness at trial to rebut new information or issues disclosed or raised by the plaintiff in rebuttal.
11. 60 days (**at least 30**) before trial, defendant shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding its rebuttal expert witnesses.
12. 40 days before trial, plaintiff shall complete any depositions of the defendant's rebuttal expert witnesses.

Oct. 10, 2022 Stipulation for Scheduling and Planning at 4-5; Oct. 17, 2022 Notice of Trial Setting and Order Gov. Further Proceedings at 1 (adopting deadlines in Stipulation for Scheduling and Planning).

### **III. PLAINTIFFS' REQUESTED EXTENSION**

Plaintiffs request a 28-day extension for their initial expert disclosures. Under the current scheduling order, this initial expert disclosure is due February 10, 2023. With the extension, the disclosure would be March 10, 2023. Plaintiffs also request proportionate extensions for the expert deadlines that follow the initial expert disclosure. In each instance, Plaintiffs provided Defendants a commensurate extension to what they request for themselves, and the proposed new deadlines comply with the Court's requirements

for minimum time periods before trial that disclosure may occur. Plaintiffs request that this Court amend the scheduling order to include the following extensions:

**A. EXPERT WITNESSES**

**(Plaintiff's experts—retained or non-retained)**

1. 122 days (**at least 120**) before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.
2. 122 days (**at least 120**) before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.
3. 77 days before trial, defendant shall complete any depositions of the plaintiff's initial expert witnesses.

**(Defendant's experts—retained or non-retained)**

4. 95 days (**at least 95**) before trial, defendant shall disclose each person defendant intends to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.
5. 95 days (**at least 95**) before trial, defendant shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.
6. 45 days before trial, plaintiff shall complete any depositions of the defendant's expert witnesses.

**(Plaintiff's rebuttal experts—retained or non-retained)**

7. 74 days before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial to rebut new information or issues disclosed or raised by the defendant.
8. 74 days (**at least 42**) before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding the rebuttal expert witnesses.
9. 30 days before trial, defendant shall complete any depositions of the plaintiff's rebuttal expert witnesses.

**(Defendant's rebuttal experts—retained or non-retained)**

10. 44 days before trial, defendant shall disclose each person defendant intends to call as an expert witness at trial to rebut new information or issues disclosed or raised by the plaintiff in rebuttal.
11. 44 days (**at least 30**) before trial, defendant shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding its rebuttal expert witnesses.
12. 24 days before trial, plaintiff shall complete any depositions of the defendant's rebuttal expert witnesses.

#### **IV. GOOD CAUSE TO AMEND A SCHEDULING ORDER EXISTS ABSENT BAD FAITH OR PREJUDICE TO THE OPPOSING PARTY.**

The Court may amend the Scheduling Order by extending its discovery deadlines “on a showing of good cause.” Idaho R. Civ. P. 16(a)(3). Such amendments are to be “freely granted, absent bad faith or prejudice to the opposing party.” *Dep’t of Labor & Indus. Servs. ex. rel. Hansen v. East Idaho Mills*, 111 Idaho 137, 139, 721 P.2d 736, 738 (Ct. App. 1986) (citing *Stevenson v. Steele*, 93 Idaho 4, 9, 453 P.2d 819, 824 (1969)).

Affirming amendment of a scheduling order’s expert witness disclosure deadline, the Idaho Supreme Court has emphasized the principles behind scheduled discovery: “[t]he purpose of our discovery rules is to facilitate fair and expedient pretrial fact gathering. It follows, therefore, that discovery rules are not intended to encourage or reward those whose conduct is inconsistent with that purpose.” *Phillips v. E. Idaho Health Servs.*, 166 Idaho 731, 757, 463 P.3d 365, 391 (2020) (internal quotation marks omitted).

#### **V. GOOD CAUSE EXISTS IN THIS CASE.**

Good cause exists to extend the expert witness disclosure deadlines in this case.<sup>1</sup> First, Plaintiffs request this modest extension in good faith. Stidham Decl., ¶ 3. They have pursued their case diligently, promptly moving to amend pleadings upon new information coming to light, serving written discovery on third-parties on all defendants, setting depositions, engaging in substantial motion practice to obtain necessary discovery, and retaining expert witnesses in anticipation of the expert disclosure deadline. *Id.* Plaintiffs have been actively engaged in all aspects of the case and require more time to complete expert disclosures. *Id.*, ¶ 4. The facts

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<sup>1</sup> Plaintiffs’ counsel emailed Defendant Rodriguez asking if he would stipulate to this amendment to the scheduling order but has received no response. Stidham Decl., ¶ 6.

underlying their case are complex and involve many witnesses, who, in turn, provide testimony and data for expert witnesses' consideration. And the process has been further complicated by Rodriguez's failure to comply with discovery requests and failure to attend his deposition, detailed in Plaintiffs' pending Motion to Compel, heard January 24, 2023. Finally, one of Plaintiffs' retained experts has been dealing with a family emergency that has required rescheduling of meetings and delay in work on the expert report.

Second, Defendants would suffer no prejudice should the requested extension be granted. All Defendants but Mr. Rodriguez have had default entered against them and thus will not be affected because the requested extension does not seek a change in the trial date.<sup>2</sup>

Mr. Rodriguez also would not be prejudiced by the requested extension. Plaintiffs request commensurate extensions for Defendants' expert deadlines. Further, a short extension clearly would not hurt Rodriguez; he has actually been working to delay the legal proceedings. Rodriguez has refused to produce material documents that would support Plaintiffs' expert disclosures, including failing to produce any correspondence between himself and the other Defendants, any evidence of any money or other things of value he has received as a result of his public statements about the Infant and defamatory statements about the Plaintiffs, and any contact information of key witnesses. Rodriguez also refused to provide any date for his deposition but one (January 10, 2023), refused to respond to any communications with Plaintiffs' counsel for weeks leading up to his properly noticed deposition on January 10, 2023, and then failed to appear at the deposition. His obstruction of discovery in this case has caused more work

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<sup>2</sup> Plaintiffs do not propose any change in the trial date (trial to begin July 10, 2023). They make the instant motion without prejudice to any further request for amendment of the scheduling order, should circumstances develop requiring future, further amendment.

than would otherwise be necessary to obtain information necessary to expert disclosures, which has resulted in prolonging the experts' work.

Good cause for amendment has been established here.

## **VI. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their Motion for Extension of Time to Disclose Expert Witnesses.

DATED: January 30, 2023.

HOLLAND & HART LLP

By: */s/Erik F. Stidham*

Erik F. Stidham

*Counsel for Plaintiffs*

## CERTIFICATE OF SERVICE

I hereby certify that on this 30th 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  
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*/s/ Erik F. Stidham*

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