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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 and an unincorporated  
association,

Defendants.

Case No. CV01-22-06789

**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION FOR AWARD  
OF ATTORNEYS' FEES AND COSTS  
AGAINST DIEGO RODRIGUEZ  
PURSUANT TO THE COURT'S  
FEBRUARY 8, 2023 MEMORANDUM  
DECISION ON MOTION TO COMPEL  
DIEGO RODRIQUEZ TO RESPOND TO  
DISCOVERY (RE: FAILURE TO  
ATTEND DEPOSITION)**

**MEMORANDUM IN SUPPORT OF MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS  
AGAINST DIEGO RODRIGUEZ PURSUANT TO THE COURT'S FEBRUARY 8,  
2023 MEMORANDUM DECISION ON MOTION TO COMPEL DIEGO  
RODRIQUEZ TO RESPOND TO DISCOVERY (RE: FAILURE TO ATTEND  
DEPOSITION) - 1**

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 and Costs Against Diego Rodriguez Pursuant to The Court's February 8, 2023 Memorandum Decision on Motion to Compel Diego Rodriguez to Respond to Discovery ("Motion to Compel").

## I. BACKGROUND

Plaintiffs filed the Motion to Compel with supporting documents on December 6, 2022, asking the Court to, among other things, compel Defendant Rodriguez to appear in-person for a deposition. *See* Memorandum Decision on Motion to Compel Diego Rodriguez to Respond to Discovery ("Memorandum Decision") at 1. Plaintiffs filed supplemental declarations in support of the Motion to Compel on January 6, 9, and 19, 2023. *See id.* Those supplemental declarations showed, among other things, that Plaintiffs properly scheduled and noticed Defendant Rodriguez's deposition in Orlando on January 10-11, that Plaintiffs' counsel communicated to Defendant Rodriguez their plans to travel to Orlando to attend the deposition numerous times, that Defendant Rodriguez did not communicate with Plaintiffs' counsel to reset the deposition, and that Defendant Rodriguez failed to appear at the deposition. *See id.* at 11.

The Court held oral argument on Plaintiffs' Motion to Compel on January 17, 2023. Defendant Rodriguez did not appear. The Court ultimately found that Defendant Rodriguez did not "offer to the Court any excuse for his failure to appear at that deposition" and ordered him to pay Plaintiffs' reasonable attorney fees "that were caused by [his] failure to attend that scheduled deposition." *Id.* at 12.

Plaintiffs now file this memorandum of fees and costs related to Defendant Rodriguez's failure to attend his deposition pursuant to the Court's Memorandum Decision filed February 8, 2023, and Rule 37(a)(5)(A).

## **II. PLAINTIFF'S FEES AND COSTS INCURRED IN RELATION TO THE ORLANDO DEPOSITION**

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 (Idaho 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; and
- (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**

There was a considerable amount of time and expense involved in preparing for and travelling to Defendant Rodriguez's deposition. As demonstrated in Exhibit A to the Stidham Declaration filed concurrently with this brief ("Stidham Decl."), Plaintiffs' counsel spent a reasonable amount of time preparing for the deposition. Stidham Decl., Ex. A. This included, among other things, reviewing relevant websites and interviews, identifying and preparing exhibits, coordinating deposition logistics, and outlining deposition questions. *See id.*

Similarly, travelling to and from Orlando took a substantial amount of time owing to travel delays and flight cancellations. Plaintiffs' counsel was re-routed through several airports

before ultimately reaching Orlando. *See id.* And although Plaintiffs' counsel worked efficiently during much of this time, the time that was lost due to travel could have been avoided had Defendant Rodriguez complied with his discovery obligations. While significantly more time was lost traveling due to the travel disruptions, Plaintiffs seek only 11 hours for travel, an amount that reflects the travel time one assumes would have occurred absent the disruptions.

Plaintiffs are not seeking all of their fees that were caused by Defendant Rodriguez's failure to attend his scheduled deposition. Instead, they only seek some of the fees incurred preparing for and travelling to the deposition. *See Stidham Decl.*, ¶ 11-13. Although these fees were material, Plaintiffs are not seeking to recover fees for time spent by paralegals or other attorneys who helped prepare for the deposition and who traveled for the deposition.

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.*, ¶ 9. 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. *See id.* For the deposition, he reviewed and analyzed

relevant documents, websites, and interviews, travelled to and from the scheduled deposition, and directed and oversaw more junior attorneys and paralegals on preparing the deposition outline and creating exhibits. *See id.*, Ex. A.

Jennifer Jensen, of counsel at Holland & Hart's Boise office, was the second-most senior attorney who helped prepare for the deposition. *See id.* at ¶ 9. Ms. Jensen reviewed the evidence, identified exhibits, developed lines of questioning, and travelled to Orlando to attend the deposition. *See id.*, Ex. A.

In an effort to seek only the most conservative, core amount of fees, the instant motion voluntarily foregoes certain fees incurred by other attorneys who helped prepare for the deposition even though all fees incurred were reasonable and the amount incurred was material. *See id.*, ¶ 11.

The lawyers on the case team did not duplicate work. *Id.*, ¶ 14. Their experience in handling litigation of this sort allowed them to avoid duplicate billing and efficiently delegate work to the appropriate level, as reflected in Exhibit A. *See 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.*, ¶ 18. The rates charged are Holland & Hart's standard hourly rates reduced by 10 to 15%. *Id.*, ¶ 6.

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) (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., ¶ 4. Such an agreement is an appropriate basis for attorneys’ fees. *Id.*

### **III. 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 \$12,458.46, to be paid within 14 days of this Court’s Order on Plaintiff’s Motion, or by a date certain to be set by the Court.

DATED: February 22, 2023.

HOLLAND & HART LLP

By: /s/Erik F. Stidham

Erik F. Stidham

Jennifer M. Jensen

*Counsel for Plaintiffs*

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RODRIQUEZ TO RESPOND TO DISCOVERY (RE: FAILURE TO ATTEND  
DEPOSITION) - 8**



## CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2023, I caused to be filed via iCourt and served 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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Erik F. Stidham  
OF HOLLAND & HART LLP

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