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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
SANCTIONS AGAINST DEFENDANT
DIEGO RODRIGUEZ FOR FAILURE TO
COMPLY WITH COURT ORDERS**

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

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SANCTIONS
AGAINST DEFENDANT RODRIGUEZ FOR FAILURE TO COMPLY WITH
COURT ORDERS - 1**

attorneys of record, Holland & Hart LLP, hereby submit this Memorandum in Support of Plaintiffs' Motion for Sanctions Against Defendant Diego Rodriguez for Failure to Comply with Court Orders ("Motion").

I. INTRODUCTION

Defendant Diego Rodriguez ("Rodriguez") continues to defy this Court's orders. In turn, Plaintiffs are forced, yet again, to ask the Court to exercise its discretionary authority under Idaho Rule of Civil Procedure 37 to sanction Rodriguez. First, Rodriguez refused to pay the \$5,408.10 that this Court ordered be paid by January 12, 2023. *See* Dec. 13, 2022 Order Awarding Fees (ordering fees be paid within 30 days of the date of the Order). Second, he violated the Court's February 8, 2023 Order Compelling Rodriguez to Respond to Discovery ("Discovery Order"). Rodriguez violates the Discovery Order in two ways: (1) Rodriguez failed to provide viable dates for his deposition, instead sending pejorative emails which disingenuously demand that the deposition take place in Brazil where such depositions would be illegal and a violation of Brazil's national sovereignty; and (2) Rodriguez failed to provide written discovery responses and documents as ordered by the Court.

Action by the Court is needed. By refusing to meaningfully engage in discovery, Rodriguez has denied Plaintiffs the appropriate opportunity to prepare their case for trial. Furthermore, Rodriguez continually disparages this Court in public statements. He shows no regard for the Court's orders. He is being allowed to prejudice the Plaintiffs and, no doubt, will only escalate his defiance and efforts to derail this litigation unless and until significant sanctions are imposed. Plaintiffs request that (1) Rodriguez be compelled to pay the \$5,408.10 owed (plus interest); (2) Rodriguez be required to pay the amounts the Court finds are reasonable after

considering the two memos for fees and costs currently before the Court;¹ (3) default judgment be entered against Rodriguez; and (4) a time be set for Plaintiffs to present evidence, including expert testimony in support of compensatory, disgorgement, and punitive damages.

Default judgment against Rodriguez is appropriate because his unwillingness to meaningfully engage in discovery has prejudiced Plaintiffs. If the Court is not willing to enter a default judgment at this time, Plaintiffs request all of the relief requested but default judgment—and instead of default judgment, that the Court again order Rodriguez to provide the written discovery responses and appear for a two-day deposition in Orlando, Florida (or Boise, Idaho), and pay monetary sanctions.

II. BACKGROUND

A. Rodriguez Defied the Court's Order to Pay Fees.

On December 13, 2022, the Court ordered Rodriguez to pay \$5,408.10 in fees and costs incurred relating to the Court-ordered deposition taken on October 5, 2022. Declaration of Erik F. Stidham in Support of Motion for Sanctions Against Rodriguez (“Stidham Decl.”), ¶ 2; Dec. 13, 2022 Order. The Court ordered Rodriguez to pay the \$5,408.10 by January 12, 2023. Dec. 13, 2022 Order. As of the date of this motion, more than 30 days after the Court's deadline, Rodriguez still refuses to pay. Stidham Decl., ¶ 2.

B. Rodriguez Violated the Court's Order to Provide Deposition Dates, Discovery Responses, and Documents.

On February 8, 2023, the Court issued an Order Compelling Rodriguez to Respond to Discovery. Stidham Decl., ¶ 3; Discovery Order. The Order granted Plaintiffs' Motion to Compel

¹ 2-22-2023 Memorandum in Support of Attorneys' Fees and Costs (Re: Failure to Attend Deposition); 2-22-2023 Memorandum in Support of Attorneys' Fees and Costs (Re: Failure to Respond to Discovery).

filed December 6, 2022. *See* Discovery Order. The Discovery Order compelled Rodriguez to provide certain supplemental answers and responses to Plaintiffs’ Expedited First Interrogatories and Second Interrogatories and Requests for Production (together “Written Discovery”) to Plaintiffs by February 22, 2023. Stidham Decl., ¶ 3; Discovery Order at 1-2. The Discovery Order also compelled Rodriguez to coordinate to schedule and sit for his deposition, and particularly required that he:

sit for an in-person two-day deposition that will be two consecutive days. Diego Rodriguez is required to inform Plaintiffs’ counsel, Erik Stidham, of two possible start dates for this deposition that are between February 25, 2023 and March 25, 2023 **by 12:00 p.m. on February 15, 2023**. Diego Rodriguez must inform Plaintiffs’ counsel in what city, state, and country that he will be in on those provided dates. Plaintiffs’ counsel will then choose one of those start dates. These communications must be conducted by email so there is a record of the discussion.

Plaintiffs’ counsel must then file a Notice of Deposition setting the time and place for the two-day deposition consistent with the parties’ emailed communications **by February 18, 2023**. Diego Rodriguez **MUST** then appear in-person at the noticed deposition.

Discovery Order at 2-3.

On Tuesday February 14, 2023, Plaintiffs’ counsel received an email from Rodriguez providing only one start date in Brazil, a country where it is illegal to take international depositions.

Id. ¶ 5, Ex. A; <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/Brazil.html> (last visited Mar. 7, 2023). Rodriguez chose this location despite the fact that he has admitted that he lives in Florida. *Id.*, ¶ 9. No doubt Rodriguez chose Brazil to frustrate the Court’s order. Rodriguez’s email reads as follows:

Dear Erik He/Him/His Stidham –

I reject the notion of needing 2 days for a deposition to waste time and ask questions that you already know the answer to. It is evident you are simply trying to rack up billable hours in your endless gamesmanship and dishonorable evil actions, sucking St. Luke’s dry (and the public from which they take their dollars).

I am not waiving any rights to challenge the order to sit for a two day meaningless deposition, but I nevertheless offer you the following 2 dates where I will attempt to make myself available while I will be working in Curitiba, Paraná, Brazil on March 24th and 25th.

I am sure you will enjoy Brazil and it will give you the chance to fellowship with other He/Him/His friends you can meet there.

Diego Rodriguez
Freedom Man Press

Id.

On Friday February 17, 2023, Plaintiffs' counsel sent an email in response to Defendant Rodriguez's February 14, 2023 email putting Rodriguez on notice that: (1) he had been required to provide two options for two consecutive days of deposition, not just one; and (2) a deposition in Brazil is not an option because Brazilian authorities do not permit persons, such as American attorneys, to take depositions in Brazil for use in a court in the United States. *Id.*, ¶ 6, Ex. B; <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/Brazil.html#ExternalPopup>.

Because Rodriguez had failed to provide a viable deposition location or two start dates, Plaintiffs' counsel could not prepare a notice of deposition. *Id.*, ¶ 7. Accordingly, on February 20, 2023, Plaintiffs filed a Notice of Rodriguez's Failure to Comply with the Court's February 8, 2023 Order. *Id.*

On Wednesday February 22, 2023, Rodriguez sent a response to Plaintiffs' counsel's February 17, 2023 Email. *Id.* ¶ 8, Ex. C. The response reads as follows:

Oh my, Erik He/Him/His Stidham! I guess I didn't realize that I should have provided TWO date options and I only provided ONE. I'm so sorry that you got your panties all twisted in a knot over that one.

So I have reviewed the order again and see that it plainly reads, “IT IS HEREBY ALSO ORDERED THAT Diego Rodriguez must sit for an in-person two- day deposition that will be two consecutive days. Diego Rodriguez is required to inform Plaintiffs’ counsel, Erik Stidham, of two possible start dates for this deposition that are between February 25, 2023 and March 25, 2023 by 12:00 p.m. on February 15, 2023. Diego Rodriguez must inform Plaintiffs’ counsel in what city, state, and country that he will be in on those provided dates. Plaintiffs’ counsel will then choose one of those start dates. These communications must be conducted by email so there is a record of the discussion.”

So what we find YET AGAIN, is that Erik He/Him/His Stidham is either an intentional and/or compulsive liar, or is just a psychopath and has no recognition of what is true or false and just spews out lies according to whatever he feels. But fear not, I have a running record and account of all of your obvious and intentional lies. And it will be filed with the appropriate authorities (i.e., the BAR) and justice will eventually be done. Your evil and wicked deeds can't go on forever, Erik He/Him/His Stidham.

You plainly stated below, “You violated a court order yet again” when I certainly did not. I provided you with an option and I let you what city, state, and country I would be in which is exactly what the order demanded. I certainly now recognize that I overlooked the request to provide TWO dates, but I'll provide them to you now. However, your contention about me being in Brazil is not a violation in any way as I am informing you of the City, State, and Country where I will be—which is what the order demanded. There were not any requirements put on the location nor can any court deprive me of my freedom to travel, particularly as someone who is a legal resident outside the United States. If you don't have any He/Him/His friends who will host you there in Brazil, then we can have the deposition over Zoom like we did last time. It's as simple as that.

If the Brazilian authorities arrest you based on what you have written below, well then we should just consider that JUSTICE for all of your lies, corruption, and wickedness. But rest assured, your He/Him/His contemporaries will take good care of you in a Brazilian jail.

So here, you've got your dates. Pick one:

March 22nd & 23rd
March 24th & 25th
Curitiba, Paraná, Brazil

Diego Rodriguez
Freedom Man Press

Id.

Rodriguez's hostility in his emails is part of a larger message of supposed corruption of the courts, which he publicly proclaims to whomever will listen. *Id.*, ¶ 10. For instance, he states in a video posted on Rumble:

At the end of the entire trial—which, let's just say we lose—because it's Ada County, and everyone knows that Ada County is totally corrupt. The justice system there is unjust—there's no justice. The judges are corrupt. They intimidate jury members. And they—they can pick all the jury members they want. They get thirty jury members and they can be all Brad Little's best friends and the people that are in his brothel with him, his male brothel, and he could have his cousin and his uncle and his friends and all of—all of, you know, Holland and Hart's employees and friends and family members—and that's the jury. And they can tell me that I get to eliminate three of them. That's how it works. That's how the system works. So, they stack the system against you, and the three that I eliminate, they just replace with three more people who are more insane. So that's a total fake system and bogus. So, they're going to get whatever outcome they want. And for those—I've talked to other people who have been tried in Ada County—they intimidate the jurors who don't go the way that they want. They intimidate and force them into voting a certain way—the way that they want.

Id.

As a result of Rodriguez's violation of the Court orders, Plaintiffs' prosecution of their claims continues to be delayed and prejudiced. Rodriguez's pattern of intentional and prejudicial delay and violations of Court orders demonstrates the need for strong sanctions, including default judgment against Rodriguez.

III. STANDARD OF LAW

Idaho Rule of Civil Procedure 37 provides remedies when a party fails to cooperate in discovery—up to and including default judgment against a disobedient party—where, as here, a party violates the Court's discovery order. Idaho Rule of Civil Procedure 37(b) states:

If a party or a party's officer, director, or managing agent, or a witness designated under Rule 30(b)(6) or 31(a)(4), fails to obey an order to provide or permit discovery, including an order under Rule 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:

(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.

Id. “The imposition of sanctions under [I.R.C.P. 37] is committed to the discretion of the trial court, and that ruling will not be overturned on appeal absent a manifest abuse of discretion.” *Ashby v. W. Council, Lumber Prod. & Indus. Workers*, 117 Idaho 684, 686-87, 791 P.2d 434, 436-37 (1990).

When issuing terminating sanctions, a court must find a clear record of delay and ineffective lesser sanctions, “bolstered by the presence of at least one ‘aggravating’ factor, including: (1) delay resulting from intentional conduct, (2) delay caused by the [defendant] personally, or (3) delay causing prejudice to the [opposing party]. The consideration of these factors must appear in the record in order to facilitate appellate review.” *Ashby v. W. Council, Lumber Prod. & Indus. Workers*, 117 Idaho 684, 686-87, 791 P.2d 434, 436-37 (1990); *see also Nollenberger v. Nollenberger*, 122 Idaho 186, 190, 832 P.2d 757, 761 (1992) (“Where failure to comply with a discovery order is ‘intentional’ and causes prejudice, sanctions against the non-compliant party are warranted.”).

For instance, the Idaho Supreme Court held that default judgment was appropriate under I.R.C.P. 37(b) when a pro se defendant violated several discovery orders and failed to show up for his deposition. *Minor Miracle Prods., LLC v. Starkey*, 152 Idaho 333, 335 n.1, 338, 271 P.3d 1189, 1191 n.1, 1194 (2012) (affirming district court’s grant of judgment).

The Court may also award “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.” I.R.C.P. 37(b)(2)(C).

Discovery sanctions are “intended to punish misconduct and deter others involved in litigation to prevent abuse in connection with discovery[.]” *Devault v. Steven L. Herndon, P.A.*, 107 Idaho 1, 2, 684 P.2d 978, 979 (1984) (citing *Nat’l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639 (1976)).

IV. ARGUMENT

A. This Court Should Sanction Rodriguez for His Failure to Pay the Fee Award.

The Court should impose sanctions against Rodriguez for his failure to pay the \$5,408.10 in fees and costs ordered by the Court on December 13, 2022. Rodriguez had until January 12, 2022, to comply. He did not. Stidham Decl., ¶ 2. Rodriguez should be required to pay the reasonable fees and costs associated with filing this motion. I.R.C.P. 37(b)(2)(C).

B. This Court Should Impose Sanctions Against Diego Rodriguez for His Failure to Comply with the Discovery Order.

The Discovery Order required Rodriguez to submit specific answers and responses, and supplemental answers and responses to Plaintiffs’ Written Discovery on or before February 22, 2023. He did not. His now repeated failure to provide answers and responses to Written Discovery

has caused prejudice to Plaintiffs and undue delay in this case. For example, Rodriguez was served with the Second Interrogatories and Requests for Production more than four months ago—in October 2022. The Court has already exercised its discretion under Rule 37(a) in issuing its February 8, 2023 Discovery Order compelling his response.

Plaintiffs are entitled to meaningful discovery from Rodriguez. The information sought through the Interrogatories and Requests for Production that are the subject of the Discovery Order is directly relevant to the claims and defenses asserted in this matter. For example, Plaintiffs are entitled to discovery about the forms, methods, dates, nature and content of communications Rodriguez made and participated in related to the claims and defenses in this case. Plaintiffs are also entitled to discovery about money exchanges between people and entities tied to the facts and circumstances underlying the claims and defenses in this matter. His refusal to provide such information causes undue prejudice to Plaintiffs.

Rodriguez continues in the same pattern to violate the Court's orders, frustrate the legal process, and refuse to provide the discovery to which Plaintiffs are entitled. The pattern of delay, the invective comments, and his proclamations of the supposed "corruption" of the courts demonstrate that the delay is intentional and seeks to prejudice Plaintiffs as they seek to hold him legally accountable for the significant damages, threat, and harm he has caused. In the face of this intentional and prejudicial pattern of delay, Plaintiffs request that default judgment be entered against him. *See Minor Miracle Prods., LLC*, 152 Idaho at 335 n.1, 271 P.3d at 1191 n.1 (default judgment appropriate under Rule 37(b) when defendant repeatedly violated court orders and failed to appear for his deposition). Rodriguez continues to drive up costs and express animus for the court system. Based on his behavior to date, there is little chance that he will willingly comply with any Court order. Under these circumstances, significant sanctions are appropriate.

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If, however, this Court does not believe that default judgment should be entered yet, Plaintiffs request that Rodriguez be ordered to immediately comply with the Court's Discovery Order and be ordered to pay fees and costs.

C. This Court Should Impose Sanctions Against Diego Rodriguez for His Continued Frustration of the Deposition.

Rodriguez has also disregarded the direct and clear terms of the Court's Discovery Order related to scheduling his deposition. First, in his email of February 14, 2023, Rodriguez rejected the "notion" of a two-day deposition, which had been directly ordered by the Court. He did not provide "two possible start dates" "between February 25, 2023 and March 25, 2023." Instead, Rodriguez provided just two consecutive dates, March 24 and March 25, at the end of the Court's defined window. Next, he provided a place of deposition that presents a legal impossibility to Plaintiffs' counsel conducting the deposition—Brazil. As such, he failed to comply with the terms of the Discovery Order by 12:00 p.m. on February 15, 2023. Moreover, when alerted of the issues with his dates and location, his follow-on communication of February 22, 2023 contains abusive, pejorative, and discriminatory language to communicate his further refusal to comply with the Discovery Order.

This Court should not permit Rodriguez to abuse legal processes. These circumstances call for significant sanctions. Again, should this Court not enter default judgment as a Rule 37 sanction at this time, Plaintiffs are entitled to meaningful discovery from Rodriguez, including the opportunity to depose him in person. His chosen location of Brazil is not a legal option. He should be ordered to appear for a deposition in Orlando, Florida or in Boise, Idaho for two consecutive dates. Rodriguez has recently publicly announced that he lives in Florida. Stidham Decl., ¶ 9. He

should also be required to pay reasonable fees and costs caused by his violation of the Court's Discovery Order.

D. This Court Should Award Plaintiffs' Fees and Costs Incurred in Bringing this Motion.

Pursuant to Rule 37(b)(2)(C), (c)(1)(A), and (f), Plaintiffs further ask the Court to award them the fees and costs incurred in bringing this motion. Rodriguez's pattern of behavior evidences intentional frustration of the legal process. He has repeatedly violated this Court's orders. He cannot demonstrate excusable neglect. Fees and costs are warranted here.

V. CONCLUSION

For all the foregoing reasons, Plaintiffs request that this Court grant their Motion for Sanctions Against Rodriguez.

DATED: March 7, 2023.

HOLLAND & HART LLP

By: */s/Erik F. Stidham*

Erik F. Stidham

Jennifer M. Jensen

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 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:

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c/o Ammon Bundy
4615 Harvest Ln.
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/s/ Erik F. Stidham

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