

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

St Lukes Health System LTD, St
Lukes Regional Medical Center LTD,
Chris Roth, Natasha Erickson, MD,
Tracy Jungman
Plaintiff,

vs.

Ammon Bundy, Ammon Bundy for
Governor, Diego Rodriguez,
Freedom Man PAC, Peoples Rights
Network, Freedom Man Press LLC
Defendant.

Case No. CV01-22-06789

Order Awarding Fees Against Diego
Rodriguez (Failure to Respond to
Discovery)

Plaintiffs' Motion for Award of Attorneys' Fees and Costs Against Diego Rodriguez Pursuant to Court's February 8, 2023 Memorandum Decision on Motion to Compel Diego Rodriguez to Respond to Discovery (Re: Failure to Respond to Discovery), filed February 22, 2023, came before the Court for hearing on March 21, 2023.

Appearances: Eric Stidham for Plaintiffs
Diego Rodriguez did not appear

On February 22, 2023, Plaintiffs' Motion for Award of Attorneys' Fees and Costs Against Diego Rodriguez Pursuant to Court's February 8, 2023 Memorandum Decision on Motion to Compel Diego Rodriguez to Respond to Discovery (Re: Failure to Respond to Discovery). The matter was supported by a memorandum and a declaration filed on the same day. The matter was also accompanied by a Notice of Hearing. All were served on Defendant Diego Rodriguez.

Diego Rodriguez did not appear at the hearing on March 21, 2023 and no written response to the motion was filed. No motion to appear by videoconference was filed by Diego Rodriguez. All hearings at the District Court level, even in civil cases, are being held in person unless a party moves for an exception to appear by videoconference.

The Fourth Judicial District Local Rules provide the following when a party fails to appear at a civil hearing:



5.2. If the moving party or his or her attorney appears to argue the motion at the time set, if the opposing party or his or her attorney does not appear, and if the motion has been properly and timely noticed for hearing with proof of due service, the court may render a decision on the merits of the motion.

The Court considered the motion, memorandum and declaration filed.

LEGAL STANDARD

Pursuant to Idaho Rule of Civil Procedure 37(b)(2)(C), a disobedient party that does not obey a discovery order must pay the reasonable expenses, including attorney's fees caused by the failure, unless the failure to respond to discovery was substantially justified or the disobedient party shows other circumstances that make an award of fees unjust.

Idaho Rule of Civil Procedure 54(e) governs the award of attorney fees and subsection (3) of that rule sets for the factors that the Court must consider in awarding fees which include the time and labor required; the novelty and difficulty of the questions; the skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law; the prevailing charges for like work; whether the fee is fixed or contingent; the time limitations imposed by the client or the circumstances of the case; the amount involved and the results obtained; the undesirability of the case; the nature and length of the professional relationship with the client; awards in similar cases; the reasonable cost of automated legal research, if the court finds it was reasonably necessary in preparing a party's case; and any other factor which the court deems appropriate in the particular case. "Rule 54(e)(3) does not require the district court to make specific findings in the record, only to consider the stated factors in determining the amount of the fees. When considering the factors, courts need not demonstrate how they employed any of those factors in reaching an award amount." *Lettunich v. Lettunich*, 145 Idaho 746, 750, 185 P.3d 258, 262 (2008). As a general rule, with regard to fees, "The determination to award or not award attorney fees is committed to the discretion of the trial court." *Foster v. Shore Club Lodge, Inc.*, 127 Idaho 921, 927, 908 P.2d 1228, 1234 (1995). "The bottom line in an award of attorney fees is reasonableness." *Lettunich*, 145 Idaho at 750, 185 P.3d at 262. Reasonableness and other attorney fee determinations, "are a discretionary matter for the trial court and are reviewed under an abuse of discretion standard." *Sun*



Valley Potato Growers, Inc. v. Texas Refinery Corp., 139 Idaho 761, 769, 86 P.3d 475, 483 (2004).

ANALYSIS

The Court determined in its Memorandum Decision on Motion to Compel Diego Rodriguez to Respond to Discovery, filed February 8, 2023, that the Plaintiffs were entitled to reasonable attorney fees under Idaho Rule of Civil Procedure 37(a)(5)(A) for their filing and pursuit of the Motion to Compel and that an award of fees was not unjust since the Plaintiffs prevailed on almost every basis in the motion to compel.

The Court has considered the factors stated in Idaho Rule of Civil Procedure 54, has carefully reviewed the Declaration filed in support along with the arguments of the Plaintiffs.

The Court finds the hourly rate for the three attorneys are prevailing rates in the Boise area for similar work with similar outcomes to prepare and file the Motion for to Compel Discovery and then attend the hearing on that motion is reasonable considering the outcome. The Court finds the 8.3 hours for the attorney billed at \$364.50 per hour for drafting the motion to compel is reasonable and should be awarded. The Court finds the 1.5 hours for the attorney billed at \$243 per hour for drafting the motion, memorandum and declaration for fees and costs is also reasonable and should be awarded. The Court notes that the hearing on this Motion to Compel was actually heard on January 24, 2023, and it was heard along with the Plaintiffs' motions for punitive damages and motions to seal. In reviewing the Court minutes, the Plaintiffs' oral argument on the unopposed motion to compel was actually between 4:06 p.m. and 4:17 p.m., so it was an eleven-minute argument on this motion. The Court finds that 7.5 hours to review and revise those documents on the motion to compel and oral argument on the motion to compel is excessive for this type of motion. Therefore, this Court will reduce the recoverable amount to reflect 4.0 hours billed at \$490.50 which is a reasonable fee for the supervisory attorney that reviewed and argued the motions. The Court denies 3.5 hours billed at \$490.50 (or the additional \$1,716.75 in fees requested) as unreasonable or as attributable to motions other than the motion to compel against Rodriguez.




CONCLUSION

The Court **awards a total of \$5,449.95** to Plaintiffs to be paid by Defendant Diego Rodriguez as reasonable fees incurred related the the Court's February 8, 2023 Memorandum Decision on Motion to Compel Diego Rodriguez to Respond to Discovery (Re: Failure to Respond to Discovery),

The \$5,449.95 in attorneys' fees is to be paid by Defendant Diego Rodriguez within fourteen days after Diego Rodriguez is served with this Order Awarding Fees.

IT IS ORDERED.

Dated: 3/21/2023 5:47:10 PM


Lynn Morton
District Judge

CERTIFICATE OF SERVICE

I certify that on this day I served a copy of the attached to:

Erik F. Stidham
Diego Rodriguez

efstidham@hollandhart.com
freedommanpress@protonmail.com

E-mail
 E-mail

Trent Tripple
Clerk of the Court

Dated: 3/22/2023

By: Janine Korsen
Deputy Clerk

