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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 TO COMPEL
COMPLIANCE WITH SUBPOENAS AS
TO POWER MARKETING
CONSULTANTS LLC, POWER
MARKETING AGENCY, LLC, AND
FREEDOM TABERNACLE,
INCORPORATED**

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 Plaintiffs’ Motion to Compel Compliance with Subpoenas as to Power Marketing Consultants LLC, Power Marketing Agency, and Freedom Tabernacle, Incorporated.

I. INTRODUCTION

As alleged in the operative complaint and indicated in evidence, Defendant Diego Rodriguez (“Rodriguez”) owns and controls three non-party Idaho entities related to this lawsuit. Those entities are Power Marketing Agency, LLC, Power Marketing Consultants LLC, and Freedom Tabernacle, Incorporated (collectively, the “Rodriguez Third-Party Entities”). Each of these entities benefitted from the events in this lawsuit both publicly and financially. Moreover, the financial entanglement between the Rodriguez Third-Party Entities and Defendants Ammon Bundy, Ammon Bundy for Governor, and People’s Rights Network demonstrates and supports Plaintiffs’ claim of conspiracy and the allegation that the Defendants worked together to defame Plaintiffs, attract followers, and monetize the events giving rise to this lawsuit. Given the connection between the Rodriguez Third-Party Entities and the Defendants and underlying events, Plaintiffs subpoenaed each of the Rodriguez Third-Party Entities to attend depositions and produce documents. None complied.

Because Plaintiffs need the sought-after discovery to establish their claims and prove their damages, they bring this Motion seeking an order compelling the Rodriguez Third-Party Entities to comply with their subpoenas. Plaintiffs also request an award of fees and costs incurred in bringing this Motion.

Idaho Rule of Civil Procedure 37(a)(1) indicates an attempt to meet and confer is required before filing a motion to compel. Plaintiffs have attempted to meet and confer but have been unable to do so because of Rodriguez’s refusal to respond to emails, his refusal to provide his address despite the fact that the Court ordered him to provide it, *see* Mem. Decision on Mot. to Compel Diego Rodriguez to Respond to Disc. at 3, his refusal to provide valid physical addresses for the Rodriguez Third-Party Entities’ registered agents despite his obligation to do so, *see* <https://sos.idaho.gov/business-services-resources/registered-agent-information/>, and his refusal to meaningfully participate in discovery. Although it is clear that any attempt to meet and confer with the Rodriguez Third-Party Entities would be futile, Plaintiffs have attempted, in good faith, to confer with the Rodriguez Third-Party Entities in an effort to obtain the discovery without court action by emailing Rodriguez. *See* Declaration of Erik F. Stidham in Support of Motion to Compel Compliance with Subpoenas (“Stidham Decl.”), Ex. A; I.R.C.P. 37(a)(1); *see also* *Care Envtl. Corp. v. M2 Techs., Inc.*, No. CV-05-1600 (CPS), 2006 U.S. Dist. LEXIS 35396, at *9 (E.D.N.Y. May 30, 2006) (“Courts have excused a failure to meet and confer where: (1) under the circumstances, the parties do not have time to attempt to reach an agreement; or (2) an attempt to compromise would have been clearly futile.”) (citations omitted).¹ Rodriguez has not responded.

¹ The Idaho Supreme Court “prefer[s] to interpret the Idaho Rules of Civil Procedure in conformance with interpretations of the same language in the federal rules.” *Westby v. Schaefer*, 157 Idaho 616, 622, 338 P.3d 1220, 1226 (2014). Idaho Rule of Civil Procedure 37(a)(1) is identical to Federal Rule of Civil Procedure 37(a)(1).

II. BACKGROUND

A. **Rodriguez Controls Power Marketing Agency, LLC; Power Marketing Consultants LLC; and Freedom Tabernacle, Incorporated.**

As alleged in the operative Complaint and indicated in the evidence, each of the Rodriguez Third-Party Entities is owned and controlled by Rodriguez. *See* Fourth Am. Compl. and Demand for Jury Trial (“Complaint”), ¶¶ 16-17 (alleging that Rodriguez founded, owns and/or controls the Rodriguez Third-Party Entities and that those entities “are alter-egos of Rodriguez”). Indeed, Rodriguez promotes himself as the “President” of the Power Marketing entities on his personal website. *See* Stidham Decl., Ex. S. He was listed as the Manager and Registered Agent for Power Marketing Consultants LLC on that entity’s 2022 annual report. *See id.*, Ex. F at 1. He was listed as the President and Registered Agent for Freedom Tabernacle, Incorporated on that entity’s 2022 annual report. *See id.*, 2. And he never denied controlling the Rodriguez Third-Party Entities in his Answer to Plaintiffs’ operative Complaint. *See* Answer to Fourth Amended Complaint and Demand for Jury Trial, ¶ 18-19 (not denying that he owns and controls those entities); I.R.C.P. 8(b)(6) (allegation admitted if not denied).

B. **Subpoena to Power Marketing Agency, LLC.**

On December 27, 2022, Plaintiffs filed and served on Defendants a Notice of Intent to Serve Subpoena Duces Tecum to Power Marketing Agency, LLC, stating that they intended to serve a subpoena on Power Marketing Agency, LLC on or after January 3, 2023. *See* Stidham Decl., Ex. B. That notice was filed and served in accordance with Idaho Rule of Civil Procedure 45(c)(2).

The subpoena commanded Power Marketing Agency, LLC to appear for a deposition on February 3, 2023, and to produce or permit the inspection of documents. *See id.*, Ex. C. The

topics and documents identified in the subpoena were narrowly tailored to get information relevant to this lawsuit. *See id.*

Service was attempted on the registered agent of Power Marketing Agency, LLC, Miranda Chavoya—Rodriguez’s daughter—on January 3, 2023, at the registered agent’s address as listed on the Idaho Secretary of State website. *See id.*, Exs. D, E. Although the Idaho Secretary of State requires registered agents to maintain a physical address, *see* <https://sos.idaho.gov/business-services-resources/registered-agent-information/> (“If the Secretary of State’s Office is notified and verifies that the registered agent street address listed on a filing is a UPS Store, PMB or PO Box, it may subject your business entity to being administratively dissolved/revoked.”), the address listed on the Secretary of State website for Power Marketing Agency, LLC’s registered agent was a virtual address. *See* Stidham Decl., Ex. D.

Because the registered agent’s address was a virtual address, Plaintiffs directed the process server to attempt service at the only physical address Plaintiffs could identify for Power Marketing Agency, LLC, which was an address in Meridian, Idaho, that was listed on Power Marketing Consultants LLC’s and Freedom Tabernacle, Incorporated’s Secretary of State filings. *See id.*, Ex. F. Service was attempted at the Meridian address on January 4, 2023, and January 5, 2023. *See id.*, Ex. D. However, the occupant at that address stated that they had occupied the residence for several months and denied knowing Chavoya. *See id.* So, Plaintiffs served Power Marketing Agency, LLC via Certified Mail on January 4, 2023. *See id.*, Ex. D at 2.

Power Marketing Agency, LLC never responded to the subpoena, it never contacted Plaintiffs’ counsel regarding the subpoena, and it never filed any motions seeking to quash or modify the subpoena. *See id.*, ¶ 9. Accordingly, Plaintiffs’ counsel prepared for the deposition,

hired a videographer and a court reporter, and appeared at the deposition on the scheduled date and time. *See id.*, Ex. G. Power Marketing Agency, LLC never appeared. *See id.*

C. Subpoena to Power Marketing Consultants LLC.

On December 27, 2022, Plaintiffs filed and served on Defendants a Notice of Intent to Serve Subpoena Duces Tecum to Power Marketing Consultants LLC, stating that they intended to serve a subpoena on Power Marketing Consultants LLC on or after January 3, 2023. *See Stidham Decl.*, Ex. H. That notice was filed and served in accordance with Idaho Rule of Civil Procedure 45(c)(2).

The subpoena commanded Power Marketing Consultants LLC to appear for a deposition on February 3, 2023, and to produce or permit the inspection documents. *See id.*, Ex. I. The topics and documents identified in the subpoena were narrowly tailored to get information relevant to this lawsuit. *See id.*

Service was attempted on the registered agent of Power Marketing Consultants LLC, Rodriguez, on January 4, 2023, and January 5, 2023, at the registered agent's address as listed on the Idaho Secretary of State website. *See id.*, Exs. J, K. However, the occupant at that address stated that they had occupied the residence for several months and denied knowing Rodriguez. *See id.*, Ex. J. Plaintiffs also tried serving Power Marketing Consultants LLC at the address Power Marketing Agency, LLC listed on its Secretary of State filing. *See id.* But that address was a virtual address. *See id.* So, Plaintiffs served Power Marketing Consultants LLC via Certified Mail on January 4, 2023. *See id.*, p. 2.

Power Marketing Consultants LLC never responded to the subpoena, it never contacted Plaintiffs' counsel regarding the subpoena, and it never filed any motions seeking to quash or

modify the subpoena. *See id.*, ¶ 13. Accordingly, Plaintiffs' counsel prepared for the deposition, hired a videographer and a court reporter, and appeared at the deposition on the scheduled date and time. *See id.*, Ex. L. Power Marketing Consultants LLC never appeared. *See id.*

D. Subpoena to Freedom Tabernacle, Incorporated.

On December 27, 2022, Plaintiffs served on Defendants a Notice of Intent to Serve Subpoena Duces Tecum to Freedom Tabernacle, Incorporated, stating that they intended to serve a subpoena on Freedom Tabernacle, Incorporated on or after January 3, 2023. *See Stidham Decl.*, Ex. M. That notice was sent in accordance with Idaho Rule of Civil Procedure 45(c)(2).

The subpoena commanded Freedom Tabernacle, Incorporated to appear for a deposition on February 6, 2023, and to produce or permit the inspection of documents. *See id.*, Ex. N. The topics and documents identified in the subpoena were narrowly tailored to get information relevant to this lawsuit. *See id.*

Service was attempted on the registered agent of Freedom Tabernacle, Incorporated, Rodriguez, on January 4, 2023, and January 5, 2023, at the registered agent's address as listed on the Idaho Secretary of State website at the time of service. *See id.*, Exs. O, P. However, the occupant at that address stated that they had occupied the residence for several months and denied knowing Rodriguez. *See id.*, Ex. O. Plaintiffs also tried serving Freedom Tabernacle, Incorporated at the address Power Marketing Agency, LLC listed on its Secretary of State filing. *See id.* But that address was a virtual address. *See id.* So, Plaintiffs served Freedom Tabernacle, Incorporated via Certified Mail on January 4, 2023. *See id.*, p. 2.

Freedom Tabernacle, Incorporated never responded to the subpoena, it never contacted Plaintiffs' counsel regarding the subpoena, and it never filed any motions seeking to quash or

modify the subpoena. *Id.*, ¶ 18. Accordingly, Plaintiffs’ counsel prepared for the deposition, hired a videographer and a court reporter, and appeared at the deposition on the scheduled date and time. *Id.*, Ex. Q. Freedom Tabernacle, Incorporated never appeared. *Id.*

III. ARGUMENT

A. The Court Should Compel the Rodriguez Third-Party Entities to Attend a Deposition and Produce Documents Within Ten Days of the Court’s Order.

Rule 26 of the Idaho Rules of Civil Procedure provides the general scope of discovery under Idaho law. Under Rule 26, “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense” I.R.C.P. 26(b)(1)(A). Relevant information need not be admissible at trial if the discovery request appears reasonably calculated to lead to the discovery of admissible evidence.” *Id.* “The purpose of [Idaho’s] discovery rules is to facilitate fair and expedient pretrial fact gathering.” *Edmunds v. Kraner*, 142 Idaho 867, 873, 136 P.3d 338, 344 (2006); *see also Stevens v. Corelogic, Inc.*, 899 F.3d 666, 678 (9th Cir. 2018) (quoting Fed. R. Civ. P. 26(b) advisory committee’s note to 1946 amendment) (“The purpose of discovery is to allow a broad search for facts . . . or any other matters which may aid a party in the preparation or presentation of [its] case.”).

Idaho Rule of Civil Procedure 30 authorizes a party to take the deposition of “any person,” generally without the court’s permission. I.R.C.P. 30(a)(1). “The deponent’s attendance may be compelled by subpoena under Rule 45.” *Id.* If the deponent disobeys the subpoena without adequate excuse, the court may hold the deponent in contempt. *See* I.R.C.P. 45(i).

“While a subpoena’s judicial imprimatur and the threat of sanctions for noncompliance is one way to ensure that a deponent shows up for a deposition, it isn’t the only way.” *Sali v.*

Corona Reg'l Med. Ctr., 884 F.3d 1218, 1222 (9th Cir. 2018).² Idaho Rule of Civil Procedure Rule 37 authorizes a party to “move for an order compelling disclosure or discovery.” I.R.C.P. 37(a)(1). That a Rule 37(a) motion can be made against a nonparty is explicitly contemplated for in the Rule. *See* I.R.C.P. 37(a)(1) (“The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.”) (emphasis added); I.R.C.P. 37(a)(2) (“A motion for an order to a nonparty must be made in the court where the discovery is or will be taken if outside of Idaho.”) (emphasis added); *see also Nelson v. State*, No. 43976, 2018 Ida. App. Unpub. LEXIS 113, at *10 (Ct. App. Apr. 6, 2018) (recognizing that courts have discretionary authority to compel compliance with subpoenas).

Here, in an attempt to timely obtain the needed evidence and to hopefully avoid the need to file a motion seeking to hold the Rodriguez Third-Party Entities in contempt, Plaintiffs seek a Court order compelling those entities to comply with their discovery obligations and sit for a Rule 30(b)(6) deposition, pursuant to Rule 37(a) and the Court’s inherent authority. *See* Idaho Code § 1-1603 (“Every court has power . . . To compel obedience to its judgments, orders and process”).

The facts easily justify Plaintiffs’ request. The Rodriguez Third-Party Entities likely have information relevant to this lawsuit, including documents showing payments made by and between Defendants Bundy, People’s Rights Network, and Rodriguez. *See, e.g., Stidham Decl.*,

² The Idaho Supreme Court “prefer[s] to interpret the Idaho Rules of Civil Procedure in conformance with interpretations of the same language in the federal rules.” *Westby*, 157 Idaho at 622, 338 P.3d at 1226. The relevant language of Idaho Rule of Civil Procedure 26(b)(1)(A) (“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense”) is identical to the relevant language from Federal Rule of Civil Procedure 26(b)(1) (same), and Idaho Rule of Civil Procedure 37(a)(1) is identical to Federal Rule of Civil Procedure 37(a)(1).

Ex. R at 3 (noting that donations to Defendant People’s Rights Network appear as “a donation to FREEDOM TABERNACLE” on the donor’s bank statement). Plaintiffs properly served notices of their intent to serve the relevant subpoenas on Defendants, including Rodriguez, on December 27, 2022. *See id.*, Exs. B, H, M. Rodriguez accessed those notices via iCourt on December 27, 2022, and December 28, 2022. *See id.*, Ex. T. The subpoenas were duly served to the Rodriguez Third-Party Entities via Certified Mail on January 4, 2023, several weeks in advance of the scheduled depositions. *See id.*, Exs. D, J, O. None of the Rodriguez Third-Party Entities communicated with Plaintiffs’ counsel regarding the subpoenas, nor did they file any motions to quash or modify them. *See id.*, ¶¶ 8, 13, 18. But despite having several weeks to prepare for the depositions and compile the requested documents, all of the Rodriguez Third-Party Entities refused to comply with the subpoenas. *See id.*

The Rodriguez Third-Party Entities’ refusal to comply with their discovery obligations is prejudicial to Plaintiffs. Plaintiffs have already been forced to prepare expert disclosures without relevant testimony and documents. They’ve had to litigate against Rodriguez—a ghost defendant who repeatedly defies the Court and only participates in proceedings and discovery when he feels like it. They’ve had to endure persistent public attacks, harassment, and intimidation from Defendants even though the Protective Order in this case forbids such conduct. And now they’re being forced to bring motion after motion to acquire information needed to prove their claims and obtain justice. This is costly to Plaintiffs and time-consuming for the Court. The Court should put an end to the games and order the Rodriguez Third-Party Entities to comply with the subpoenas.

If an Idaho court grants a motion to compel, it is required to award the moving party its “reasonable expenses incurred in making the motion, including attorney’s fees” unless (1) the movant filed the motion before attempting in good faith to obtain the discovery without court action; (2) the opposing party’s nondisclosure, response, or objection was substantially justified; or (3) other circumstances make an award of expenses unjust. I.R.C.P. 37(a)(5)(A). None of these exceptions apply here, and Plaintiffs are entitled to their reasonable expenses incurred in making this Motion, including attorney fees.

IV. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant their Motion to Compel Compliance with Subpoenas.

DATED: March 30, 2023.

HOLLAND & HART LLP

By: /s/Erik F. Stidham

Erik F. Stidham

Jennifer M. Jensen

Zachery J. McCraney

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March, 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
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 via process server
- 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
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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
P.O. Box 370
Emmett, ID 83617

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

Freedom Man Press LLC
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1317 Edgewater Dr. #5077
Orlando, FL 32804

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- Hand Delivered
- Overnight Mail
- Email/iCourt/eServe:

Freedom Man Press LLC
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Boise, ID 83714

- U.S. Mail
- Hand Delivered
- Overnight Mail
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freedommanpress@protonmail.com

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- U.S. Certified Mail

Power Marketing Agency, LLC
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9169 W. State St., Ste. 3177
Boise, ID 83714

- U.S. Certified Mail

Freedom Tabernacle, Incorporated
Attn: Diego Rodriguez, Registered Agent
1876 E. Adelaide Drive
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/s/ Erik F. Stidham

Erik F. Stidham
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