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**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
MOTION TO APPOINT DISCOVERY
REFEREE**

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 Motion to Appoint Discovery Referee (the “Motion”).

I. INTRODUCTION

Plaintiffs ask this Court to appoint a discovery referee under Rule 53, in order to facilitate resolution of the ongoing discovery violations perpetrated by Rodriguez. This Court has discretion to appoint a discovery referee to address discovery issues, and other courts faced with similar situations have found this method expedient when a party exhibits obstructionist conduct in discovery that takes an undue amount of the district court’s time to address. Plaintiffs are aware of the burden on the Court as well as the approach of the trial in this matter and the need to complete discovery.

It has been six months since Plaintiffs sought basic discovery (deposition, interrogatories, and requests for production) from Rodriguez, and he has yet to comply with multiple court orders requiring him to sit for deposition and meaningfully respond to the discovery requests. Now Rodriguez has served onerous interrogatories and requests for production on Plaintiffs, for which Plaintiffs are preparing responses—even though Rodriguez has never fulfilled his discovery obligations.

To resolve this case, close scrutiny of Rodriguez’s conduct in discovery and enforcement of discovery obligations are required, which may be best accomplished by a discovery referee who can devote a greater proportion of time to the discovery disputes in this case than a court with a full docket. Plaintiffs suggest a Plan B judge for this role. But to the extent no Plan B judge is appointed, Plaintiffs request that any fees of the discovery referee be paid at least in part by Rodriguez because he has created the need for the appointment.

II. BACKGROUND

A. RODRIGUEZ HAS CONSISTENTLY VIOLATED HIS DISCOVERY OBLIGATIONS.

Rodriguez has violated his discovery obligations from the beginning of this lawsuit. This Court ordered expedited discovery—answering five interrogatories. 7-12-22 Order. Rodriguez violated the Court’s order. 9-8-22 Order at 2. The Court ordered a limited deposition to explore the topics set forth in the five interrogatories. *Id.* at 3. The Court also ordered Rodriguez to pay Plaintiffs’ attorneys’ fees incurred in connection with their motion for sanctions relating to the violation. *Id.* at 4.

On the eve of the limited deposition, Rodriguez solicited his followers to flood the Zoom deposition link. *See* 11-29-22 Memo. Decision & Order at 3. In response to this obstructionist conduct, the Court entered a protective order for depositions, limiting attendance at depositions absent prior court approval. *Id.* at 2-3.

During the limited deposition, Rodriguez refused to answer basic questions. *See* Declaration of Erik F. Stidham in Support of Motion to Appoint Discovery Referee (“Stidham Decl.”), ¶ 2, Ex. A. Rodriguez did not pay the court-ordered fees (and still has not paid to this day). *Id.*, ¶ 3.

On October 7, 2022, Plaintiffs served interrogatories and requests for production on Rodriguez. *Id.*, ¶ 4. His responses were woefully deficient, and this Court detailed in an order the requests he was required to supplement no later than February 22, 2023. *Id.*; 2-8-23 Order Compelling Rodriguez to Respond to Discovery at 2. Rodriguez provided no supplementation by February 22, 2023—or to date. Stidham Decl., ¶ 4.

Plaintiffs properly noticed Rodriguez’s deposition for January 10, 2023—after Rodriguez represented that he would be available on January 10, 2023. *Id.*, ¶ 5. Rodriguez refused to

confirm whether he would attend, forcing Plaintiffs' counsel to prepare for the deposition and travel to Orlando to take it. *Id.* Rodriguez did not show up. *Id.*

This Court granted an award of fees against Rodriguez, pending the filing of a memo of fees and costs from Plaintiffs. 2-8-23 Memo. Decision on Mot. to Compel Rodriguez to Respond to Discovery at 14. The Court also ordered Rodriguez to provide by noon on February 15, 2023, two possible start dates for a deposition between February 25, 2023 and March 25, 2023 and the city, state, and country where he would be on the provided dates. 2-8-23 Order Compelling Rodriguez to Respond to Discovery at 2; Stidham Decl., ¶ 6.

Rodriguez again violated the Court's order by providing on February 14, 2023, only one possible start date—and a location in a place where it is illegal to take depositions. Stidham Decl., ¶ 6. When Plaintiffs' counsel responded to this email correspondence, Rodriguez simply replied with discriminatory hate speech. *Id.*, ¶ 6, Ex. B.

Plaintiffs have attempted to take Rodriguez's deposition for six months, which Rodriguez has wrongfully resisted, in violation of multiple court orders. *Id.*, ¶ 7. Plaintiffs have yet to receive basic interrogatory responses and documents in response to their requests for production from six months ago. *Id.* At every turn, Rodriguez has violated his discovery obligations. *Id.*

And he refuses to engage in any meet and confer communications. He rarely responds to any email communications from Plaintiffs' counsel, and when he does he sends counterproductive messages. *See id.*, ¶ 8, Ex. B.

Moreover, this Court has been unduly burdened with enforcing standard orders against Rodriguez, whose pattern of discovery violations is requiring a disproportionate amount of the Court's attention when it has a full docket of other matters.

B. RODRIGUEZ NOW SEEKS DISCOVERY FROM PLAINTIFFS.

Rodriguez recently served interrogatories and requests for production on Plaintiffs. *Id.*, ¶ 9. Plaintiffs are working on responding to them. *Id.* However, the requests are very broad and will require significant resources to answer. *Id.* Plaintiffs anticipate it will cost over \$100,000 in order to respond to the requests. *Id.* It would be fundamentally inequitable for Plaintiffs to undergo this trouble and expense if Rodriguez were to continue to refuse to cooperate in discovery and respond to basic requests that were served on him six months ago. Given his intransigence, there is good cause to impose close supervision of Rodriguez’s conduct in discovery—which can be accomplished using a discovery referee.

III. ARGUMENT

A. THIS COURT HAS DISCRETION TO APPOINT A DISCOVERY REFEREE (I.E. MASTER).

This Court has the authority to appoint a discovery referee under Rule 53. *See* I.R.C.P. 53(a) (“The court in which any action is pending may appoint a master. Except where these rules are inconsistent with the law, the word ‘master’ includes a referee, a commissioner, an auditor, and an examiner.”); *Inland Group of Cos. v. Obendorff*, 131 Idaho 473, 474, 959 P.2d 454, 455 (1998) (noting appointment of special master to assist with discovery); *Miner v. Miner*, No. 37069, 2011 Ida. App. Unpub. LEXIS 38, at *19 (Idaho Ct. App. Jan. 27, 2011) (same).

Whether to appoint a Rule 53 referee is discretionary. *State v. Dist. Ct. (In re Petition for Writ of Prohibition)*, 143 Idaho 695, 699, 152 P.3d 566, 570 (2007). For instance, federal courts have appointed a discovery referee under F.R.C.P. 53 to handle discovery disputes when a party exhibits recalcitrance in complying with discovery, resulting in repeated discovery motions. *See Wachtel v. Health Net, Inc.*, 239 F.R.D. 81, 112 (D.N.J. 2006) (appointing special master at plaintiff’s request, when defendant’s repeated refusal to produce documents and violation of

discovery orders caused undue burden on the court); *Murphy v. Gospel for Asia, Inc.*, No. 5:17-CV-5035, 2018 U.S. Dist. LEXIS 155601, at *11-12 (W.D. Ark. Sept. 10, 2018) (appointing special master to handle discovery disputes when defendants refused to cooperate in discovery).¹

“The order [making an appointment under Rule 53] can be broad, or limited, and usually specifies exactly what issues are submitted to the master.” *Olson v. Idaho Dep’t of Water Resources*, 105 Idaho 98, 100, 666 P.2d 188, 190 (1983); *see also* I.R.C.P. 53(e)(1)-(2) (“The order appointing a master may . . . define the authority of the master [and] direct the master . . . to do or perform particular acts[.]”).

The Court also has discretion to determine who pays the referee’s fees (if the referee charges fees). *In re Petition for Writ of Prohibition*, 143 Idaho at 699, 152 P.3d at 570; *see also* I.R.C.P. 54(d)(1)(E) (“The Court may assess and apportion as costs, between and among the parties to the action, all fees and expenses of masters, receivers or expert witnesses appointed by the court in the action.”); *Wachtel*, 239 F.R.D. at 112 (requiring party violating discovery obligations to pay referee’s fees); *Murphy*, 2018 U.S. Dist. LEXIS 155601, at *20 (same).

¹ F.R.C.P. 53 has a higher standard than I.R.C.P. 53 for appointment of special masters, making appointment of a discovery referee that much more compelling in this case. F.R.C.P. 53(a)(1) provides:

Unless a statute provides otherwise, a court may appoint a master only to:

- (A) perform duties consented to by the parties;
- (B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by:
 - (i) some exceptional condition; or
 - (ii) the need to perform an accounting or resolve a difficult computation of damages; or
- (C) address pretrial and posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district.

B. THIS COURT SHOULD EXERCISE ITS DISCRETION TO APPOINT A DISCOVERY REFEREE.

A discovery referee would promote efficiency in this litigation and advancement of the dispute toward resolution. Plaintiffs are aware that the Court does not have unlimited resources or time to deal with the serial discovery violations perpetrated by Rodriguez.

It has been six months, and still Rodriguez has refused to sit for a deposition or respond to basic discovery requests—despite multiple orders from the Court to do so. Closer supervision of his conduct would be beneficial—like in *Wachtel* and *Murphy*—where defendants refused to properly respond to discovery, and the courts appointed a special master to handle discovery disputes. *See Wachtel*, 239 F.R.D. at 112; *Murphy*, 2018 U.S. Dist. LEXIS 155601, at *11-12.

Plaintiffs request that a Plan B judge be appointed to serve as a discovery referee, assuming that the Plan B judge does not have as full a docket as this Court.

In the absence of a Plan B judge, Plaintiffs assume any appointment would require the payment of the referee's fees. It would be inequitable for this Court to saddle Plaintiffs with the sole expense of the discovery referee. Plaintiffs request that this Court require Rodriguez to pay at least half of the fees of the discovery referee. This Court has the discretion to order him to pay all of the discovery referee's fees. Indeed, one would hope that Rodriguez would be more cooperative if there are monetary consequences each and every time he caused further problems in discovery.

To the extent that Rodriguez's ability to pay the discovery referee's fees is relevant, Rodriguez has represented that he is very successful, serving as "President of Power Marketing International, which consists of the Power Marketing Consultants Network—the largest international network of professional marketing consultants in the world, the Power Marketing Agency—which is the premier marketing agency for total market domination[.]" Stidham Decl.,

Ex. C. He claims that he charges more for his services than Plaintiffs' attorneys' rates. 3-20-23 Rodriguez Memo. ISO Mot. for Dismissal of Sanctions at 5. And he apparently runs a church, Freedom Tabernacle, which appears to have no physical location (and no overhead that a physical location brings) but whose members are mandated to donate 10% of their income as tithes. Stidham Decl., Ex. D-F. Accordingly, and based on Rodriguez's own statements, he is well funded and can reasonably afford the expense associated with a discovery referee to resolve the discovery issues he is creating in this matter.

IV. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court grant their Motion to Appoint Discovery Referee.

DATED: April 3, 2023.

HOLLAND & HART LLP

By: */s/ Jennifer M. Jensen*
Jennifer M. Jensen
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April, 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	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered via Process Server <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Email/iCourt/eServe:
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Ammon Bundy for Governor c/o Ammon Bundy 4615 Harvest Ln. Emmett, ID 83617-3601	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered via Process Server <input checked="" type="checkbox"/> Overnight Mail <input type="checkbox"/> Email/iCourt/eServe:
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Ammon Bundy 4615 Harvest Ln. Emmett, ID 83617-3601	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered via Process Server <input checked="" type="checkbox"/> Overnight Mail <input type="checkbox"/> Email/iCourt/eServe:
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People's Rights Network c/o Ammon Bundy 4615 Harvest Ln. Emmett, ID 83617-3601	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered via Process Server <input checked="" type="checkbox"/> Overnight Mail <input type="checkbox"/> Email/iCourt/eServe:
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People's Rights Network c/o Ammon Bundy P.O. Box 370 Emmett, ID 83617	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered via Process Server <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Email/iCourt/eServe:
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Freedom Man Press LLC c/o Diego Rodriguez 1317 Edgewater Dr. #5077 Orlando, FL 32804	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Overnight Mail <input type="checkbox"/> Email/iCourt/eServe:
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Freedom Man Press LLC c/o Diego Rodriguez 9169 W. State St., Ste. 3177 Boise, ID 83714	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Overnight Mail <input type="checkbox"/> Email/iCourt/eServe:
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Freedom Man PAC c/o Diego Rodriguez 1317 Edgewater Dr., #5077 Orlando, FL 32804	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Overnight Mail <input type="checkbox"/> Email/iCourt/eServe:
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/s/ Jennifer M. Jensen

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