

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 GRANTING PLAINTIFFS'  
MOTION FOR SANCTIONS AGAINST  
RODRIGUEZ FOR FAILURE TO  
COMPLY WITH COURT ORDERS

Plaintiffs filed a Motion for Sanctions Against Defendant Diego Rodriguez for Failure to Comply with Court Orders, filed March 7, 2023, that came before the Court for hearing on March 21, 2023.

Appearances: Erik Stidham for Plaintiffs

Diego Rodriguez, a self-represented litigant, did not appear at this hearing

On March 7, 2023, Plaintiffs filed a Motion for Sanctions against Defendant Diego Rodriguez for Failure to Comply with Court Orders<sup>1</sup> with supporting memorandum<sup>2</sup> and Declaration from Erik Stidham.<sup>3</sup>

The Notice of Hearing for March 21, 2023 was served on Diego Rodriguez. Pursuant to Idaho Rule of Civil Procedure 7(b)(3)(B), any opposing memoranda or brief must be filed with the court and served so as to be received by the parties at least seven days before the hearing.

<sup>1</sup> Motion for Sanctions Against Defendant Diego Rodriguez for Failure to Comply with Court Orders, filed Mar. 7, 2023.

<sup>2</sup> Memorandum in Support of Plaintiffs' Motion for Sanctions Against Defendant Diego Rodriguez for Failure to Comply with Court Orders, ("Pl. Memo") filed Mar. 7, 2023.

<sup>3</sup> Declaration of Erik Stidham in Support of Plaintiffs' Motion for Sanctions Against Defendant Diego Rodriguez for Failure to Comply with Court Orders, filed Mar. 7, 2023.



Diego Rodriguez is representing himself. “*Pro se* litigants are held to the same standards and rules as those represented by an attorney.” *Twin Falls Cnty. v. Coates*, 139 Idaho 442, 445, 80 P.3d 1043, 1046 (2003). *Pro se* litigants are not accorded any special consideration simply because they are representing themselves and are not excused from adhering to procedural rules. *Nelson v. Nelson*, 144 Idaho 710, 170 P.3d 375, 383 (2007); *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 346, 941 P.2d 314, 318 (1997); *Golay v. Loomis*, 118 Idaho 387, 392, 797 P.2d 95, 100 (1990), quoting *Golden Condor, Inc. v. Bell*, 112 Idaho 1086, 1089 n.5, 739 P.2d 385, 388 n.5 (1987).

Diego Rodriguez filed an untimely Motion for Dismissal of Plaintiff’s Motion for Sanctions Against Defendant Diego Rodriguez for Failure to comply with Orders, filed March 21, 2023, and a Memorandum in Support, filed March 20, 2023. Although styled as a motion to dismiss, the Court considers the substance of the memorandum to be an opposition brief opposing the sanctions requested in Plaintiffs Motion for Sanctions against Defendant Diego Rodriguez.

Diego Rodriguez did not appear at the hearing on March 21, 2023. 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 Plaintiffs’ motion, memorandum and declaration filed. The Court also considered Rodriguez’s motion to dismiss and memorandum as a response.

#### **FACTS AND PROCEDURAL BACKGROUND**

This order addresses the latest motion in an ongoing discovery dispute that began with discovery requests served approximately a year ago. Specifically, on May 12, 2022, Plaintiffs moved this Court to permit expedited discovery requests for all defendants. The Court entered its Order Granting Motion for Expedited Discovery on



June 3, 2022 and then an Amended Order Granting Motion to Expedite Discovery on July 12, 2022. The deadline for Diego Rodriguez to respond to the expedited interrogatories was August 4, 2022. Rodriguez did not timely respond to those interrogatories so the Plaintiffs moved for sanctions.<sup>4</sup> This Court entered its Order on Motions for Sanctions on September 8, 2022, requiring Diego Rodriguez to sit for a deposition to answer the questions posed in Interrogatories numbers 1, 2, 3, 4, and 5. The costs of that deposition were ordered at Rodriguez's expense since the deposition costs would not have been incurred but for Mr. Rodriguez's failure to respond to the Interrogatories proposed by Plaintiffs.<sup>5</sup>

Ultimately, that limited deposition was conducted by videoconference on October 5, 2022.<sup>6</sup> At that deposition, Diego Rodriguez testified that his residence is in Florida but would not specifically identify an address.<sup>7</sup> Following a Motion and Memorandum of Fees, and hearing on that motion on November 22, 2022,<sup>8</sup> this Court entered an Order Awarding Fees<sup>9</sup> requiring Rodriguez to pay \$5,408.10 in deposition costs incurred by Plaintiffs when Plaintiffs counsel traveled to the place designated in the Notice of Deposition at the time designated in the Notice of Deposition.

Because of Rodriguez's efforts to encourage members of the public to join the October 5, 2022 video deposition, this Court entered an Order for Protection RE: Depositions, filed November 29, 2022, limiting attendance at future depositions in this

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<sup>4</sup> Memorandum in Support of Motion for Sanctions and For Contempt (Diego Rodriguez), filed Aug. 9, 2022; Decl. of Erik F. Stidham in Support of Mot. for Sanctions and for Contempt, filed Aug. 9, 2022 ("Despite being served with the Amended Order and having more than four weeks to comply with the Court's directive, Mr. Rodriguez has not responded to Plaintiffs' interrogatories in any way." ¶ 4.); Decl. of Erik F. Stidham in Support of Mot. for Award of Attorneys' Fees Against Diego Rodriguez Pursuant to Court's September 8, 2022 Orders on Motions for Sanctions, filed Oct. 19, 2022 ("Although Rodriguez's email correspondence continued to obstruct any in-person deposition, as he refused to disclose his location so that St. Luke's counsel could hold the deposition where he claims to currently reside or be located, the deposition was scheduled to move forward via Zoom on October 5, 2022." ¶ 9.)

<sup>5</sup> Order on Motions for Sanctions, filed Sept. 8, 2022,

<sup>6</sup> Declaration of Erik F. Stidham in Support of Motion for Sanctions and Protective Order Relating to Limited Deposition of Diego Rodriguez Set for October 5, 2022, filed Oct. 4, 2022.

<sup>7</sup> Dec of Erik Stidham in Support of Motion to Compel, filed Dec. 6, 2022, ¶8 and Ex. D, pp. 10-15.

<sup>8</sup> Rodriguez did not file any written response to this motion and did not appear at the November 22, 2022 hearing.

<sup>9</sup> Order Awarding Fees, filed Dec. 13, 2022.



case to legal counsel, the individual parties, and a single designated representative of the legal entity parties.

On December 6, 2022, the Plaintiffs filed a Motion to Compel Discovery from Rodriguez, with a memorandum and a declaration in support. The Court entered its Order Compelling Defendant Rodriguez to Respond to Discovery on February 8, 2023. This Order was for Rodriguez to supplement his deposition responses to Interrogatory Nos. 1, 2, 3, 4, 5 with full responses; fully respond to Interrogatory Nos. 6, 8, 11, 14, 15, 28, and 29-32; respond to Requests for Production No. 16, 19, 22, 23, 37, and 41; and to appear in-person for a deposition in December 2022.<sup>10</sup>

The motion currently before the Court requests this Court to sanction Diego Rodriguez under Idaho Rule of Civil Procedure 37 for (1) his refusal to pay \$5,408.10 in deposition costs incurred to obtain answers to expedited discovery requests within the timeframe in the Order Awarding Fees entered December 13, 2022; and also sanction Rodriguez for (2) violating the Order Compelling Rodriguez to Respond to Discovery entered February 8, 2023 by (a) failing to provide viable dates and for attempting to designate Brazil for a deposition and (b) failing to supplement his written discovery responses as ordered.<sup>11</sup>

Defendant Rodriguez's response contests the legality of the Order Awarding Fees for reasons stated in his motion to cancel or reconsider the Order on motions for Sanctions.<sup>12</sup> Related to failing to attend the December deposition, Rodriguez states he provided dates for deposition and offered to attend the deposition by Zoom/video conference from outside the United States.<sup>13</sup> His response did not address the failure to supplement his responses to the interrogatories and requests for production.

The trial in this case is set for July 10, 2023.

#### **LEGAL STANDARD**

The pertinent rules regarding obtaining discovery have previously been set forth in this Court's orders on the Plaintiffs' motions to compel and will not be reiterated here.

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<sup>10</sup> Order Compelling Defendant Rodriguez to Respond to Discovery, filed Feb. 8, 2023.

<sup>11</sup> Pl. Memo, p. 2.

<sup>12</sup> Response, p. 2.

<sup>13</sup> Id. pp. 3-4.



Idaho Rule of Civil Procedure 26(b)(1) addressed the scope of discovery in general and states:

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (1) Parties may obtain discovery **regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action**, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. **It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.**

(emphasis added).

Then, Idaho Rule of Civil Procedure 26(b)(5)(A) more specifically provides:

**Privileged information withheld.** When a party withholds information otherwise discoverable under these rules by claiming it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(emphasis in original).

Rule 37(a)(3) states that for purposes of sanctions for violation of orders on motions for orders compelling discovery, the court is to treat evasive or incomplete answers as a failure to answer.

Idaho Rule of Civil Procedure 11 provides in pertinent part that:

[t]he signature of an attorney or party constitutes a certificate that the attorney or party has read the pleading, motion or other paper; that to the best of the signer's knowledge, information, and belief after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

...  
If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the



reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Idaho Rule of Civil Procedure 37(d)(2) provides that if a party fails, after being served with proper notice, to appear for that person's deposition; or after being properly served with interrogatories or a request for production or inspection, fails to serve its answers, objections, or written response, then the Court may order sanctions which may include those listed in Rule 37(b)(2)(A)(i) through (vi).

- (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.

Instead of or in addition to these sanctions, Idaho Rule of Civil Procedure 37(d)(3) provides the court must require the party failing to act pay the 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.

The Court of Appeals of Idaho has also set forth the circumstances under which a court may impose the more severe sanctions including dismissing an action with prejudice or entering a default judgment as a sanction:

[F]or a trial court to properly dismiss a case with prejudice for failure to comply with procedural rules, several circumstances must be shown: (1) a clear record of delay; (2) ineffective lesser sanctions; and (3) at least one aggravating factor of (a) delay from intentional conduct; (b) delay by the [party] personally; or (c) delay causing prejudice to the [opposing party]. These factors must appear in the record in order to facilitate appellate review.



*Peterson v. McCawley*, 135 Idaho 282, 16 P.3d 958 (Ct. App. 2000) (citing *Ashby v. Western Council, Lumber Production and Industrial Workers*, 117 Idaho 684, 687 791 P.2d 434, 437 (1990)). The Idaho Supreme Court has held “[a]n award of costs and explicit warnings are among the appropriate preliminary measures which a trial court may take to force compliance with procedural rules before taking the drastic measure of dismissal with prejudice.” *Ashby*, 117 Idaho at 688, 791 P.2d at 438.

### **ANALYSIS**

Once again, this Court is to determine whether Defendant Rodriguez should be sanctioned—this time for failing to fully supplement his discovery responses and failing to provide deposition dates in a reasonable location for a deposition as required in the February 8, 2023 Order.

**1. The request to sanction Rodriguez for refusing to pay deposition costs and also for violating the Order Compelling Rodriguez to Respond to Discovery, entered February 8, 2023, by failing to provide viable dates and for attempting to designate Brazil for a deposition**

Defendant Rodriguez’s response contests the legality of the Order Awarding Fees for reasons stated in his motion to cancel or reconsider the order on motions for sanctions. Rodriguez’s response essentially states that he was not obligated to sit for the deposition noticed in a Notice of Deposition because it was inconvenient since he was out of the country. Mr. Rodriguez is a party to this litigation and has filed an Answer. While the Court required the parties to try to find a mutual date, time and place for the deposition, Mr. Rodriguez was not reasonable in designating Brazil as the place for the deposition or in providing reasonable deposition dates complying with the Order Compelling Rodriguez to Respond to Discovery. Therefore, Plaintiffs noticed a deposition according to the Idaho Rules of Civil Procedure and Defendant Rodriguez was required by the rules to attend that deposition. Defendant Rodriguez did not file a motion with the court for a protective order requesting the Court change the date, time or place of the noticed deposition. Rather, he unnecessarily caused expense for the Plaintiffs.

The Court will enter a sanction for failing to pay the deposition costs ordered in the Order Awarding Fees entered December 13, 2022 and also for violating the Order





Compelling Rodriguez to Respond to Discovery, entered February 8, 2023, by failing to provide viable dates and for attempting to designate Brazil for a deposition.

The Court will appoint a Discovery Referee or Discovery Master, pursuant to Idaho Rule 53. The Plaintiffs are to notice a deposition of Defendant Diego Rodriguez in Boise, Idaho, before May 24, 2023. The Defendant Rodriguez is required to travel to Boise, Idaho, to attend. Since the Defendant is unwilling to pay Plaintiffs costs for trying to conduct the deposition at the address where Rodriguez testifies that he resides, and the Defendant attempted to have others attend his videoconferenced deposition, the Court will require the travel costs for Diego Rodriguez to attend the deposition in Boise, Idaho, to be born by Rodriguez.

This deposition is to be conducted no later than May 24, 2023.

**2. The request to sanction Rodriguez for violating the Order Compelling Rodriguez to Respond to Discovery, entered February 8, 2023, by failing to supplement his written discovery responses**

As stated above, Rule 37(a)(3) states that for purposes of sanctions for violation of orders on motions for orders compelling discovery, the court is to treat evasive or incomplete answers as a failure to answer.

The Court determined in its Memorandum Decision on Motion to Compel Diego Rodriguez to Respond to Discovery, entered February 8, 2023, how Rodriguez's responses were deficient and how he needed to supplement those responses to comply with providing full responses as required by Rule 37.

Again, the Defendant could have responded with a privilege log to certain requests or seek a protective order from the Court. He did neither. The Court does not find Rodriguez's continuing objection to the court's previous orders and this motion substantially justified. Therefore, this Court finds that Defendant Rodriguez's incomplete answers, which have not been supplemented as required by the Order Compelling Rodriguez to Respond to Discovery, is a failure to answer those interrogatories and requests for production.

Since supplemental responses to interrogatories and responsive documents to the requests for production were not produced complying with the Court's previous order, the Plaintiffs Motion for Sanctions Against Defendant Diego Rodriguez for Failure to Comply with Court Orders, filed March 7, 2023, is GRANTED.





### 3. Order for sanctions

Rule 37(b)(2) provides in pertinent part that if a party fails to obey an order to provide discovery, then the court may make such orders in regard to the failure as are just. The Court enters an Order directing a Discovery Referee or Discovery Master to be available to resolve discovery disputes between Plaintiffs and Rodriguez during the deposition in Boise, Idaho, and that during this deposition Diego Rodriguez must answer opposing counsel's questions asking him to:

- 1) supplement his earlier deposition responses and now fully respond to Interrogatories 1, 2, 3, 4 and 5 for expedited discovery;
- 2) provide the phone number and address for every person identified in his response to Interrogatory 6 except Dr. Natasha Erickson, Tracy Jungman, and Chris Roth;
- 3) respond fully to Interrogatory 8;
- 4) respond fully to Interrogatory 11 with "admission against interest" defined as "A person's statement acknowledging a fact that is harmful to the person's position, esp[ecially] as a litigant" and further provides that "An admission against interest must be made either by a litigant or by one in privity with or occupying the same legal position as the litigant." BLACK'S LAW DICTIONARY, *Admission* (11th ed. 2019);
- 5) supplement the response Interrogatory 14 to respond fully to all details requested of all conversations and/or discussions;
- 6) supplement his response to Interrogatory 15 to fully include "all forms, methods, apps, or types of communication you used to communicate with any person about any issue involved in this lawsuit.";
- 7) supplement his response to Interrogatory 28 to answer whether any immediate family member(s) or business entity owned or controlled by Diego Rodriguez or any immediate family member of Diego Rodriguez received any money or other things of value as requested in Interrogatory 28;
- 8) supplement responses to Interrogatories 29 through 32 to include any information related to donations to Rodriguez, his businesses, the People's Rights Network, or donations on behalf of the infant's family, and must include



any information that Diego Rodriguez has knowledge of related to public assistance or insurance coverage for Baby Cyrus' care. Defendant Rodriguez must respond fully to each aspect of Interrogatories 29 through 32 based upon his own knowledge and belief;

And he must provide to Plaintiffs before the deposition, or at the latest bring with him to the deposition:

- 9) all emails and text messages between Diego Rodriguez and Ammon Bundy that relate to this lawsuit or the underlying subject matter in this case as requested in Request for Production 16;
- 10) supplement Request for Production 19 to provide the requested types of documents Power Marketing LLC and also to include any other responsive documents for businesses, whether incorporated or not, or entity that holds itself out as a business in addition to Power Marketing LLC;
- 11) supplement Request for Production 22 to produce all contracts and business relationships between the parties in this case including those specifically named in Request for Production 22 or others that exist;
- 12) produce tax returns responsive to Request for Production 23 but subject to a confidentiality order that restricts the disclosure of any tax returns marked confidential to being viewed only by the attorneys assigned to this case and filed as a sealed exhibit subject to Idaho Court Administrative Rule 32;
- 13) supplement Request for Production 37 to include all exchanges of money or funds between the people and entities identified Request for Production 37;
- 14) must fully respond to Request for Production 41 because the writings are relevant and are not privileged.

This Court ORDERS Defendant Rodriguez to attend the deposition in Boise, Idaho, that will be noticed by the Plaintiffs no later than May 24, 2023 and answer these questions fully and provide in advance of the deposition or, at the latest, bring with him all responsive documents to disclose to Plaintiffs.

While the Plaintiffs request the Court enter a default judgment against Defendant Rodriguez at this point, the Court finds that while Rodriguez's lack of responses delays the discovery in this case, and may eventually delay the trial of this matter, the Court



still must impose lesser sanction than a default judgment at this point and provide Defendant Rodriguez with another opportunity to fully respond to comply with this Court's Order Compelling Rodriguez to Respond to Discovery, entered February 8, 2023, by attending a deposition and providing the required information.

Further, this Court GRANTS Plaintiffs' request for a Discovery Referee to preside over discovery disputes between Rodriguez and the Plaintiffs, as was requested at the hearing on April 18, 2023. Since the discovery referee is an experienced Senior Judge, she will be permitted to rule on discovery motions, including future motions for sanctions, if any, and the Discovery Referee or Discovery Master may determine sanctions if Rodriguez fails to provide the documents responsive to the requests for production or fails to fully answer the interrogatories ordered in this decision.

#### CONCLUSION

The Court GRANTS Plaintiffs' Motion for Sanctions against Defendant Diego Rodriguez for Failure to Comply with Court Orders, filed March 7, 2023.

The Court also awards costs to the Plaintiffs for the filing of this motion and the Plaintiffs must file a memorandum of costs within fourteen days of the date this order is filed.

IT IS SO ORDERED

Dated 4/24/2023 9:46:58 PM

  
\_\_\_\_\_  
Lynn G. Norton  
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

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By E-mail     By mail  
 By fax (number)  
 By overnight delivery / FedEx  
 By personal delivery

Trent Tripple  
Clerk of the Court

Dated: 04/25/2023

By: Janine Korsen  
Deputy Clerk

