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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,

Defendants.

Case No. CV01-22-06789

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR AWARD
OF ATTORNEYS' FEES PURSUANT TO
COURT'S APRIL 24, 2023 ORDER ON
MOTION FOR SANCTIONS AND TO
COMPEL AGAINST AMMON BUNDY,
AMMON BUNDY FOR GOVERNOR,
AND PEOPLE'S RIGHTS NETWORK**

COME NOW Plaintiffs, by and through their attorneys of record, Holland & Hart LLP,

and submit this Memorandum in support of their Motion for Award of Attorneys' Fees and Costs

Against Ammon Bundy, Ammon Bundy for Governor, and People’s Rights Network (collectively “Bundy Defendants”) pursuant to The Court’s April 24, 2023 Memorandum Decision on Motion for Sanctions and to Compel against Ammon Bundy, Ammon Bundy for Governor, and People’s Rights Network (“Motion for Sanctions”).

I. BACKGROUND

Plaintiffs filed the Motion for Sanctions with supporting documents on March 7, 2023. *See* Memorandum Decision on Motion for Sanctions and to Compel against Ammon Bundy, Ammon Bundy for Governor, and People’s Rights Network (“Memorandum Decision”) at 1.

The Court held oral argument on Plaintiffs’ Motion for Sanctions on March 21, 2023. *See* Memorandum Decision at 3. Defendants Ammon Bundy, Ammon Bundy for Governor, and People’s Rights Network did not appear. *Id.* The Court ultimately issued an order compelling responses to the discovery requests made by Plaintiffs and compelling depositions of the Bundy Defendants and stated that Plaintiffs “are 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 pursuant to Idaho Rule of Civil Procedure 37(d)(1)(A)(i) for the Bundy Defendants’ failure to appear at the depositions noticed for January 31, February 2, and February 7, 2023.” *Id.* at 4-5.

Plaintiffs now file this memorandum of fees and costs pursuant to the Court’s Memorandum Decision filed April 24, 2023, Rule 37(a)(5)(A), and Rule 37(d)(1)(A)(i)

II. PLAINTIFFS’ FEES AND COSTS INCURRED IN RELATION TO THE MOTION TO COMPEL AND FAILURE OF BUNDY DEFENDANTS TO ATTEND DEPOSITIONS

This Court has already found that attorneys’ fees and costs should be awarded to Plaintiffs. Accordingly, this memorandum solely focuses on the reasonableness of the fees and costs incurred.

Once a court determines that a party is entitled to an award of attorneys' fees, it then considers the factors set out in Idaho Rule of Civil Procedure 54(e)(3) to determine the amount of attorneys' fees to be awarded. The Rule 54(e)(3) "factors guide the trial court in fixing the amount to be awarded as reasonable attorney fees." *Nalen v. Jenkins*, 113 Idaho 79, 83, 741 P.2d 366, 369 (Idaho Ct. App. 1987). "Under Rule 54(e)(3) the trial court is required to consider the existence and applicability of each factor." *Id.* But "[n]o element is to be given undue weight or emphasis." *Id.* Under Rule 54(e)(3), the factors are:

- (A) the time and labor required;
- (B) the novelty and difficulty of the questions;
- (C) the skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law;
- (D) the prevailing charges for like work;
- (E) whether the fee is fixed or contingent;
- (F) the time limitations imposed by the client or the circumstances of the case;
- (G) the amount involved and the results obtained;
- (H) the undesirability of the case;
- (I) the nature and length of the professional relationship with the client;
- (J) awards in similar cases;
- (K) the reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case; and
- (L) any other factor which the court deems appropriate in the particular case.

I.R.C.P. 54(e)(3). Although the Court must consider the Rule 54(e)(3) factors, a specific written finding on each of the various factors is not necessary. *See State v. Baeza*, 161 Idaho 38, 383 P.3d 1208, 1213 (2016). Applying those Rule 54(e)(3) factors that bear the most weight in the instant matter, Plaintiffs are entitled to all of their attorneys' fees requested in this Memorandum.

A. THE TIME AND LABOR REQUIRED

The Motion for Sanctions and attempts to depose Bundy Defendants on January 31, February 2, and February 7, 2023 required consideration of the discovery rules, attendant case law, and the specific circumstances of this lawsuit. Plaintiffs' counsel worked efficiently in preparing the motion and preparing for the depositions of the Bundy Defendants, as demonstrated in **Exhibit A** to the Stidham Declaration filed concurrently with this brief ("Stidham Decl.").

Moreover, Plaintiffs do not seek all of their fees incurred in preparing and arguing the Motion for Sanctions. Instead, they only seek some of the fees incurred in drafting the motion and attending oral argument. *See Stidham Decl.*, ¶¶ 11-13.

Plaintiffs also seek their attorneys' fees incurred in preparing this request for attorneys' fees. *BECO Constr. v. J-U-B Eng'rs Inc.*, 149 Idaho 294, 298, 233 P.3d 1216, 1220 (2010) (holding that "courts may award reasonable attorney fees incurred in connection with the effort to secure a reasonable amount of attorney fees"), overruled in part on other grounds by *Keybank Nat'l Ass'n v. PAL I, LLC*, 155 Idaho 287, 311 P.3d 299 (2013).

The fees and costs incurred to prepare for and appear at the depositions is segregable by defendant. *See Stidham Decl.*, ¶¶ 11-13. For reasons of efficiency, the work done on the motions

for sanctions, to prepare for and appear at argument, and to prepare this memo was performed
MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES
PURSUANT TO COURT'S APRIL 24, 2023 ORDER ON MOTION FOR SANCTIONS AND TO
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concurrently for the Bundy Defendants. To be fair to each of the Bundy Defendants, the fees relating to work that was performed concurrently for all of the Bundy Defendants has been divided by three and assigned to each of the Bundy Defendants in a pro rata share.

Below is a chart explaining which costs are specific to the specific Bundy Defendant and which have been spread equally amongst the three.

Fees As to Ammon Bundy Failure to Appear for Deposition – Specific Charges		
Date Range	Total Hours	Total Fees
1/17 – 1/31/23	6.2	\$3,348.00
Fees As to Ammon Bundy– Equally Divided Charges		
Date Range	Total Hours	Total Fees
1/27 – 5/1/23	7.2	\$2,313.00
Fees As to People’s Rights Network Failure to Appear for Deposition – Specific Charges		
Date Range	Total Hours	Total Fees
1/17 – 1/31/23	6.6	\$3,434.40
Fees As to People’s Rights Network – Equally Divided Charges		
Date Range	Total Hours	Total Fees
1/27 – 5/1/23	7.2	\$2,313.00
Fees As to Ammon Bundy for Governor’s Failure to Appear for Deposition – Specific Charges		
Date Range	Total Hours	Total Fees
1/17 – 2/2/23	3.5	\$1876.00
Fees As to Ammon Bundy for Governor – Equally Divided Charges		
Date Range	Total Hours	Total Fees

1/27 – 5/1/23	7.2	\$2,313.00
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B. THE SKILL REQUIRED TO PERFORM THE LEGAL SERVICE

The Plaintiffs in this matter were represented by counsel with experience litigating similar complex commercial disputes and preparing similar motions. *See Stidham Decl.*, ¶ 9. Erik F. Stidham, a partner at Holland & Hart’s Boise office, was the most senior attorney on the litigation. *Id.* He manages the representation in this matter, working with other attorneys from Holland & Hart’s commercial litigation practice group. *Id.*

For the Motion for Sanctions, Mr. Stidham primarily relied on the research and drafting assistance of an experienced, but more junior, attorney, whose work he directed. *Id.*, ¶ 9. Mr. Stidham appeared at the hearing and argued the Motion for Sanctions. In an effort to seek only the most conservative, core amount of fees, the instant motion voluntarily foregoes certain fees incurred by other attorneys who worked on the motion even though all fees incurred were reasonable. *See id.*, ¶ 11.

The lawyers on the case team did not duplicate work. *Id.*, ¶ 14. Their experience in handling litigation of this sort allowed them to avoid duplicate billing and efficiently delegate work to the appropriate level, as reflected in Exhibit A. *See id.*

C. PREVAILING CHARGES FOR LIKE WORK

The hourly rates charged for the services provided to Plaintiffs are reasonable for the type of work performed and are comparable to those for similar services in the Treasure Valley performed by attorneys of comparable skill and experience. *See Stidham Decl.*, ¶ 17. The rates charged are Holland & Hart’s standard hourly rates reduced by 10 to 15%. *Id.*, ¶ 6.

Moreover, courts have repeatedly found Holland & Hart’s standard rates to be reasonable and in accord with the market. *See Edmark Auto Inc. v. Zurich Am. Ins. Co.*, No. 1:15-cv-00520-BLW, 2021 U.S. Dist. LEXIS 39160, at *10 (D. Idaho Mar. 1, 2021) (“It has [] been this Court’s experience that attorneys at regional firms, such as Holland & Hart, charge hourly rates at or near, but not above, the high end of acceptable rates for the Boise area.”) (citation omitted); *see also Bank of Am. v. Neef*, No. CV-OC 13-19726 (Idaho Fourth Judicial District, Ada County) (allowing the hourly rates of the attorneys representing the receiver of \$385 for a senior partner; \$300 for a junior partner; and \$245 for an associate in 2013); *Cnty. House, Inc. v. City of Boise, Idaho*, No. 1:05-cv-00283-CWD, 2014 WL 1247758, at *6 (D. Idaho Mar. 25, 2014) (approving rate of \$400 per hour in 2014); *Lakeview Cheese Co. v. Nelson-Ricks Creamery Co.*, No. 4:13-cv-00361-BLW, 2015 WL 769960 (D. Idaho Feb. 23, 2015) (permitting the following rates in 2015: \$455 for a senior litigation partner; \$310 for a junior litigation partner).

D. WHETHER THE FEE IS FIXED OR CONTINGENT

The fee agreement in this case is based on an hourly rate. *See Stidham Decl.*, ¶ 4. Such an agreement is an appropriate basis for attorneys’ fees. *Id.*

E. RESULTS OBTAINED

Plaintiffs obtained the results they requested—an order compelling responses from the Bundy Defendants to the discovery requests served on October 19, October 24, and December 9, 2022 and an order compelling Bundy Defendants to sit for consecutive depositions within ten days of entry of this order. *See Motion for Sanctions* at 4-5.

IV. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request this Court enter an award in their favor for reasonable fees and costs in the total amount of \$6,129.65 from Ammon Bundy (fees in

the amount of \$5,661.00 and costs in the amount of \$468.65), in the total amount of \$4,643.55 from Ammon Bundy For Governor (fees in the amount of \$4,161.55 and costs in the amount of \$482), and in the total amount of \$6,229.40 from Peoples Right's Network (fees in the amount of \$5,774.85 and costs in the amount of \$454.55), see Exhibit A, to be paid within 14 days of this Court's Order on Plaintiff's Motion, or by a date certain to be set by the Court.

DATED: May 2, 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 2nd day of May, 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
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Emmett, ID 83617-3601

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- Overnight Mail
- Email/iCourt/eServe:

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

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/s/ Erik F. Stidham

Erik F. Stidham
OF HOLLAND & HART LLP

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