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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 FOR HEARING ON
DAMAGES BEFORE A JURY
RELATING TO DEFAULTED
DEFENDANTS AMMON BUNDY,
AMMON BUNDY FOR GOVERNOR,
AND PEOPLE’S RIGHTS NETWORK**

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 for Hearing on Damages Before a Jury Relating to Defaulted Defendants Ammon Bundy (“Bundy”), Ammon Bundy for Governor (“Bundy Campaign”), and People’s Rights Network (“PRN”). Defaulted Defendants Bundy, Bundy Campaign, and PRN are collectively referred to as “Bundy Defendants.”

I. INTRODUCTION

Plaintiffs seek to schedule a hearing, before a jury, to determine the amount of damages owed by the defaulting Bundy Defendants. Pursuant to Idaho Rule of Civil Procedure 55(b)(2)(B), “[t]he court may conduct hearings or make referrals when, to enter or effectuate judgment, it needs to . . . determine the amount of damages”.

Plaintiffs are entitled to have a jury determine damages at the default hearing. Plaintiffs properly demanded a jury in their complaint. The Idaho Constitution declares that “[t]he right of trial by jury shall remain inviolate . . .” Idaho Const. Art. I, § 7. Further, Idaho Rules of Civil Procedure 38 and 39 reiterate and confirm Plaintiffs’ right to a jury. Moreover, even if Plaintiffs did not have a mandatory right to a jury, the Court has the discretion to refer damages to a jury in a post-default hearing. Federal precedent supports the use of a jury in a Rule 55 hearing especially when, as is the case here, the Plaintiffs seek damages in the form of emotional, mental, and physical distress.

Plaintiffs should be allowed to proceed promptly with the damages hearing relating to the Bundy Defendants. First, precedent supports proceeding promptly. Courts regularly proceed with a damages trial against defaulted defendants even if not all defendants have not defaulted. Second, fairness dictates proceeding promptly to limit prejudice to Plaintiffs. Bundy is taking steps to hide his assets and frustrate Plaintiffs’ recovery. Recent discovery responses from a third

party indicate that Bundy has or is transferring his considerable assets into a series of shell companies and trusts with the assistance of Aaron Welling, Bundy's friend and former Campaign treasurer. These appear to be fraudulent conveyances of assets into Wyoming trusts to prevent Plaintiffs from collecting on a judgment. Bundy controls PRN and the Bundy Campaign. It is reasonable to conclude that he is likely taking similar steps to frustrate Plaintiffs' recovery against those Defendants; this is a justified concern, especially given that Bundy directs "donations" to PRN to Dono Custos, a Wyoming LLC he owns and/or controls.

The Bundy Defendants continue to defy Court orders, frustrate the litigation proceedings, make defamatory statements, harass witnesses, threaten violence, and profit from their wrongdoing. In fact, Bundy has recently intensified his media campaign of defamation, lies, and intimidation. Delaying resolution of the claims against the Bundy Defendants only prejudices Plaintiffs. Third, proceeding promptly will be efficient. Owing to the default by the Bundy Defendants, the properly pled allegations in the Fourth Amended Complaint are established. And, Plaintiffs have their fact and expert witnesses available and prepared to testify regarding damages.

Finally, Plaintiffs suggest that a Plan B or Senior judge be appointed to preside at the hearing. Given this Court's heavy case load and busy calendar, Plaintiffs anticipate that use of an alternate judge would create efficiencies, allow the damages hearing to be set soon, and help shorten any disruptions manufactured by Bundy and his acolytes.

II. BACKGROUND

On April 24, 2023, the Court entered an Order of Default on Fourth Amended Complaint Against Ammon Bundy, Ammon Bundy for Governor, and People's Rights Network. The Bundy Defendants have been duly served with the Fourth Amended Complaint and have failed to

appear or defend. *See* Affidavit of Erik F. Stidham in Support of Motion for Entry of Default and Default Judgment filed on April 4, 2023. The Bundy Defendants have not ever formally appeared in this case, which has been pending since May 11, 2022.¹

Bundy has, however, repeatedly acknowledged the lawsuit and broadcasted online about it, including Bundy stating that he intends to hide his assets in order to frustrate the collection of a judgment. *See* Supplemental Declaration of Erik F. Stidham in Support of Motions for Leave to Amend Complaint to Allege Punitive Damages filed on January 6, 2023, ¶ 4, Ex. 3 at 45:38-45:59 (“They’re suing me for defamation, and they’re probably going to try to get judgments against me of over a million dollars and take everything they [sic] have from me. And you know I’m not going to let that happen. And I’m making moves you know to stop that from happening. If I have to, you know, meet them at the door with my friends and shotgun, I’ll do that. You know, they’re not going to take my property.”).

Discovery recently received from third parties shows that Bundy is actively engaging in fraudulent conveyances to hide his assets. *See* Declaration of Erik F. Stidham dated May 9, 2023 (“Stidham Decl. 5/09/23”) at ¶¶ 3-14. Documents produced by Prime Corporate Services, a company specializing in forming business entities, indicate that Bundy is actively setting up shell corporations to hold Wyoming trusts into which he is transferring substantial assets, with the assistance of Aaron Welling (Bundy’s friend and former Treasurer of the Bundy Campaign), has set up a series of Wyoming Trusts and has transferred substantial assets into those trusts. *Id.* at ¶¶ 3-13. Emails reflect maneuvering to hide assets and ownership in Wyoming trusts. *Id.* at ¶¶ 9-10.

¹ Ammon Bundy has not appeared in this case but he did recently file a “petition” in federal court seeking to have the case removed there. *See* https://www.idahopress.com/news/local/ammon-bundy-files-petition-to-move-st-lukes-case-to-federal-court/article_b7c6d006-e913-11ed-b450-c7c2edce5fde.html (last visited May 90, 2023)

In fact in one email, Welling, assumedly referring to Bundy's assets, states that he is "ready to move all the existing assets for current business to new LLCs". *Id.* at ¶ 9. Other documents, when considered together, indicate that Bundy engaged in a fraudulent transfer of one of his property's valued at approximately \$1.2 million into one of the shell entities that Welling set up for Bundy. *Id.* at ¶¶ 12-13. All indications are that Bundy has made millions as a professional extremist and conflict entrepreneur and that he is now doing his best to fraudulently convey his considerable wealth into shell corporations and Wyoming trusts. *Id.* at ¶¶ 2-14.

In addition to hiding millions in assets, Bundy also continues to harass and make false statements in order to intimidate witnesses. *See* Plaintiffs' Memorandum in Support of Renewed Motion for Contempt Against Ammon Bundy and People's Rights Network filed on March 30, 2023. In fact, Ammon Bundy is actively promoting an online presentation on the supposed child trafficking committed by St. Lukes. *See* <https://twitter.com/RealABundy/status/1655676513755209734/photo/2> (last visited May 9, 2023).

While Defendant Rodriguez did file a pleading styled as an Answer to the Fourth Amended Complaint, he has not appeared in any hearing before this Court for many months and continues to defy Court orders. *See, e.g.,* Rodriguez's Answer to Fourth Amended Complaint filed on March 15, 2023 and the Declaration of Erik F. Stidham in Support of Motion for Sanctions Against Rodriguez for Failure to Comply with Court Orders filed on March 7, 2023. The trial on the claims against all Defendants is currently set to begin July 10, 2023. *See* 10-11-

22 Stipulation for Scheduling and Planning at 4. Given that all other parties have been defaulted, Rodriguez is the only defendant for whom liability is arguably at issue.²

III. ARGUMENT

A. A JURY SHOULD DETERMINE THE AMOUNT OF DAMAGES

1. The Post-Default Hearing Should be Limited to Determining Plaintiffs' Damages and the Appropriate Measure of Punitive Damages.

On Rule 55 default, “all well pleaded factual allegations in the complaint are deemed admitted.” *Holladay v. Lindsay*, 143 Idaho 767, 772, 152 P.3d 638, 643 (Ct. App. 2006). Accordingly, the plaintiff may recover damages without proving additional facts. *Id.*; *see also Cement Masons’-Employers’ Tr. v. Davis*, 107 Idaho 1131, 1132, 695 P.2d 1270, 1271 (Ct. App. 1985) (reversing because district court improperly permitted defaulted defendant to defend on the merits of the case, violating the “long-established precept that on default all well pleaded factual allegations in the complaint are deemed admitted”); *Pierce v. McMullen*, 156 Idaho 465, 474, 328 P.3d 445, 454 (2012) (reversing because district court improperly required plaintiff to prove liability when defendants had not denied the allegations underlying liability in an Answer).

Accordingly, on default, only the remaining issue of the amount of damages remains to be heard. *See id.* As against the Bundy Defendants, with the exception of the amount of damages, the allegations of the Fourth Amended Complaint are deemed true. The excepted allegations are found at Fourth Amended Complaint ¶¶ 191 (final sentence), 205 (clause “more than \$250,000”), 221 (final sentence), Prayer For Relief ¶ A.

² In candor to the Court, Plaintiffs intend to file another motion soon seeking default against Rodriguez given his continuing refusal to comply with Court orders, defiance of the protective order, and refusal to provide basic discovery.

2. The Idaho Constitution Mandates Plaintiffs' Right to a Jury.

While the Idaho Supreme Court has not addressed the right to a jury trial in the context of a hearing pursuant to Rule 55(b)(2), the plain language of the Idaho Constitution, Rule 38, and Rule 39 support the conclusion that Plaintiffs are entitled to a jury. The Idaho Constitution states “[t]he right of trial by jury shall remain inviolate . . .” Idaho Const. Art. I, § 7. While Idaho courts have yet to consider the issue, other states have construed similar constitutional language and held a jury is mandated in default hearings to determine damages. *See, e.g., Berube v. Richardson*, 2017-Ohio-1367, ¶¶ 19-20, 89 N.E.3d 85, 91 (Ct. App. Apr. 13, 2017) (relying on identical language from the Ohio constitution and holding that the “Defendant’s non-appearance should not dictate [the plaintiff’s] properly preserved fundamental constitutional right” to a jury). Because the constitutional right to a trial by jury “is inviolate,” the Ohio Court of Appeals was “constrained to reverse the trial court’s judgment on damages,” even though the judge had engaged in a “diligen[t] and thoughtful process” when conducting the damages hearing. *Id.* at ¶ 20, 89 N.E.2d at 91.

Echoing the Idaho Constitution, Rule 38(a) states “[t]he right of trial by jury as declared by the Constitution or as provided by a statute of the state of Idaho is preserved to the parties inviolate.” Rule 38(d) further states “[a] proper demand may be withdrawn only if the parties consent.” Given Plaintiffs have not withdrawn their jury demand, their right to a jury on the issue of damages is preserved. *See Zero Down Supply Chain Sols., Inc. v. Glob. Transp. Sols., LLC*, 282 F.R.D. 604, 606 (D. Utah 2012) (construing similar language in F.R.C.P. 38 and holding that jury was required in post-default damages proceeding because proper jury demand in complaint had not been withdrawn). To require a bench hearing on default damages would violate Rule 38(d)’s preservation of the jury right. *See id.* And such a ruling would be inequitable because it

would permit the defaulting party to unilaterally abrogate the other party's constitutional jury right.

Rule 39(a) further supports Plaintiffs' right to a jury, stating:

When a jury trial has been demanded under Rule 38, the action must be designated on the register of actions as a jury action. **The trial on all issues so demanded must be by jury**, unless:

(1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court on motion or on its own finds that on some or all of those issues there is no right to a jury trial.

(Emphasis added). The preservation of the jury right is mandatory. *See id.*

Here, Plaintiffs have properly demanded a jury. *See* Fourth Amended Complaint at 1, 40. There is no dispute that Plaintiffs would have been entitled to a jury had the Bundy Defendants not defaulted. As there is no Idaho authority establishing that the right to a jury on damages is lost owing to a defendant's default, the exception in Rule 39(a)(2) does not apply and "trial on all issues so demanded [by Plaintiffs] must be by jury."

3. Even if the Court Somehow Concludes Plaintiffs' Right to a Jury is Not Mandatory, the Court Should Refer Damages to a Jury.

Even if the Court were to determine that Plaintiffs' right to a jury somehow did not apply here, the Court should empanel a jury in this case.

Even if the right to a jury does not survive the entry of default in Idaho, the Court has discretion to empanel a jury to decide damages, and there are good reasons why the Court should do so under the circumstances. *See, e.g., Hathaway v. Idaho Pac. Corp.*, No. 4:15-cv-00086-DCN, 2020 U.S. Dist. LEXIS 97965, at *56 (D. Idaho June 2, 2020) ("A jury shall decide at a later time what damages Hathaway is owed.") (citation omitted); *Henry v. Sneiders*, 490 F.2d

315, 318 (9th Cir. 1974) ("Fed. R. Civ. P. 55(b)(2) authorizes a district court to hold an
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evidentiary hearing following a default judgment to determine damages”); Wright & Miller, 10A Fed. Prac. & Proc. Civ. § 2688 (The “court may order a jury trial as to damages in a default situation if it seems to be the best means of assessing damages”); *Abernathy v. Church of God*, No. 4:11-CV-2761-VEH, 2013 U.S. Dist. LEXIS 72433, at *4 (N.D. Ala. May 22, 2013) (“if the plaintiff has demanded a jury trial, this court has concluded, consistent with Rule 38 of the Federal Rules of Civil Procedure, that the better practice is to empanel a jury for determining damages”) (citations omitted).

In *Armeni v. Transunion LLC, Inc.*, the court outlined several reasons why it “is the better practice” to empanel a jury on damages after a plaintiff obtains default. No. 3:15-CV-00066, 2016 U.S. Dist. LEXIS 166399, at *6 (W.D. Va. Dec. 2, 2016) (quoting *Barber v. Turberville*, 94 U.S. App. D.C. 335, 218 F.2d 34, 37 (1954)). Many of those reasons are compelling here, including: (1) F.R.C.P. Rule 55—like I.R.C.P 55(d)(2)—empowers “the Court with authority to ‘make referrals’ to determine the amount of damages”; (2) “considerations of fairness counsel in favor of a jury trial” when the plaintiff demands a jury in its complaint because, had the defendant timely defended the case, the plaintiff would have been entitled to one under the Constitution; (3) Plaintiffs are seeking damages “in the form of emotional, mental, and physical distress,” which are types of damages that “are particularly within the province of a jury”; and (4) the Bundy Defendants would likely not suffer prejudice because the case would have been triable to a jury had they timely defended. *See Armeni*, 2016 U.S. Dist. LEXIS 166399, at *6-9. Accordingly, a jury is appropriate on the facts presented.

B. PLAINTIFFS SHOULD BE ALLOWED TO PROCEED PROMPTLY TO A FINAL DETERMINATION OF DAMAGES

Rule 42 permits the Court to order separate trials. *See* I.R.C.P. 42(b) (“For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any right to a jury trial.”); *Silverstein v. Carlson*, 118 Idaho 456, 461, 797 P.2d 856, 861 (1990) (Whether to grant a motion for separate trial under Rule 42(b) is entrusted to the district court’s discretion).

“[S]ometimes a single trial covering all aspects of the case will be neither desirable nor feasible.” *Heaney v. Bd. of Trs.*, 98 Idaho 900, 903, 575 P.2d 498, 501 (1978). For instance, “certain matters may be ripe for trial while consideration of others would be premature,” and separating the issues would “serve the ends of justice.” *Id.*; *see also Bank of Idaho v. Colley*, 103 Idaho 320, 322-23, 647 P.2d 776, 778-79 (Ct. App. 1982) (affirming district court’s decision to order a separate trial for one defendant, when other defendants had not been served). Or separate trials are warranted to try different aspects of damages. *See Schaefer v. Ready*, 134 Idaho 378, 379, 3 P.3d 56, 57 (Ct. App. 2000) (noting that court had ordered separate trial on punitive damages pursuant to I.R.C.P. 42(b), to take place before the same jury immediately after the compensatory damages trial).

Idaho court regularly allows a default judgment and determination be made against defaulting defendants while non-defaulting defendants continue the litigation. *See Wilson v. Bivins*, 113 Idaho 865, 866, 749 P.2d 4, 5 (Ct. App. 1988)(addressing a default judgment, entered as to one but not all of the defendants in a case).

Here, default judgment against the Bundy Defendants may be entered, and the issues of compensatory and punitive damages are ripe for adjudication. The claims against Rodriguez are not ripe because Rodriguez continues to selectively participate in the lawsuit, while withholding basic discovery. Further, while Plaintiffs are diligently pursuing their claims against Rodriguez, his defiance of the Court and blocking of discovery could well delay resolution of the claims against him until after the scheduled trial date.

There is also some urgency. The damages owed by the Bundy Defendants must be decided soon because Bundy is attempting to hide his assets in an effort to frustrate collection of a judgment. *See Stidham Decl. 5/9/23 at ¶¶ 2-13*. Time is of the essence. A separate trial for the issues of compensatory and punitive damages against the Bundy Defendants is warranted here and within this Court's Rule 42 discretion. *See Heaney*, 98 Idaho at 903, 575 P.2d at 501 (explaining that separate trials are appropriate when certain matters are ripe for trial while others are not); *Bank of Idaho*, 103 Idaho at 322-23, 647 P.2d at 778 (affirming separate trial for one defendant when claims against other defendants were not ripe).

C. THE HEARING SHOULD BE HELD SOON AND REFERRAL TO A PLAN B JUDGE OR SENIOR JUDGE WOULD ASSIST WITH EFFICIENCIES.

Plaintiffs understand that this Court has a full docket and that the Defendants' conduct in this case has posed repeated burdens on the case's management. Plaintiffs have had to return to the Court numerous times to compel basic discovery, protect potential witnesses from threats and intimidation from Defendants and their agents, and enforce this Court's orders. In short, Defendants' conduct has caused this case to take a disproportionate amount of the Court's time. With caseload and scheduling concerns in mind, Plaintiffs request that the hearing on the amount of damages owed by the Bundy Defendants be assigned to a Plan B judge. Plaintiffs would like

to close down their claims against the Bundy Defendants as soon as possible because of the ongoing harassment and intimidation by Bundy and his attempts to dissipate assets in order to frustrate any collection of a judgment. The longer Plaintiffs must wait for judgment, the more the Bundy Defendants' conduct prejudices them.

IV. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court enter the Proposed Order which provides for an expedited hearing on damages against the Bundy Defendants, for a jury, and for the hearing on damages against the Bundy Defendants to be assigned to a Plan B or Senior judge.

DATED: May 9, 2023,

HOLLAND & HART LLP

By: /s/ Erik F. Stidham

Erik F. Stidham

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 10th 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

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- Hand Delivered
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c/o Ammon Bundy
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