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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 and an unincorporated
association,

Defendants.

Case No. CV01-22-06789

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' AMENDED MOTION
FOR SANCTIONS AGAINST
DEFENDANTS AMMON BUNDY,
AMMON BUNDY FOR GOVERNOR,
DIEGO RODRIGUEZ, FREEDOM MAN
PRESS, FREEDOM MAN PAC, AND
PEOPLE'S RIGHTS NETWORK FOR
ONGOING REFUSAL TO COMPLY
WITH COURT ORDERS AND
DISCOVERY OBLIGATIONS**

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' AMENDED MOTION FOR
SANCTIONS AGAINST DEFENDANTS AMMON BUNDY, AMMON BUNDY
FOR GOVERNOR, DIEGO RODRIGUEZ, FREEDOM MAN PRESS, FREEDOM
MAN PAC, AND PEOPLE'S RIGHTS NETWORK FOR ONGOING REFUSAL
TO COMPLY WITH COURT ORDERS AND DISCOVERY OBLIGATIONS - 1**

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 ("St. Luke's Parties"), by and through their attorneys of record, Holland & Hart LLP, hereby submit this Memorandum in Support of Plaintiffs' Motion for Sanctions Against Defendants Ammon Bundy ("Bundy"), Ammon Bundy for Governor ("Bundy Campaign"), Diego Rodriguez ("Rodriguez"), Freedom Man Press ("FM Press"), Freedom Man PAC ("FM PAC"), and People's Rights Network ("PRN") for Ongoing Refusal to Comply with Court Orders and Discovery Obligations ("Motion").

I. INTRODUCTION

Bundy, Bundy Campaign, FM Press, FM PAC, and PRN (collectively "Defaulted Defendants") and Rodriguez have repeatedly defied Court Orders and refused to comply with discovery. The St. Luke's Parties have filed numerous discovery motions compelling responses and deposition attendance. Repeatedly the Court has issued orders sanctioning the Defaulted Defendants and Rodriguez and compelling their compliance with discovery obligations. With one exception, the financial sanctions have been ignored and discovery obligations uniformly ignored.

In refusing to obey Court Orders, produce documents, respond to written discovery, and appear for depositions, Defaulted Defendants and Rodriguez seek to frustrate the St. Luke's Parties' ability to prove their case, establish damages, and present evidence of malicious conduct in support of punitive damages. Idaho Rules of Civil Procedure Rule 37 and related caselaw exist to prevent parties from gaining an advantage by disobeying Court Orders and violating discovery obligations. The law does not reward such wrongful conduct.

To mitigate the negative consequences of the Defaulted Defendants' and Rodriguez's wrongful conduct, the St. Luke's Parties request an Order providing the following remedies:

MEMORANDUM IN SUPPORT OF PLAINTIFFS' AMENDED MOTION FOR SANCTIONS AGAINST DEFENDANTS AMMON BUNDY, AMMON BUNDY FOR GOVERNOR, DIEGO RODRIGUEZ, FREEDOM MAN PRESS, FREEDOM MAN PAC, AND PEOPLE'S RIGHTS NETWORK FOR ONGOING REFUSAL TO COMPLY WITH COURT ORDERS AND DISCOVERY OBLIGATIONS - 2

- default of Rodriguez;
- designated facts be taken as established for purposes of the action;
- Defaulted Defendants and Rodriguez be prohibited from introducing evidence opposing the St. Luke's Parties' claims;
- Defaulted Defendants and Rodriguez be prohibited from excluding any evidence offered into evidence by the St. Luke's Parties;
- adverse inferences be imposed on the Defaulted Defendants and Rodriguez for their failure to comply with their discovery obligations; and
- Defaulted Defendants and Rodriguez be held in contempt of court for their failure to obey the Court Orders.

II. BACKGROUND

A. Rodriguez Violates Court Orders and Discovery Obligations.

For the last ten months, the St. Luke's Parties have tried to compel Rodriguez to appear for depositions and to respond to discovery. Declaration of Erik F. Stidham in Support of Amended Motion for Sanctions ("Stidham Decl. ISO AM") at ¶¶ 2-4, 12, 14 Exs. H, J. The Court has repeatedly sanctioned Rodriguez and ordered Rodriguez and the entities that he controls to comply with discovery requests. *See, e.g.*, Order Granting Plaintiffs' Motion for Sanctions Against Rodriguez for Failure to Comply with Court Orders filed April 25, 2023. He has repeatedly ignored those sanctions. *Id.* The Court has imposed lesser sanctions than default. *Id.* at 10-11. But the lesser sanctions have had no effect on Rodriguez; he continues to flout all Court Orders and thwart discovery. *See* Motion for Sanctions as to Diego Rodriguez, Freedom Man Press, Freedom Man PAC for Failure to Appear at Properly Noticed Depositions filed May 26, 2023.

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Rodriguez continues to violate the Court's Protective Order. See, e.g., Memorandum in Support of Motion for Contempt Against Diego Rodriguez filed May 2, 2023. Rodriguez has filed or attempted to file frivolous motions to delay and harass, including a purported Petition for Removal on May 22, 2023. See Stidham Decl. ISO AM at ¶ 13, Ex. I. When St. Luke's Parties' counsel contacts Rodriguez, he either abuses and obstructs or he simply refuses to respond. *Id.* All evidence indicates that Rodriguez has no intention of appearing for trial, paying his existing sanctions, or stopping his ongoing efforts to defame. See <https://www.freedomman.org/2023/facts-about-ammons-contempt-of-court-charge/> (stating St. Luke's Parties' counsel "is a pedophile").

B. Defaulted Defendants Violate Court Orders and Discovery Obligations.

Bundy is a conflict entrepreneur. As alleged in the St. Luke's Parties' Fourth Amended Complaint, Bundy and the other Defendants engaged in a grift, using slick marketing tactics to manufacture a false conspiracy and smear campaign (1) to enhance their political reputations and personal brands, (2) to grow membership in the PRN, (3) to drive traffic to Defendants' websites, (4) to benefit themselves financially through contributions, donations, and fees paid to the Bundy Campaign, FM PAC, PRN, Bundy's shell corporations (Dono Custos, Inc. and Abish-husbandi, Inc.), Rodriguez's entities (Freedom Tabernacle Inc., Power Marketing Agency, LLC and Power Marketing Consultants), and a fund benefitting Rodriguez's family. Fourth Amended Complaint and Demand for Jury Trial at 4-6.

St. Luke's Parties served extensive discovery requests and noticed depositions, seeking among other things, evidence relating to communications, the financial structure, and the coordinated manipulation of Bundy's followers. See Stidham Decl. ISO AM at ¶¶ 4-14. Exs. A-H, J. Defaulted Defendants have never responded, even though the Court has repeatedly ordered

compliance. *See, e.g.*, Order Compelling Ammon Bundy, Ammon Bundy for Governor, and People's Rights Network to Respond to Discovery filed April 24, 2023.

Bundy and the other Defaulted Defendants continue to defy all Court Orders. Thwarting his arraignment on contempt, Bundy summoned his followers, many armed, to his home to deter the Gem County Sherriff. *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 26, 2023). While defying the Court's Orders and keeping the Sheriff at bay with armed followers on his property, Bundy is spending his time creating slick commercials (full of flags, sunsets, and horses) to get more members for PRN and, in turn, more donations. *See* <https://twitter.com/socialistlyakwd/status/1662142486029144064> (satirical analysis of Bundy's new commercial for PRN using his defiance of this Court's warrant as a sales tool) (last visited May 26, 2023).

C. St. Luke's Parties Have Been Prejudiced.

Defaulted Defendants and Rodriguez have gained an advantage by defying the Court. Through their wrongdoing, Bundy, PRN, Rodriguez and the other Defendants have concealed (and most likely destroyed) the evidence sought by St. Luke's Parties. Among other things, Defaulted Defendants and Rodriguez concealed all communications, financial information, coordinating materials relating to interactions between the Defendants. All information regarding net assets that is needed to determine punitive damages. The St. Luke's Parties have been deprived of evidence that is essential to presenting a compelling case, especially as it relates to punitive damages.

III. ARGUMENT

Discovery sanctions are “intended to punish misconduct and deter others involved in litigation to prevent abuse in connection with discovery[.]” *Devault v. Steven L. Herndon, P.A.*, 107 Idaho 1, 2, 684 P.2d 978, 979 (1984) (citing *Nat’l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639 (1976)). After all, the purpose of discovery is to “facilitate fair and expedient pretrial fact gathering” and to “prevent surprise at trial.” *Westby v. Schaefer*, 157 Idaho 616, 623, 338 P.3d 1220, 1227 (2014). “It follows, therefore, that discovery rules are not intended to encourage or reward those whose conduct is inconsistent with that purpose.” *Id.* Further, the law imposes sanctions to mitigate the disadvantage caused when defendants engage in failing to appear, ignoring discovery obligations, and violating Court Orders. *See* I.R.C.P. Rule 37(b). At least three of types of sanctions are appropriate here: default, exclusion of evidence, and adverse inferences.

A. Rule 37 Provides for A Variety of Sanctions, Including Default.

Idaho Rule of Civil Procedure 37 provides remedies when a party fails to cooperate in discovery—up to and including default judgment against a disobedient party—where, as here, a party violates the Court’s discovery order. Idaho Rule of Civil Procedure 37(b) states:

If a party or a party’s officer, director, or managing agent, or a witness designated under Rule 30(b)(6) or 31(a)(4), fails to obey an order to provide or permit discovery, including an order under Rule 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:

(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.

Id.

“The imposition of sanctions under [I.R.C.P. 37] is committed to the discretion of the trial court, and that ruling will not be overturned on appeal absent a manifest abuse of discretion.” *Ashby v. W. Council, Lumber Prod. & Indus. Workers*, 117 Idaho 684, 686-87, 791 P.2d 434, 436-37 (1990).

B. Rodriguez Should Be Defaulted.

When issuing terminating sanctions, a court must find a clear record of delay and ineffective lesser sanctions, “bolstered by the presence of at least one ‘aggravating’ factor, including: (1) delay resulting from intentional conduct, (2) delay caused by the [defendant] personally, or (3) delay causing prejudice to the [opposing party]. The consideration of these factors must appear in the record in order to facilitate appellate review.” *Ashby v. W. Council, Lumber Prod. & Indus. Workers*, 117 Idaho 684, 686-87, 791 P.2d 434, 436-37 (1990); *see also Nollenberger v. Nollenberger*, 122 Idaho 186, 190, 832 P.2d 757, 761

(1992) (“Where failure to comply with a discovery order is ‘intentional’ and causes prejudice, sanctions against the non-compliant party are warranted.”).

For instance, the Idaho Supreme Court held that default judgment was appropriate under Idaho Rule of Civil Procedure 37(b) when a pro se defendant (just like Rodriguez here) violated several discovery orders and failed to show up for his deposition. *Minor Miracle Prods., LLC v. Starkey*, 152 Idaho 333, 335 n.1, 338, 271 P.3d 1189, 1191 n.1, 1194 (2012) (affirming district court’s grant of judgment).

Default judgment against Rodriguez is appropriate because the delay was caused by his personal, intentional unwillingness to meaningfully engage in discovery and has prejudiced Plaintiffs. Moreover, all attempts at lesser sanctions has proven ineffective. Default is needed here to mitigate the prejudice to the St. Luke’s Parties and to mitigate the ongoing wasting of money and time associated with repeatedly bringing Rodriguez’s wrongdoing before the Court.

C. The Spoliation Doctrine Should be Applied to Impose Adverse Inferences on the Default Defendants and Rodriguez.

The Idaho Supreme Court has held:

As a general matter, "spoliation" refers to "the intentional destruction, mutilation, alteration, or concealment of evidence." Black's Law Dictionary (11th ed. 2019). As an evidentiary matter, the spoliation doctrine is "a form of admission by conduct." *Courtney v. Big O Tires, Inc.*, 139 Idaho 821, 824, 87 P.3d 930, 933 (2003). Succinctly put, [t]he evidentiary doctrine of spoliation recognizes it is unlikely that a party will destroy favorable evidence. Thus, the doctrine of spoliation provides that when a party with a duty to preserve evidence intentionally destroys it, an inference arises that the destroyed evidence was unfavorable to that party. Spoliation is a rule of evidence applicable at the discretion of the trial court.

State v. Ish, 166 Idaho 492, 514, 461 P.3d 774, 796 (2020) (emphasis added).

Bundy, Rodriguez, PRN, and the other Defendants have concealed evidence for over a year; the adverse impact to St. Luke's Parties is no different than if the evidence had been intentionally destroyed.¹ When the Spoliation Doctrine applies, as is the case here, "an inference arises that the destroyed evidence was unfavorable to that party." *See Courtney v. Big O Tires, Inc.*, 139 Idaho 821, 824, 87 P.3d 930, 933 (2003).

Given the wholesale concealment of evidence, the adverse inferences need to be applied broadly to the categories of evidence sought in written discovery. See Stidham Dec. ISO AM at ¶¶ 4-14, Ex. A-H. (attaching discovery requests). Further, the trier of fact should be instructed to make an adverse inference regarding Bundy's and Rodriguez's refusal to be deposed and on the topics identified in the Notices for Rule 30(b)(6) depositions of Bundy for Governor, PRN, Freedom Man LLC, and Freedom Man PAC.

Prior to the Pretrial Conference, St. Luke's Parties will provide the Court with proposed adverse inferences based on the discovery sought against Defendants.

D. Defendants Should Not Be Permitted to Introduce Any Evidence That Was Not Disclosed by Defendants in Discovery.

The Court may sanction a party who violates a discovery order by "prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence[.]" I.R.C.P. 37(b)(2)(A)(ii). Prohibiting a party from introducing evidence he did not disclose in discovery is a proper sanction when nondisclosure was intentional.

¹ In fact, given the brazen disrespect to the Court and the legal system displayed by Bundy and his followers, in all likelihood, the evidence has now been destroyed.

See Kugler v. Drown, 119 Idaho 687, 690-91, 809 P.2d 1166, 1169-70 (Ct. App. 1991) (affirming sanctions and reasoning that precluding introduction of evidence not disclosed in discovery was an appropriate initial sanction when party withheld material evidence requested in discovery); *State ex rel. Dep't of Labor & Indus. Servs. v. Hill*, 118 Idaho 278, (Ct. App. 1990) (affirming sanctions because litigant's repeated failure to respond to interrogatories, coupled with the litigant's refusal to accept that the court had jurisdiction over her demonstrated that she did not intend to comply with discovery orders).

All Defendants should be precluded from introducing evidence that they did not disclose in discovery. Like the parties in *Kugler* and *Hill*, they have long withheld material evidence, indicating intent and a motive to delay. It would be fundamentally unfair if they were allowed to withhold relevant information despite proper discovery requests and multiple court orders requiring them to disclose information within their custody and control, and then turn around and seek to introduce information for the first time as evidence at hearing or trial.

Here, Defendants have done nothing but obstruct and harass. If the Court were to permit them to introduce evidence at trial that they have not disclosed in discovery, the Defendants would be rewarded for their violations of court rules and orders. *See Westby*, 157 Idaho at 623, 338 P.3d at 1227.

Moreover, the Defendants should not be permitted to exclude or challenge the admission of the St. Luke's Parties' evidence. *See id.* (discovery rules should not be applied to reward those who violate them). The St. Luke's Parties have been wrongfully prevented from engaging in even basic discovery into material issues relating to their claims and the amount of damages to which they are entitled. They have diligently sought discovery from third parties and from public sources, but such

evidence is no true substitute for documents authenticated by Defendants through production or testimony under oath in deposition. St. Luke's Parties have been deprived of party discovery, the mechanism by which the rules of civil procedure provide a party aggrieved to obtain the information needed to prove her causes of action—or her damages. Here, even if all Defendants are defaulted, the St. Luke's Parties will still need to put on evidence of their damages, including punitive damages. Defendants should not be permitted to impede the introduction of that evidence at the hearing or trial

E. St. Luke's Parties Should Be Awarded Fees and Costs in Bringing This Motion.

Pursuant to Rule 37(b)(2)(C), (c)(1)(A), and (f), Plaintiffs further ask the Court to award them the fees and costs incurred in bringing this motion. Rodriguez's pattern of behavior evidences intentional frustration of the legal process. He has repeatedly violated this Court's orders. He cannot demonstrate excusable neglect. Fees and costs are warranted here.

IV. CONCLUSION

For all the foregoing reasons, Plaintiffs request that this Court grant their Motion for Sanctions Against Rodriguez.

DATED: May 26, 2023.

HOLLAND & HART LLP

By: /s/Erik F. Stidham

Erik F. Stidham

Jennifer M. Jensen

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 27th 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:

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