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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' MOTIONS IN LIMINE**

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" or "St. Luke's Parties"), by and through their attorneys of record, Holland & Hart LLP, hereby submit this Memorandum in support of their motions for orders excluding (1) evidence introduced by Defendants, given their refusal to participate in discovery, and (2) evidence contradicting allegations in the Fourth Amended Complaint and requests for admission deemed admitted.

I. INTRODUCTION

Ammon Bundy, Ammon Bundy for Governor, Freedom Man Press LLC, Freedom Man PAC, and People's Rights Network (collectively "Defaulted Defendants") and Diego Rodriguez ("Rodriguez") have repeatedly defied Court Orders and refused to comply with discovery. Defaulted Defendants' and Rodriguez's refusals to comply is the subject of St. Luke's Parties' Amended Motion for Sanctions Against Defendants for Ongoing Refusal to Comply with Court Orders and Discovery Obligations, filed on May 26, 2023. For the sake of efficiency, St. Luke's Parties incorporate the background and arguments presented in that motion and the accompanying Declaration of Erik F. Stidham in Support.

II. LEGAL STANDARD

Motions in limine seek an advance ruling on the admissibility of evidence. *Warren v. Sharp*, 139 Idaho 599, 605, 83 P.3d 773, 779 (2003), *reversed in part on other grounds in Blizzard v. Lundeby*, 156 Idaho 204, 208, 322 P.3d 286, 290 (2014). Such motions are recognized by Idaho courts as an important tool in litigation and trial preparation because they enable a trial court to rule on evidence without first exposing it to the jury, and thereby avoid juror bias generated by objections to evidence during trial. *Davidson v. Reco Corp.*, 112 Idaho 560, 563, 733 P.2d 781, 784 (Ct. App. 1986), *partially overruled on other grounds*, 114 Idaho

107, 753 P.2d 1253 (1987). A trial court has broad discretion in determining the admissibility of evidence and ruling on motions in limine. *Appel v. Page*, 135 Idaho 133, 135, 15 P.3d 1141, 1143 (2000); *Gunter v. Murphy's Lounge, L.L.C.*, 141 Idaho 16, 25, 105 P.3d 676, 685 (2005).

The admissibility of evidence is governed by the Idaho Rules of Evidence, specifically, Rule 402 and 403. Rule 402 provides that “[e]vidence which is not relevant is not admissible.” Idaho R. Evid. 402. And Rule 403 gives the Court discretion to exclude evidence “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” *Id.* at 403.

III. ARGUMENT

A. MOTION IN LIMINE EXCLUDING EVIDENCE INTRODUCED BY DEFENDANTS GIVEN THEIR REFUSAL TO PARTICIPATE IN DISCOVERY

This Court should exercise its discretion and exclude from trial any evidence introduced by Defaulted Defendants or Rodriguez. Without the opportunity to obtain meaningful discovery, St. Luke’s Parties have been deprived evidence essential to presenting a robust case on each of their claims. If Defaulted Defendants or Rodriguez are permitted to introduce new evidence that St. Luke’s parties have not had the benefit of discovering, considering, and having their experts consider and opine upon, substantial prejudice will result to St. Luke’s Parties. As such, under Rule 403, the probative value of any evidence offered by Defaulted Defendants or Rodriguez would be substantially outweighed by the danger of unfair prejudice.

Furthermore, “failure to meet the requirements of [Idaho Rule of Civil Procedure] 26 typically results in exclusion of the proffered evidence.” *Clark v. Raty*, 137 Idaho 343, 347, 48 P.3d 672, 676; (Ct. App. 2002) (internal quotations omitted). The Court also has “the discretion to preclude the introduction of evidence not produced in the face of a court order [under Rule 37]

for production. *Ernst v. Hemenway & Moser Co.*, 120 Idaho 941, 949, 821 P.2d 996, 1004 (Ct. App. 1991). Here, Defaulted Defendants have produced no discovery, and Rodriguez, no meaningful discovery. As such, any evidence not produced as required by the discovery obligations set forth in Rule 26, or not produced in the face of this Court’s multiple orders compelling discovery, should not be admitted at trial.

B. MOTION IN LIMINE EXCLUDING EVIDENCE CONTRADICTING ALLEGATIONS IN COMPLAINT AND REQUESTS FOR ADMISSIONS DEEMED ADMITTED

1. The Court should exclude evidence contradicting allegations in the Fourth Amended Complaint.

This Court has entered orders of default against all Defendants except Diego Rodriguez. “On 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); *see also Cement Masons’-Employers’ Tr. v. Davis*, 107 Idaho 1131, 1132, 695 P.2d 1270, 1271 (Ct. App. 1985) (stating that it is “long-established precept that on default all well pleaded factual allegations in the complaint are deemed admitted”). Thus, Defaulted Defendants must be deemed to have admitted the allegations in Plaintiffs’ Fourth Amended Complaint, and, after refusing to participate in this litigation, they should not now be allowed to introduce evidence contradicting those allegations.

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; 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; Memorandum in Support of Motion for Sanctions as to Diego Rodriguez, Power Marketing

Consultants, LLC, Power Marketing Agency, LLC, and Freedom Tabernacle, Incorporated for Failure to Appear at Properly Noticed Depositions filed on May 26, 2023. At every turn, Defendant Rodriguez has refused to cooperate in this litigation. As Plaintiffs requested in their Memorandum in Support of Motion for Sanctions as to Diego Rodriguez, Power Marketing Consultants, LLC, Power Marketing Agency, LLC, and Freedom Tabernacle, Incorporated for Failure to Appear at Properly Noticed Depositions, filed on May 26, 2023, the facts in Plaintiffs' Fourth Amended Complaint should be established as true. *See* Idaho R. Civ. P 37(b). After more than a year of actively avoiding this litigation, Defendant Rodriguez should not be able to choose now to introduce evidence contrary to Plaintiffs' allegations.

2. The Court should exclude evidence that contradicts information in requests for admission deemed admitted for failure to answer.

Under Idaho Rule of Civil Procedure 36(a)(4), a matter stated in a request for admission “is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney.” Here, St. Luke’s Parties served requests for admission on Ammon Bundy, Ammon Bundy for Governor, People’s Rights Network, Freedom Man PAC, and Diego Rodriguez. Each party failed entirely to respond to Plaintiffs’ requests for admission. They should not be permitted now to controvert facts that have been conclusively admitted under Rule 36. *See Deloge v. Cortez*, 131 Idaho 201, 204, 953 P.2d 641, 644 (Ct. App. 1998). “Evidence inconsistent with a Rule 36 admission is properly excluded.” *Id.* (quoting 999 v. C.I.T. Corp., 776 F.2d 866, 869–70 (9th Cir. 1985)).

As explained above, Defendants consistently and continually have refused to participate in discovery in this litigation. They have done so in bad faith and in violation of multiple orders by this Court. Accordingly, Plaintiffs respectfully request that Defendants be barred from

seeking to introduce evidence at this late stage that contradicts information in the requests for admission that must be deemed admitted.

IV. CONCLUSION

Plaintiffs respectfully request the Court grant each of their motions in limine and exclude evidence introduced by Defendants, given their refusal to participate in discovery. Plaintiffs also ask the Court to exclude all evidence contradicting allegations in the Fourth Amended Complaint and requests for admission deemed admitted due to Defendants' failure to answer.

DATED: June 6, 2023.

HOLLAND & HART LLP

By: /s/Erik F. Stidham

Erik F. Stidham

Jennifer M. Jensen

Zachery J. McCraney

Anne E. Henderson

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2023, I caused to be filed via iCourt and served 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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/s/ Erik F. Stidham

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