

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 AWARDING FEES AGAINST
RODRIGUEZ FOR APRIL 25, 2023
ORDER FOR SANCTIONS

On May 2, 2023, the Plaintiffs filed a Motion for Award of Attorney Fees Pursuant to Court's April 25, 2023 Order Granting Plaintiffs' Motion for Sanctions against Rodriguez for Failure to Comply with Court Orders,¹ with supporting Memorandum² and Declaration from Erik Stidham.³ Defendant Rodriguez did not timely file a motion to disallow. Plaintiffs request \$5,350.65 in attorney's fees.

The Court finds the following background is necessary to address the reasonableness of Plaintiffs' pending fees request against Rodriguez.

¹ Plaintiffs' Motion for Award of Attorney Fees Pursuant to Court's April 25, 2023 Order Granting Plaintiffs' Motion for Sanctions against Rodriguez for Failure to Comply with Court Orders ("Pending Fee Request"), filed May 2, 2023.

² Memorandum in Support of Plaintiffs' Motion for Award of Attorney Fees Pursuant to Court's April 25, 2023 Order Granting Plaintiffs' Motion for Sanctions against Rodriguez for Failure to Comply with Court Orders ("Pending Memo"), filed May 2, 2023.

³ Declaration of Erik F. Stidham in Support of Plaintiffs' Motion for Award of Attorney Fees Pursuant to Court's April 25, 2023 Order Granting Plaintiffs' Motion for Sanctions against Rodriguez for Failure to Comply with Court Orders ("Stidham Dec"), filed May 2, 2023.



BACKGROUND

Diego Rodriguez is the only defendant in this case that answered and has not been defaulted. Still, he has not been compliant with his discovery obligations in this case.

Overall, the Court has previously awarded the fees and costs totaling \$23,316.51 to be paid to Plaintiffs by Diego Rodriguez resulting from three previous orders:

- (1) \$5,408.10 by written decision entered on December 13, 2022 related to the failure to respond to expedited discovery requests;
- (2) \$5,449.95 by written decision entered March 22, 2023 for failure to respond to written discovery; and
- (3) \$12,458.46 by written decision signed March 22, 2023⁴ for failure to attend deposition.

For all previous awards of fees in this action the Plaintiffs have submitted the following rates for hourly billing, which the Court has determined reasonable:⁵

- Stidham at \$490.50
- First-Year Attorney at \$243.00
- Second-Year Attorney at \$243.00
- Four-year Attorney at \$301.50
- Five-Year Attorney at \$364.50
- Eight-Year Attorney at \$369.00
- Fourteen-Year Attorney at \$364.50

Further, the Court finds the following motions and decisions relevant to this Court's determination.

On March 7, 2023, Plaintiffs filed a Motion for Sanctions against Defendant Diego Rodriguez for Failure to Comply With Court Orders,⁶ which sought sanctions pursuant to Idaho Rule of Civil Procedure 37 for (1) the failure to timely pay the fees awarded by the Court in the December 13, 2022 Order⁷ and (2) failure to comply with the Court's

⁴ Included file with a listed filing date of February 22, 2023.

⁵ See Stidham Declarations dated Sep. 28, 2022; Oct. 19, 2022; and Feb. 22, 2023.

⁶ Plaintiffs' Motion for Sanctions Against Defendant Diego Rodriguez for Failure to Comply with Court Orders, filed Mar. 7, 2023.

⁷ Order Awarding Fees, filed Dec. 13, 2022. The Order reads in its entirety:



February 8, 2023 Order Compelling discovery (“Discovery Order”)⁸ and corresponding Order Compelling Defendant Rodriguez to Respond to Discovery⁹ because (A) he did not provide viable dates or location for his ordered deposition and (B) failed to provide the written discovery responses. The Court’s February 8, 2023 orders required Rodriguez to respond to the fourteen listed specific written discovery requests by February 22, 2023, ordered Rodriguez to comply with Court’s listed requirements and provide dates and locations for the taking of his deposition, and found the Plaintiffs were entitled to reasonable fees and costs as the prevailing party pursuant to Idaho Rule of Civil Procedure 37(a)(5) for filing and pursuing the Motion to Compel, and fees and costs that the Plaintiffs incurred as a sanction under Idaho Rule of Civil Procedure 37(d)(1)(A)(i) for Diego Rodriguez’s failure to appear at the deposition that was scheduled and noticed.¹⁰ The Court issued its written decision on April 25, 2023 (“4/25/23 Order”).¹¹

The 4/25/23 Order, appointed a Discovery Referee, ordered Defendant Diego Rodriguez to respond to the written discovery requests as previously ordered, ordered Rodriguez to attend a deposition in Boise by May 24, 2023, and denied the Plaintiffs’ request for the Court to enter default against Rodriguez based on the proceedings at that time. The Court also found the Plaintiffs were entitled to costs for filing the March 7,

This matter came before the Court on Plaintiffs’ Motion for Award of Attorneys’ Fees Against Diego Rodriguez Pursuant to Court’s September 8, 2022, Orders on Motions for Sanctions (“Motion”), requesting that the Court award Plaintiffs fees and costs incurred from Defendant Diego Rodriguez’s (“Defendant Rodriguez”) deposition to obtain answers to expedited discovery requests. On November 28, 2022, the Court granted Plaintiffs’ Motion.

THEREFORE, IT IS HEREBY ORDERED that Defendant Rodriguez make payment in the amount of \$5,408.10 to Plaintiffs no later than thirty (30) days from the date of this Order.

⁸ Memorandum Decision on Motion to Compel Diego Rodriguez to Respond to Discovery, filed Feb. 8, 2023.

⁹ Order Compelling Defendant Rodriguez to Respond to Discovery, filed Feb. 8, 2023.

¹⁰ Although not relevant to this decision, the Court notes that it provided notice in its written Order that, “Failure to comply with this Order can result in sanctions listed in Idaho Civil Rule of Procedure 37(b) which may include:...(vi) rendering a default judgment against the disobedient party...”

¹¹ Order Granting Motion for Sanctions Against Rodriguez for Failure to Comply with Court Orders (“4/25/23 Order”), filed Apr. 25, 2023.



2023 motion. The Plaintiffs have now filed this fees request as ordered in the April 25, 2023 Order.

LEGAL STANDARD AND ANALYSIS

The Court determined in the April 25, 2023 Order that fees against Diego Rodriguez are appropriate under Rule 37.¹² Therefore, the only remaining issue is whether this fees request is reasonable.

Subsection (3) of the Rule 54(e) sets for the factors the Court must consider in awarding fees, including the time and labor required; the novelty and difficulty of the questions; the skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law; the prevailing charges for like work; whether the fee is fixed or contingent; the time limitations imposed by the client or

¹² Idaho Rule of Civil Procedure 37 provides in relevant part:

(a) Motion for an Order Compelling Disclosure or Discovery.

...

(5) Payment of Expenses; Protective Orders.

(A) If the Motion Is Granted (or Discovery Is Provided After Filing). If the motion is granted, or if the requested discovery is provided after the motion was filed, the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

...

(b) Failure to Comply with a Court Order.

(b)(2)(C) Payment of Expenses. Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to 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.

...

(f) General Sanctions; Catch-All. In addition to the sanctions provided for in this rule for violation of discovery procedures, any court may impose sanctions or conditions, or assess attorney fees, costs or expenses against a party or the attorney advising that party for failure to comply with an order made pursuant to these rules.



the circumstances of the case; the amount involved and the results obtained; the undesirability of the case; the nature and length of the professional relationship with the client; awards in similar cases; the reasonable cost of automated legal research, if the court finds it was reasonably necessary in preparing a party's case; and any other factor which the court deems appropriate in the particular case.

Plaintiffs request \$5,350.65 in attorney fees for 13.7 hours of work caused by the March 7, 2023 Motion for Sanctions against Rodriguez. Overall, the Court's review of the billed line-items shows the amount of time spent on this Motion for Sanctions was reasonable. However, the Court finds the rates billed are unreasonable.

On this fees request and without explanation, the Plaintiffs' counsel increased the hourly billing rate previously awarded as follows:

- Erik Stidham's requested rate has increased from \$490.50 to \$540.00;
- The Fourteen-Year Attorney has increased from \$364.50¹³ to \$396.00; and
- The Second-Year Attorney has increased from \$243.00 to \$315.00.¹⁴

This fees request relates to an ongoing discovery dispute which is more complicated than litigating against defaulted defendants, but still not particularly novel or difficult, and still doesn't amount to complex commercial litigation requiring a high level of skill. Further, the discovery requests have been ongoing against Defendant Diego Rodriguez so this motion was in many ways redundant. Therefore, the Court will reduce the fees requested for each attorney to reflect their previously-billed rates in this case with the exception of the Fourteen-Year Attorney. While the Fourteen-Year Attorney rate is an increase from previous requests, he had previously billed the same as a previously-requested Eight-Year rate. The Court cannot find this new hourly fee for the Fourteen-Year Attorney is unreasonable under the circumstances.

So, the Court reduces the requested fees as follows:

¹³ See Stidham Dec. filed Feb. 22, 2023.

¹⁴ The Court notes the Five-Year Attorney rate requested has actually decreased from \$364.50 to \$346.50 and therefore remains reasonable.



- Stidham requesting 2.8 hours is reduced from \$1,512.00 (at the \$540.00 rate) to \$1373.40 (at the \$490.50 rate). So, the Court **DISALLOWS \$138.60** in requested fees for Stidham.
- The Second-Year Attorney requesting 1.8 hours is reduced from \$567.00 (at the \$315.00 rate) to \$437.40 (at the \$243.00 rate). So, the Court **DISALLOWS \$129.60** in requested fees for the Second-Year Attorney.

The Court finds the already large amounts awarded based solely on discovery are a factor for consideration in this case. While the Court did not reduce the billed hours requested on this motion, the Plaintiffs continue to spend a large number of hours repeatedly seeking the same discovery over and over from a noncompliant party. Still, it is Rodriguez's repeated noncompliance that requires continuing motions to be filed to address his noncompliance.

CONCLUSION

The Court **ORDERS Diego Rodriguez to pay the Plaintiffs \$5,082.45** in attorney's fees.

Defendant Diego Rodriguez must pay the \$5,082.45 awarded in this Order to the Plaintiffs no later than thirty (30) days from the date of this Order.

The Court **DISALLOWS** the remaining \$268.20 of attorney's fees requested in the May 2, 2023 fee request.

Dated: 6/10/2023 10:21:06 PM



Lynn 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

Trent Tripple
Clerk of the Court

Dated: 06/12/2023

By: Janine Korsen
Deputy Clerk

