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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
MOTION FOR RECONSIDERATION
REGARDING RIGHT TO JURY, OR, IN
THE ALTERNATIVE, MOTION
REQUESTING REFERRAL TO JURY
OR USE OF ADVISORY JURY**

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 ("the St. Luke's Parties"), by and through their attorneys of record, Holland & Hart LLP, hereby submit this Memorandum in support of their motion to the Court to reconsider its June 13, 2023, Order Following Pretrial Conference and Order on Plaintiffs' Motion for Jury Trial against Defaulted Defendants.

I. INTRODUCTION

Pursuant to the Idaho Constitution and Idaho Rules of Civil Procedure 38 and 39, the St. Luke's Parties are entitled to a jury to determine the amount of their compensatory and punitive damages. The Court should reconsider the June 13, 2023 Order Following Pretrial Conference and Order on Plaintiffs' Motion for Jury Trial Against Defaulted Defendants ("June 13 Jury Order") and hold that the St. Luke's Parties are entitled to a jury as a matter of right. The St. Luke's Parties properly demanded a jury for their legal claims, and they have never waived this right, which the Idaho Constitution holds inviolate. Default under Rule 55 does not trump this constitutional right, and the language of Rule 55 supports the jury right.

In the alternative, the St. Luke's Parties request that this Court exercise its discretion to refer the amount of damages to a jury. The June 13 Jury Order does not address the St. Luke's Parties' request that the Court exercise its discretion to refer the issue of the amount of damages to a jury. They seek clarification on this point from the Court. A jury would best serve the ends of justice, where, as here, Defendants falsely claim corruption of the judicial system and urge "fighting in the streets" to avoid accountability for the harm they have caused. The St. Luke's Parties believe that the use of the fundamental democratic institution of a jury of Defendants' peers would both provide the accountability they need and support public confidence in the rule of law.

II. BACKGROUND

On May 11, 2022, the St. Luke's Parties¹ filed a Complaint against the Defendants and properly requested a jury trial. *See* 5-11-22 Complaint at 32. Each time the Complaint was amended, the St. Luke's Parties properly demanded trial before a jury. *See* 6-2-22 First Amended Complaint at 32; 2-10-23 Third Amended Complaint at 38; 3-3-23 Fourth Amended Complaint at 40.

On April 24, 2023, the Court entered default against Ammon Bundy, People's Rights Network, and Ammon Bundy for Governor. 4-24-23 Order of Default on Fourth Amended Complaint Against Ammon Bundy, Ammon Bundy for Governor, and People's Rights Network ("Order Defaulting Bundy Parties"). On June 1, the Court defaulted Freedom Man Press and Freedom Man PAC. 6-1-23 Order of Default by Freedom Man Press LLC and Freedom Man PAC ("Order Defaulting Freedom Man Entities"). On June 13, 2023, the Court ordered the default of the remaining Defendant, Diego Rodriguez. Order Striking Answers and Order for Default of Diego Rodriguez dated June 13, 2023 ("Rodriguez Default Order").

On June 13, 2023, the Court also held the St. Luke's Parties were not entitled, as a matter of right, to a jury determination of compensatory and punitive damages. June 13 Jury Order at 7-9. In the June 13 Jury Order, the Court appeared to hold that it had the authority to refer the determination of damages to a jury and held that it had the authority to empanel an advisory jury. *See id.* at 7-9, n.6. The Court, however, made no ruling as to whether it intended to refer determination of damages to a jury or, alternatively, intended to empanel an advisory jury. *See id.*

¹ Tracy Jungman did not join as a Plaintiff until the First Amended Complaint. *Compare* 5-11-22 Complaint, *with* 6-2-22 First Amended Complaint.

On June 22, 2023, this case was reassigned to the present Court. The St. Luke's Parties have an evidentiary hearing set to determine the amount of their damages, beginning July 10, 2023. *See also* 10-11-22 Stipulation for Scheduling and Planning at 4. The St. Luke's Parties are prepared to present evidence of their damages.

They still, however, need clarification on whether this Court will refer the issue of the amount of damages to a jury. The St. Luke's Parties believe the appropriate answer is yes. And in the interest of time as the evidentiary hearing/trial approaches, they intend to submit for the Court's consideration before or at the June 29, 2023 status conference proposed (1) jury questionnaire (to be completed on July 10), (2) special verdict form, (3) voir dire, and (4) parameters of for-cause disqualification.

III. ARGUMENT

A “motion to reconsider any order of the trial court entered before final judgment may be made at any time prior to or within 14 days after the entry of a final judgment.” I.R.C.P. 11.2(b)(1). “The district court ‘must consider any new admissible evidence or authority bearing on the correctness of [the] order.’” *Fisk v. McDonald*, 167 Idaho 870, 892, 477 P.3d 924, 946 (2020). But a “motion for reconsideration need not be supported by any new evidence or authority.” *Westover v. Idaho Ctys. Risk Mgmt. Program*, 164 Idaho 385, 391, 430 P.3d 1284, 1290 (2018) (quoting *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012)).

A. PLAINTIFFS REQUEST RECONSIDERATION OF THE COURT'S JURY ORDER AND HOLD THAT THEY ARE ENTITLED TO A JURY AS A MATTER OF RIGHT.

1. The St. Luke's Parties' Right to a Jury Is Inviolable; They Properly Demanded a Jury and Are Constitutionally Entitled to One.

The Idaho Constitution states that the “right of trial by jury shall remain inviolate.” Idaho Const. Art. I, § 7; *see also State v. Bennion*, 112 Idaho 32, 37, 730 P.2d 952, 957 (1986) (“The

right to a jury trial is a fundamental right, and must be guarded jealously.”). Idaho Rule of Civil Procedure 38(a) echoes and emphasizes the constitutional language, stating, “The 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(b) further states that “[o]n any issue triable of right by a jury, a party may demand a jury trial.”

The amount of damages on legal claims is a triable issue commonly put to a jury. *See Smith v. Angell*, 122 Idaho 25, 30, 830 P.2d 1163, 1168 (1992) (stating that the amount of plaintiff’s damages was “clearly” a “legitimate, triable issue[.]”); *see also Sheets v. Agro-West, Inc.*, 104 Idaho 880, 884, 664 P.2d 787, 791 (Ct. App. 1983) (“The constitutional right of trial by jury has been interpreted to secure that right as it existed at common law when the Idaho Constitution was adopted.”). And Rule 38(d) provides that “[a] proper demand may be withdrawn only if the parties consent.”

This Rule 38(d) principle that a party may not withdraw the demand of another party dovetails with Rule 55(b)’s language stating that the judge may make “referrals” of the amount of damages to a finder of fact. *See I.R.C.P. 55(b)(2)(A)* (“The court may conduct hearings or make referrals when, to enter or effectuate a judgment, it needs to . . . determine the amount of damages[.]”). Accordingly, where legal claims are at issue, the court may refer the issue of the amount of damages to a jury. A defendant’s choice to take default does not withdraw the plaintiff’s demand for a jury.

Here, Plaintiffs demanded a jury trial, including on the issue of damages, and they have not withdrawn that demand. Accordingly, Plaintiffs’ right to be heard by 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.*

Idaho courts have yet to consider the issue of whether trial by a jury on damages in the default context is required when demanded, but other states have analyzed language nearly identical to that in the Idaho Constitution and Rule 38 and concluded that 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) (analyzing nearly identical language and concluding that, even where there are no contested issues, that fact does “not strip [the plaintiff] of [its] distinct right to a jury trial”). The Ohio Court of Appeals, for example, determined that in the context of default judgment, a trial court’s discretion to conduct a hearing is tempered with a party’s right to a jury trial. *See id.* at ¶ 13, 89 N.E.3d at 89. Thus, where, as here, a plaintiff made a timely jury demand “(through her complaint and reasserted through her motion for default judgment),” sought damages of a sum not certain, and did not abandon her demand for a jury trial, the appellate court held that the trial court’s denial of the plaintiff’s request for a jury trial on damages was in error. *Id.* at ¶ 20, 89 N.E.3d at 91. The court stated that it was “constrained to reverse” the trial court’s judgment on damages—despite the latter’s “diligen[t] and thoughtful process” in the damages hearing—because the constitutional right to a trial by jury “is inviolate.” *Id.* at ¶ 20, 89 N.E.3d at 91. Plaintiffs respectfully request that this Court reconsider on similar grounds its initial denial of Plaintiffs’ demand to be heard by a jury on the issue of damages.

Idaho Rule of Civil Procedure 39(a) provides even further support for Plaintiffs’ right to a jury here, 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.*

The Idaho Supreme Court has stated that “the rules of civil procedure [must] be liberally construed to secure just determination of any particular case” and that such requirement “is equally applicable to the provisions” of Rule 39. *R. E. W. Constr. Co. v. Dist. Court*, 88 Idaho 426, 443, 400 P.2d 390, 401 (1965) (considering the issue of waiver of the jury trial right in a civil case where the time to demand a jury as of right had expired). Even in the context of a late demand, the Idaho Supreme Court stated that the “rules [of procedure] are designed to achieve substantial justice” and should be so construed. *Id.*

Here there has never been any even arguable waiver of the St. Luke’s Parties’ jury right, and the Rules should be construed to uphold that right.

2. The Court’s Argument in the Jury Order Does Not Support Its Conclusion That No Jury Is Required Here.

In denying Plaintiffs’ motion for a trial of the damages claims against defaulted Defendants by jury, the Court made two findings: (1) that Article 1, Section 7 of the Idaho Constitution does not mandate that Idaho courts “conduct every evidentiary matter as a jury trial” and that, as such, a jury trial “is not required related to determining liability for damages by defaulted defendants”; and (2) that “a jury trial is not required for defaulted defendants” considering the language of Idaho Rule of Civil Procedure 55. *See Jury Order at 7-8.* The

St. Luke’s Parties have never argued that “every evidentiary matter” requires a jury trial. Rather,

their arguments were and are based on the language of Rule 38 and the principle that a defendant should not be able to deprive a plaintiff of a jury by defaulting. Actions resulting in default should not be rewarded. Moreover, as explained above, the language in Rule 55(b) permitting “referrals” supports the use of a jury to determine the amount of damages.

B. IF THIS COURT DOES NOT AGREE THAT PLAINTIFFS ARE ENTITLED TO A JURY AS A MATTER OF RIGHT, THEY REQUEST CLARIFICATION ON WHETHER THE COURT WILL EXERCISE ITS DISCRETION TO TRY THE AMOUNT OF DAMAGES TO A JURY.

Rule 39 provides that “[i]n an action not triable of right by a jury, the court, on motion or on its own: . . . may try any issue with an advisory jury; or may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right.”

I.R.C.P. 39(c). The Court should “liberally exercise its discretion” to allow a party to try an issue to a jury where the party has so requested. *R. E. W. Constr. Co.*, 88 Idaho at 443, 400 P.2d at 401.

The June 13 Jury Order does not state whether it had decided to exercise its discretion in favor of empaneling a jury or not. *See* June 13 Jury Order at 7-9. The question is left unanswered, although there appears to be some expectation of a jury because the Court expressly permitted revision to the proposed jury instructions that the St. Luke’s Parties filed on June 6, 2023. *Id.* at 10.

Accordingly, the St. Luke’s Parties ask this Court to clarify whether a jury will be empaneled.

1. Juries Typically Decide the Amount of Damages on Legal Claims.

Plaintiffs’ damages claims are situated on legal rights, which are properly considered by the jury. *See e.g., Farmer v. Loofbourrow*, 75 Idaho 88, 90, 267 P.2d 113, 114 (1954) (upholding party’s demand for jury trial despite defense seeking an accounting because the action was for

recovery under contracts and therefore the primary right was legal). And the specific types of damages at issue here are typically tried to juries. *See, e.g., Choice Feed, Inc. v. Montierth* 168 Idaho 124, 147-48, 481 P.3d 78, 101-02 (2021) (“The decision to award punitive damages is a factual question for the jury”); *Brown v. Matthews Mortuary*, 118 Idaho 830, 839, 801 P.2d 37, 46 (1990) (noting that “outrageous conduct is an element of punitive damages and is generally a jury question”); *Armeni v. Transunion LLC, Inc.*, No. 3:15-CV-00066, 2016 U.S. Dist. LEXIS 166399, at *9 (W.D. Va. Dec. 2, 2016) (stating that “actual damages in the form of emotional, mental, and physical distress” are “particularly within the province of a jury”). The individual Plaintiffs seek emotional distress damages. All Plaintiffs seek punitive damages, which serve to punish and deter future like conduct by Defendants and others. Damages here should be considered by a jury.

2. It Would Be Inequitable to Permit Defendants to Evade a Jury by Choosing to Violate Court Orders and Take Default.

It would be inequitable to strip the St. Luke’s Parties of a jury, to which they would be unquestionably entitled if they were proceeding against Defendants who had appeared in the case and properly provided discovery and participated in the legal process. Here, the only reason there is any question of a jury is because Defendants chose to disobey Court orders and ignore proper legal process. To hold that the St. Luke’s Parties may not have a jury decide the amounts of their damages would essentially put the choice of a jury into the hands of the Defendants and reward them for disregarding the legal process. *See Berube*, 2017-Ohio-1367 at ¶ 19, 89 N.E.3d at 91 (A defendant’s non-appearance should not dictate a plaintiff’s “properly preserved fundamental constitutional jury right.”).

3. This Case Particularly Calls for the Defendants to Answer to a Jury of Their Peers.

Defendants have consistently and continuously sought to frustrate and evade this litigation. *See, e.g.*, 6-13-23 Order Granting Plaintiffs’ Amended Motion for Sanctions Against All Defendants at 1-27 (describing Defendants’ litigation conduct and meting out sanctions).

Defendants Ammon Bundy and Diego Rodriguez have disparaged the judicial system and falsely called the Idaho courts corrupt. *See, e.g.*, <https://www.freedomman.org/2023/judge-lynn-norton-just-intentionally-broke-the-law-proving-that-she-is-biased/> (Diego Rodriguez calling the Court’s issuance of a warrant of attachment under I.R.C.P. 75 for probable cause that Bundy violated the protective order prohibiting threats, harassment, and intimidation of witnesses “obviously ridiculous, stupid, unethical, and immoral” and “illegal”); <https://www.freedomman.org/2023/judge-lynn-norton-and-erik-stidham-just-gag-ordered-me/> (Diego Rodriguez alleging “deep corruption” because the Court entered a standard confidentiality order to protect health information and business records in discovery from public disclosure); <https://www.youtube.com/watch?v=gcy3oYaHAPY> (Ammon Bundy commenting on this lawsuit and stating, “There is no way to get justice. And when you get that way as a nation, then the only result is to fight it out on the street.” ~15:00).

These actions and public statements demonstrate—and openly encourage—public distrust for the judiciary. Defendants should have to face a jury of their peers to answer for the damages they have caused. Using this fundamental democratic process will also support the rule of law in Idaho and counter Defendants’ knowingly false, extremist narrative about the corruption of the courts.

IV. CONCLUSION

Plaintiffs respectfully request that the Court reconsider and/or clarify the June 13 Jury Order and order that a jury be empaneled to hear the issue of the amount of damages owed by Defendants.

DATED: June 23, 2023.

HOLLAND & HART LLP

By: /s/Erik F. Stidham

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd 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
People's Rights Network
c/o Ammon Bundy
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Emmett, ID 83617

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