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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 TO RECONSIDER IN PART
THE JUNE 13, 2023 ORDER GRANTING
PLAINTIFFS' AMENDED MOTION
FOR SANCTIONS AGAINST ALL
DEFENDANTS**

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 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 Reconsider in Part the June 13, 2023 Order Granting Plaintiffs' Amended Motion for Sanctions Against All Defendants.

I. INTRODUCTION

The St. Luke's Parties seek reconsideration of two narrow issues. Prior to reassignment of this case, the Court, among other things, (1) ordered that no opposing argument from Defendants would be considered at the default damages hearing, and (2) stated that no requests for admission had been served, implying that no requests for admission would be deemed admitted for Defendants' failure to respond. The Court made a slew of rulings on June 13, 2023 which the St. Luke's Parties believe to be correct. But as to these two specific issues, the St. Luke's Parties seek reconsideration.

II. BACKGROUND

Before this case was reassigned, on June 13, 2023, the Court entered an Order Granting Plaintiffs' Amended Motion for Sanctions Against all Defendants (the "Sanctions Order"). The Sanctions Order addressed Defendants' many discovery violations and other misconduct in the course of this litigation. *See* Sanctions Order at 1-27.

The Court granted the St. Luke's Parties the relief that they had requested in their Amended Motion for Sanctions. But the Court also included an additional sanction that the St. Luke's Parties had not requested: that the defaulted Defendants would not be permitted to present any **argument** at the upcoming Rule 55(b)(2) hearing/trial on damages.

As to Defendant Diego Rodriguez, the Court ordered:

- 1) Diego Rodriguez's Answer, filed September 6, 2022, and his Answer to the Fourth Amended Complaint and Demand for Jury Trial, filed March 15, 2023, will be stricken from the record.
- 2) An Order of Default against Diego Rodriguez is entered.
- 3) This Court will deem admitted any factual allegations pled by Plaintiffs in the Fourth Amended Complaint against Diego Rodriguez.
- 4) This Court will make a determination of damages based on supporting evidence submitted by the Plaintiffs at the default damages hearing since the claims are not for a sum certain.
- 5) This court will not consider opposing argument or evidence from Diego Rodriguez during a default damages hearing.

Sanctions Order at 18.

As to the remaining Defendants, the Court ordered:

- 1) This Court will deem admitted any factual allegations pled by Plaintiffs in the Fourth Amended Complaint against [Defendant].
- 2) This Court will make a determination of damages based on supporting evidence submitted by the Plaintiffs at the default damages hearing since the claims are not for a sum certain, and after that determination will enter a default judgment.
- 3) This court will not consider any requested but undisclosed evidence from [Defendant] during a default damages hearing.
- 4) This court will not consider opposing argument from [Defendant] during a default damages hearing since [he is / they are] in default.

Sanctions Order at 9, 23-24, 27.

The St. Luke's Parties believe that the sanction stating that the Court "will not consider opposing argument" during a default damages hearing should be reconsidered or clarified.¹ The

¹ The Court also repeated the sanction of not considering opposing argument from Defendants in other orders contemporaneously issued. *See* 6-13-23 Order Striking Answers and Order for Default of Diego Rodriguez at 1; 6-13-23 Order for Sanctions on Motions for Sanctions RE: MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER IN PART THE JUNE 13, 2023 ORDER GRANTING PLAINTIFFS' AMENDED MOTION FOR SANCTIONS AGAINST ALL DEFENDANTS - 3

St. Luke's Parties seek to avoid even the appearance of a due process violation and to foreclose an appeal by the Defendants based on the disingenuous argument that they were wrongfully prevented from participating, in any way, at the damages trial.

Further, the Sanctions Order stated that there were no requests for admission in this case. There were actually several sets of requests for admission served on Defendants, and Defendants did not respond. 6-16-23 Notice of Service of Plaintiffs' RFAs; Declaration of Erik F. Stidham in Support of Notice of Service of Plaintiffs' RFAs, Exs. A-G.

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).

A. THIS COURT SHOULD RECONSIDER THE RULING THAT DEFENDANTS MAY NOT PRESENT ARGUMENT AT THE DAMAGES HEARING.

Generally, a defaulting defendant is entitled to participate in a Rule 55 hearing on damages, as a matter of procedural due process. *McGlooin v. Gwynn*, No. 29450, 2004 Ida. LEXIS 93, at *20 (May 19, 2004) (withdrawn on other grounds) (citing *Rudd v. Rudd*, 105 Idaho 112, 115, 666 P.2d 639, 642 (1983)); see also *Eden v. State (In re SRBA Case No. 39576)*, 164

Depositions at 12-14, 17. The St. Luke's Parties request the same reconsideration of the portion of these orders stating that the Court will not consider opposing argument from Defendants.

Idaho 241, 249, 429 P.3d 129, 137 (2018) (discussing procedural due process rights in the context of default proceedings).

The precise requirements imposed by procedural due process are situation specific. *See Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho 82, 91, 982 P.2d 917, 926 (1999) (describing procedural due process as “a flexible concept calling for such procedural protections as are warranted by the particular situation”).

Plaintiffs have not found Idaho law specifically forbidding a district court from barring a party in default from presenting argument in his defense at a Rule 55(b)(2) damages hearing/trial. But in the context of default, there are certain requirements. For instance, the Idaho Supreme Court has held that the purpose of a Rule 55(b)(2) “hearing is not simply for the court to rubber stamp the damages asserted by the Plaintiffs.” *Garcia v. Absolute Bail Bonds, LLC*, 161 Idaho 616, 621, 389 P.3d 161, 166 (2016). Rather, the plaintiff puts on evidence of the amount of damages. *See id.* (affirming decision that plaintiffs had failed to submit sufficient evidence of consequential damages they claimed were owed by defaulting defendant).

In line with this principle of testing the amount of damages claimed, Rule 55 requires that if a defendant has appeared, the defendant is entitled to three-days’ notice of the damages hearing. I.R.C.P. 55(b)(2). An appearance within the meaning of Rule 55 “has been broadly defined, and is not limited to a formal court appearance.” *Newbold v. Arvidson*, 105 Idaho 663, 665, 672 P.2d 231, 234 (1983). “Conduct on the part of the defendant which indicates an intent to defend against the action can constitute an appearance within the meaning of I.R.C.P. 55(b)(2).” *Id.* For instance, a defendant was deemed to have appeared for purposes of the three-day notice when he visited opposing counsel’s office, attended a deposition, and opposing

counsel had acknowledged his belief that the defendant was representing himself. *Id.* at 665-66, 672 P.2d at 233-34.

The notice requirement in Rule 55 implies some right to participate in the default damages trial/hearing. If there were no right to participate, then notice would be meaningless.

Here, the St. Luke's Parties do not take the position that any Defendant has appeared within the meaning of Rule 55(b)(2) other than Diego Rodriguez, who has filed Answers and Motions pro se. Rather, the St. Luke's Parties raise the notice requirement as an example of procedural due process principles underscoring the default damages process.

As the Court's Sanctions Order stands, all Defendants appear to be barred from participating in the default damages trial/hearing at all. To be clear, the sanctions striking Rodriguez's Answers and barring all Defendants from presenting evidence are correct. They are within the Court's discretion. *See, e.g.*, I.R.C.P. 37(b)(2) (listing sanctions for disobeying a discovery order); I.R.C.P. 16(e)(2) (permitting Rule 37(b)(2) sanctions). And they help ameliorate the prejudice Defendants caused—that hiding or withholding evidence in discovery would hamper the St. Luke's Parties' ability to prove their damages.

Taking the allegations of the Fourth Amended Complaint as true—a measure listed alongside the sanctions in the Sanctions Order—just occurs by operation of law in default, and the St. Luke's Parties also agree that this approach is correct. *See Cement Masons' Employers' Tr. v. Davis*, 107 Idaho 1131, 1132, 695 P.2d 1270, 1271 (Ct. App 1985) (reversing district court that improperly permitted defaulted party to defend on the merits of the case, thus “ignore[ing] the long-established precept that on default all well pleaded factual allegations in the complaint are deemed admitted”). The same goes for the portion of the Sanctions Order stating that the Court will hear the St. Luke's Parties' evidence on damages. *See* I.R.C.P. 55(b)(2) (where claims

are not for “a sum certain,” the court “may conduct hearings or make referrals . . . [to] determine the amount of damages.”).

But prohibiting all opposing argument from Defendants may be harsher than necessary to address even the Defendants’ many violations of discovery obligations and discovery orders, the scheduling order, and the protective order. *See State Ins. Fund v. Jarolimek*, 139 Idaho 137, 139, 75 P.3d 191, 193 (2003) (reversing dismissal as a sanction because the district court could have imposed the lesser sanction of losing the ability to put on the testimony of a key witness rather than dismissing the entire case). And in any event, the Court did not explain why the other sanctions (striking the Answers and barring introduction of evidence) would be inadequate such that prohibiting all argument from the Defendants was warranted. *See Peterson v. McCawley*, 135 Idaho 282, 284, 960 (Ct. App. 2000) (“Before ordering the most drastic sanction . . . the trial court must first consider lesser sanctions and make specific findings that less severe sanctions would be inadequate.”).

Accordingly, the St. Luke’s Parties request that this Court issue an order stating that:

- Defendants are permitted to appear in-person at the damages trial/hearing that begins on July 10, 2023;
- Defendants’ participation will be limited by the Court’s rulings on default and Sanctions Order, including but not limited to, the sanctions foreclosing the presentation of evidence;
- Defendants may present an opening statement, to the extent that they do not seek to introduce evidence and cannot assume evidence contrary to the St. Luke’s Parties’ evidence or the allegations of the Fourth Amended Complaint;

- Defendants may present argument, including closing argument, to the extent that they do not seek to introduce evidence and cannot assume evidence contrary to the St. Luke's Parties' evidence or the allegations of the Fourth Amended Complaint; and
- Defendants may cross-examine witnesses, to the extent that cross-examination does not seek to introduce evidence and does not assume evidence contrary to the St. Luke's Parties' evidence or the allegations of the Fourth Amended Complaint.

B. THERE WERE REQUESTS FOR ADMISSION IN THIS CASE THAT MUST BE DEEMED ADMITTED.

The Court also stated in the Sanctions Order that “[n]o requests for admissions were part of any of the discovery requests in this case so the court cannot deem those requests as admitted.” Order Granting Plaintiffs’ Amended Mot. for Sanctions at 18. This statement is mistaken. There were several sets of Requests for Admission properly served, to which the Defendants did not respond. 6-16-23 Notice of Service of Plaintiffs’ RFAs; Declaration of Erik F. Stidham in Support of Notice of Service of Plaintiffs’ RFAs, Exs. A-G.

These requests should be deemed admitted. *See* I.R.C.P. 36(a)(4) (“A matter 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.”).²

² The St. Luke's Parties understand that the reassignment of this case has caused a burden on this Court to familiarize itself with the relatively extensive record. In light of this, at least one point in the Court's Sanctions Order may warrant clarification or response. The Court stated that delay in holding a default damages hearing “was actually due to the Plaintiffs amending the complaint three times since they could have just scheduled a default damages hearing to prove their damages and obtain a default judgment against these defendants after the Orders for Default were entered.” Sanctions Order at 23, 26. The St. Luke's Parties sought and obtained amendment

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IV. CONCLUSION

For all the foregoing reasons, the St. Luke's Parties request that this Court grant their motion for reconsideration.

DATED: June 23, 2023.

HOLLAND & HART LLP

By: /s/Erik F. Stidham

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Counsel for Plaintiffs

when significant developments required it—each time caused by Defendants' actions. The St. Luke's Parties amended (1) when Defendants began targeting for defamation and harassment a new plaintiff not included in the original complaint (Tracy Jungman); (2) to allege punitive damages, a requirement of Idaho Code § 6-1604; and (3) to add new allegations of defamation and threats of violence when Defendants escalated their wrongdoing in apparent retaliation after the St. Luke's Parties amended to allege punitive damages.

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CERTIFICATE OF SERVICE

I hereby certify that on this 23 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
P.O. Box 370
Emmett, ID 83617

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email/iCourt/eServe:

Ammon Bundy
Ammon Bundy for Governor
People's Rights Network
c/o Ammon Bundy
4615 Harvest Ln.
Emmett, ID 83617-3601

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email/iCourt/eServe:

Freedom Man PAC
Freedom Man Press LLC
c/o Diego Rodriguez
1317 Edgewater Dr., #5077
Orlando, FL 32804

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email/iCourt/eServe:

Diego Rodriguez
1317 Edgewater Dr., #5077
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/s/ Erik F. Stidham

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