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Counsel for Plaintiffs

**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,

Defendants.

Case No. CV01-22-06789

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR AWARD
OF ATTORNEYS' FEES PURSUANT TO
COURT'S JUNE 13, 2023
MEMORANDUM DECISION AND
ORDERS ON AMENDED MOTION FOR
SANCTIONS AGAINST ALL
DEFENDANTS**

COME NOW Plaintiffs, by and through their attorneys of record, Holland & Hart LLP, and submit this Memorandum in support of their Motion for of Attorneys' Fees Pursuant to Court's June 13, 2023 Memorandum Decision and Orders on Amended Motion for Sanctions Against All Defendants ("All Defendants Order").

I. BACKGROUND

Plaintiffs filed the Motion for Sanctions against Defendant Ammon Bundy, Ammon Bundy for Governor, Diego Rodriguez, Freedom Man Press, Freedom Man PAC, and the People's Rights Network for Ongoing Refusal to Comply with Court Orders and Discovery Obligations Motion to Compel ("Sanctions Motion") with supporting documents on May 10, 2023. *See* All Defendants Order at 1. Plaintiffs filed the Amended Motion for Sanctions against Defendant Ammon Bundy, Ammon Bundy for Governor, Diego Rodriguez, Freedom Man Press, Freedom Man PAC, and the People's Rights Network for Ongoing Refusal to Comply with Court Orders and Discovery Obligations Motion to Compel ("Amended Sanctions Motion") with supporting documents on May 26, 2023. *See* All Defendants Order at 1.

The Court held oral argument on the Sanctions Motion and Amended Sanctions Motion on June 6, 2023. *See* All Defendants Order at 1. Ammon Bundy, Ammon Bundy for Governor, Diego Rodriguez, Freedom Man Press, Freedom Man PAC, and the People's Rights Network did not appear. *See id.* at 1. The Court ultimately found that Ammon Bundy and Diego Rodriguez failed to respond to discovery requests and comply with Court orders regarding discovery and sanctions. *Id.* at 7-8, 12-13. The Court first awarded costs and fees associated with Ammon Bundy's failure to answer Plaintiffs' Second Interrogatories, First Requests for Production and their Third Set of Interrogatories and Second Set of Requests for Production of attorney's fees. *Id.* at 9-10. It then awarded costs and fees "related to Diego Rodriguez's failure to comply with

discovery, which can include the time that Plaintiffs’ counsel spent attending the 2:30 hearing on May 23, 2023 when Rodriguez failed to appear and frivolously attempted to again remove this matter to Federal court to avoid responsibility for his failure to comply with discovery and other orders of this Court.” *Id.* at 19.

Plaintiffs now file this memorandum of fees and costs pursuant to the All Defendants Order, and Idaho Rules of Civil Procedure 37(a)(5)(A), 37(b)(2)(C) and 37(d)(3),

II. PLAINTIFFS’ FEES AND COSTS INCURRED WERE REASONABLE.

This Court has already found that attorneys’ fees and costs should be awarded to Plaintiffs. Accordingly, this memorandum solely focuses on the reasonableness of the fees and costs incurred.

Once a court determines that a party is entitled to an award of attorneys’ fees, it then considers the factors set out in Idaho Rule of Civil Procedure 54(e)(3) to determine the amount of attorneys’ fees to be awarded. The Rule 54(e)(3) “factors guide the trial court in fixing the amount to be awarded as reasonable attorney fees.” *Nalen v. Jenkins*, 113 Idaho 79, 83, 741 P.2d 366, 369 (Idaho Ct. App. 1987). “Under Rule 54(e)(3) the trial court is required to consider the existence and applicability of each factor.” *Id.* But “[n]o element is to be given undue weight or emphasis.” *Id.* Under Rule 54(e)(3), the factors are:

- (A) the time and labor required;
- (B) the novelty and difficulty of the questions;
- (C) the skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law;
- (D) the prevailing charges for like work;
- (E) whether the fee is fixed or contingent;

- (F) the time limitations imposed by the client or the circumstances of the case;
- (G) the amount involved and the results obtained;
- (H) the undesirability of the case;
- (I) the nature and length of the professional relationship with the client;
- (J) awards in similar cases;
- (K) the reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case; and
- (L) any other factor which the court deems appropriate in the particular case.

I.R.C.P. 54(e)(3). Although the Court must consider the Rule 54(e)(3) factors, a specific written finding on each of the various factors is not necessary. *See State v. Baeza*, 161 Idaho 38, 383 P.3d 1208, 1213 (2016). Applying those Rule 54(e)(3) factors that bear the most weight in the instant matter, Plaintiffs are entitled to all of their attorneys' fees requested in this Memorandum.

A. THE TIME AND LABOR REQUIRED

The Amended Sanctions Motion required consideration of the discovery rules, attendant case law, and the specific circumstances of this lawsuit. Plaintiffs also incurred expenses by responding to frivolous motions to delay and harass filed by Diego Rodriguez. *See All Defendants Order* at 10, 12, 17. Plaintiffs additionally incurred expenses by drafting discovery requests to Ammon Bundy and Diego Rodriguez and in fruitless attempts to receive discovery from Diego Rodriguez. *Id.* at 7-8, 12-13. Plaintiff's counsel worked efficiently in preparing the Amended Sanctions Motion, as demonstrated in **Exhibit A** to the Stidham Declaration filed concurrently with this brief ("Stidham Decl.").

Included in the expenses are the time that Plaintiffs' counsel spent attending the 2:30 hearing on May 23, 2023 when Rodriguez failed to appear and frivolously attempted to again remove this matter to Federal court to avoid responsibility for his failure to comply with discovery and other orders of this Court." *See* All Defendants Order at 19.

Moreover, Plaintiffs do not seek all of their fees, instead they only seek some of the fees incurred in drafting the motion and attending oral argument. *See* Stidham Decl., ¶¶ 10-12.

Plaintiffs also seek their attorneys' fees incurred in preparing this request for attorneys' fees. *BECCO Constr. v. J-U-B Eng'rs Inc.*, 149 Idaho 294, 298, 233 P.3d 1216, 1220 (2010) (holding that "courts may award reasonable attorney fees incurred in connection with the effort to secure a reasonable amount of attorney fees"), overruled in part on other grounds by *Keybank Nat'l Ass'n v. PAL I, LLC*, 155 Idaho 287, 311 P.3d 299 (2013).

B. THE SKILL REQUIRED TO PERFORM THE LEGAL SERVICE

The Plaintiffs in this matter were represented by counsel with experience litigating similar complex commercial disputes and preparing similar motions. *See* Stidham Decl., ¶ 10. Erik F. Stidham, a partner at Holland & Hart's Boise office, was the most senior attorney on the litigation. *Id.* He manages the representation in this matter, working with other attorneys from Holland & Hart's commercial litigation practice group. *Id.*

Lead counsel primarily relied on the research and drafting assistance of more junior attorneys, whose work he directed. *Id.*, ¶ 9. Lead counsel appeared at the hearing and argued the motions. In an effort to seek only the most conservative, core amount of fees, the instant motion voluntarily foregoes certain fees incurred by other attorneys and a paralegal who worked on both motions even though all fees incurred were reasonable. *See id.*, ¶ 11.

The lawyers on the case team did not duplicate work. *Id.*, ¶ 14. Lead counsel’s experience in handling litigation of this sort allowed them to avoid duplicate billing and efficiently delegate work to the appropriate level, as reflected in Exhibit A. *See id.*

C. PREVAILING CHARGES FOR LIKE WORK

The hourly rates charged for the services provided to Plaintiffs are reasonable for the type of work performed and are comparable to those for similar services in the Treasure Valley performed by attorneys of comparable skill and experience. *See Stidham Decl.*, ¶ 15. The rates charged are Holland & Hart’s standard hourly rates reduced by 10%. *Id.*, ¶ 6.

Earlier in this case, Plaintiffs have had occasion to file a number of motions for attorney fees. *Id.*, ¶ 14. In granting these motions, the Court has not reduced counsel’s hourly rates (except for the 10% discount included in the rate sought and referred to above). *Id.*; *see e.g.*, 3-22-23 Order Awarding Fees Against Diego Rodriguez at 3 (“The Court finds the hourly rate for the three attorneys are prevailing rates in the Boise area for similar work with similar outcomes . . .”); 10-12-22 Order Awarding Fees Against Ammon Bundy at 3 (“The Court finds the 12.8 hours at prevailing rates in the Boise area for similar work with similar outcomes . . . reasonable[.]”).

Moreover, courts have repeatedly found Holland & Hart’s standard rates to be reasonable and in accord with the market. *See Edmark Auto Inc. v. Zurich Am. Ins. Co.*, No. 1:15-cv-00520-BLW, 2021 U.S. Dist. LEXIS 39160, at *10 (D. Idaho Mar. 1, 2021) (“It has [] been this Court’s experience that attorneys at regional firms, such as Holland & Hart, charge hourly rates at or near, but not above, the high end of acceptable rates for the Boise area.”) (citation omitted); *see also Bank of Am. v. Neef*, No. CV-OC 13-19726 (Idaho Fourth Judicial District, Ada County) (allowing the hourly rates of the attorneys representing the receiver of \$385 for a senior partner;

\$300 for a junior partner; and \$245 for an associate in 2013); *Cnty. House, Inc. v. City of Boise, Idaho*, No. 1:05-cv-00283-CWD, 2014 WL 1247758, at *6 (D. Idaho Mar. 25, 2014) (approving rate of \$400 per hour in 2014); *Lakeview Cheese Co. v. Nelson-Ricks Creamery Co.*, No. 4:13-cv-00361-BLW, 2015 WL 769960 (D. Idaho Feb. 23, 2015) (permitting the following rates in 2015: \$455 for a senior litigation partner; \$310 for a junior litigation partner).

D. WHETHER THE FEE IS FIXED OR CONTINGENT

The fee agreement in this case is based on an hourly rate. Stidham Decl., ¶ 4. Such an agreement is an appropriate basis for attorneys' fees. *Id.*

E. RESULTS OBTAINED

The Court noted in its All Defendants Order that the Sanctions Motion and Amended Sanctions Order were granted in their entirety. *See* All Defendants Order at 27-28.

III. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request this Court enter an award in their favor for reasonable fees and costs in the amount of:

\$892.20 against Ammon Bundy

\$892.20 against Ammon Bundy for Governor

\$892.20 against People's Rights Network

\$892.20 against Diego Rodriguez

\$892.20 against Freedom Man Press

\$892.20 against Freedom Man PAC

Plaintiffs also request that the Court's orders awarding fees and costs require the amounts to be paid within 14 days of this Court's Order on Plaintiff's Motion, or by a date certain to be set by the Court.

DATED: June 30, 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 3rd day of July, 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:

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
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
Orlando, FL 32804

- U.S. Mail
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- Overnight Mail
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/s/ Erik F. Stidham

Erik F. Stidham
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