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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 12, 2023 ORDER  
AWARDING FEES ON MOTIONS FOR  
SANCTIONS RE: DEPOSITIONS**

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 this Court's June 13, 2023 Order Awarding Fees on Motions for Sanctions RE: Depositions ("Depositions Order").

## I. BACKGROUND

Plaintiffs filed a Motion to Compel and for Sanctions as to People's Rights Network and Ammon Bundy for Governor on May 2, 2023 ("Compel Motion"). *See* Depositions Order at 18. The Court held oral argument on Plaintiffs' Compel Motion on June 6, 2023. *See* Depositions Order at 2. People's Rights Network and Ammon Bundy for Governor did not appear. *Id.* The Court ultimately found "that People's Rights Network and Ammon Bundy for Governor failed to designate a representative or witness for a deposition as was required by Idaho Rules of Civil Procedure 30(b)(6) and this Court's discovery orders." *See id.* at 11. The Court then awarded fees and costs to Plaintiffs against People's Rights Network and Ammon Bundy for Governor associated with filing the Compel Motion. *Id.*

Plaintiffs filed a Motion for Sanctions as to Ammon Bundy, Ammon Bundy for Governor, People's Rights Network, and Abish-Husbandi, Inc. for Failure to Appear at Properly Noticed Depositions on May 26, 2023 ("Bundy Entities Deposition Motion"). *See* Depositions Order at 18. The Court held oral argument on Bundy Entities Deposition Motion on June 6, 2023. *See* Depositions Order at 2. Ammon Bundy, Ammon Bundy for Governor, People's Rights Network, and Abish-Husbandi, Inc. did not appear. *Id.* The Court ultimately found that the depositions were properly noticed and served. *Id.* at 4, 13-14. The Court first determined that "reasonable costs and fees [are] to be paid to Plaintiffs" by Abish-Husbandi, Inc. for failure to appear at the properly scheduled deposition. *Id.* at 5. The Court also determined "it is appropriate

to sanction Ammon Bundy to pay any costs incurred by the Plaintiffs for the properly noticed and scheduled deposition [of Ammon Bundy] on May 10, 2023 only.” *Id.* at 13. The Court then ordered as a sanction “reasonable costs and fees” to be paid to Plaintiffs by Ammon Bundy, Ammon Bundy for Governor, and People’s Rights Network for costs incurred in filing and pursuing this motion. *Id.* at 13, 15.

Plaintiffs filed a 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 on May 26, 2023 (“Rodriguez Entities Deposition Motion”). *See* Depositions Order at 18. The Court held oral argument on Plaintiffs’ Compel Motion on June 6, 2023. *See* Depositions Order at 2. Diego Rodriguez, Power Marketing Consultants, LLC, Power Marketing Agency, LLC, and Freedom Tabernacle, Incorporated did not appear. *Id.* The Court ultimately found that the depositions were properly notice and served on the parties. *Id.* at 4-8, 16. The Court first determined that “reasonable costs and fees [are] to be paid to Plaintiffs” by Power Marketing Consultants, LLC, Power Marketing Agency, LLC, and Freedom Tabernacle, Incorporated for failure to appear at the properly scheduled depositions. *Id.* at 5, 7, 8. The Court then stated, “The Court orders costs and reasonable attorney fees be paid by Diego Rodriguez for his failure to attend the scheduled May 12 and 15, 2023 depositions and also incurred by Plaintiffs for filing Plaintiffs’ 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 because of Diego Rodriguez.” *Id.* at 17-18.

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

Erik F. Stidham, with Exhibits, sets forth the fee and cost breakdown on the various motions and entities to which they relate.

## **II. PLAINTIFFS' FEES AND COSTS INCURRED ARE 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 Compel Motion, Bundy Entities Deposition Motion, and Rodriguez Entities Deposition Motion required consideration of the discovery rules, attendant case law, and the specific circumstances of this lawsuit. Plaintiffs' counsel worked efficiently in preparing the motion, as demonstrated in **Exhibit A** to the Declaration of Erik F. Stidham filed concurrently with this brief ("Stidham Decl.").

Plaintiffs sustained costs associated with the properly-noticed deposition of Ammon Bundy, which never occurred. Plaintiffs also sustained costs and attorney's fees for preparation of the properly-notice deposition of Abish-Husbandi, Inc., which never occurred. *See Stidham Decl.*, Ex. B.

Plaintiffs sustained costs and attorney's fees associated with preparation for the properly-noticed depositions of Diego Rodriguez, Power Marketing Consultants, LLC, Power Marketing Agency, LLC, and Freedom Tabernacle, Incorporated, which never occurred. *See Stidham Decl.*, Ex. C.

Moreover, Plaintiffs do not seek all of their fees incurred in preparing and arguing the Compel Motion, Bundy Entities Deposition Motion, and Rodriguez Entities Deposition Motion. Instead, they only seek some of the fees incurred in drafting the motions, preparing for depositions, and attending oral argument. *See* Stidham Decl., ¶¶ 11-13.

Plaintiffs also seek their attorneys' fees incurred in preparing this request for attorneys' fees. *BECO 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., ¶ 9. 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.*

For the Bundy Entities Deposition Motion, lead counsel primarily relied on the research and drafting assistance of more junior attorneys, whose work he directed. *Id.*, ¶ 9. Mr. Stidham appeared at the hearing and argued the Bundy Entities Deposition Motion. 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 the motion even though all fees incurred were reasonable. *See id.*, ¶ 11.

For the Rodriguez Entities Deposition Motion, Mr. Stidham primarily relied on the research and drafting assistance of an experienced, but more junior, attorney, whose work he

directed. *Id.*, ¶ 9. Mr. Stidham appeared at the hearing and argued the Rodriguez Entities Deposition Motion. In an effort to seek only the most conservative, core amount of fees, the instant motion voluntarily foregoes certain fees incurred by other attorneys who worked on the motion even though all fees incurred were reasonable. *See id.*, ¶ 11.

The lawyers on the case team did not duplicate work. *Id.*, ¶ 13. 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 for this matter 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**

As the Court announced in its Deposition Order, Plaintiffs’ Compel Motion, Bundy Entities Deposition Motion, and Rodriguez Entities Deposition Motion were all granted. *See* Deposition Order at 18.

**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:

- **\$8,233.76** against Ammon Bundy (Stidham Decl., Exs. B, D)
- **\$3,037.81** (\$858.60 + 2,179.21) against Ammon Bundy for Governor (Stidham Decl., Exs. A, B, D)



- **\$3,025.46** (\$858.60 +\$2,166.86) against People’s Rights Network (Stidham Decl., Exs. A, B, D)
- **\$1,857.41** against Abish-Husbondi, Inc. (Stidham Decl., Exs. B, D)
- **\$6,018.07** against Diego Rodriguez (Stidham Decl., Exs. C, D)
- **\$1,524.07** against Power Marketing Consultants, LLC (Stidham Decl., Exs. C, D)
- **\$735.37** against Power Marketing Agency, LLC (Stidham Decl., Exs. C, D)
- **\$2,505.07** against Freedom Tabernacle, Incorporated. (Stidham Decl., Exs. C, D)

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  
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*/s/ Erik F. Stidham*

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Erik F. Stidham  
OF HOLLAND & HART LLP

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