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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 and an unincorporated  
association,

Defendants.

Case No. CV01-22-06789

**MEMORANDUM IN SUPPORT OF  
MOTION TO IMPOSE ADVERSE  
INFERENCES**

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”), by and through their attorneys of record, Holland & Hart LLP, submit this Memorandum in Support of their Motion to Impose Adverse Inferences.

## **I. INTRODUCTION**

Before trial, on July 6, 2023, Plaintiffs filed a proposed jury instruction incorporating adverse inferences to be imposed by the jury in their deliberations on the amount of damages. The Court requested supplemental briefing, which Plaintiffs now provide.

Plaintiffs request that their proposed jury instruction be accepted. They made minor edits to their July 6, 2023 proposed instruction. These edits are incorporated into a new version to be filed contemporaneously with this Motion, in the set of additional proposed jury instructions from Plaintiffs.

It is only right that adverse inferences be applied in this case, where taking the bare factual allegations of the Fourth Amended Complaint does not reach the discretionary issues before the jury. If no adverse inferences are imposed for Defendants’ complete withholding of relevant evidence relating to their financial standing, interrelationships, and communications throughout the course of their conduct that harmed Plaintiffs—then Defendants will benefit from their own bad faith.

## **II. BACKGROUND**

Plaintiffs served a number of requests for production and interrogatories on each of the Defendants in this case. *See* May 26, 2023, Declaration of Erik F. Stidham in Support of Plaintiffs’ Amended Motions for Sanctions, Exs. B-H (“May 26 Stidham Decl.”) (containing Plaintiffs’ discovery requests to Defendants). No Defendant except Mr. Rodriguez provided

responses. Declaration of Jennifer M. Jensen in Support of Motion to Impose Adverse Inferences (“Jensen Decl.”), ¶ 2. Mr. Rodriguez’s responses were so inadequate that the Court sanctioned him more than once for his refusal to comply with discovery obligations and ultimately entered default against him. *Id.* Plaintiffs also properly noticed the depositions of each of the Defendants, to which none of them appeared. *Id.*

The Court ordered them to sit for deposition and ordered Mr. Rodriguez to provide discovery responses. *Id.* No Defendant complied with these orders. *Id.* As explained below, default does not fully remedy the prejudice this willful withholding of evidence causes to Plaintiffs. Plaintiffs now must prove their case for the amount of damages at trial. Adverse inferences should be imposed here due to Defendants’ spoliation of evidence.

### **III. ARGUMENT**

#### **A. SPOILIATION PROVIDES THE BASIS FOR ADVERSE INFERENCE.**

Spoliation is “the intentional destruction, mutilation, alteration, or concealment of evidence.” *State v. Ish*, 166 Idaho 492, 514, 461 P.3d 774, 796 (2020) (quoting BLACK’S LAW DICTIONARY (11th ed. 2019)). Because it is unlikely that a party would destroy or conceal favorable evidence, “an inference arises that the missing evidence was adverse to the party’s position.” *Courtney v. Big O Tires, Inc.*, 139 Idaho 821, 824, 87 P.3d 930, 933 (2003) (quoting MCCORMICK ON EVIDENCE § 265, pp. 189-94 (4th ed. 1992)). For this adverse inference to apply, the circumstances must manifest bad faith. *Id.*

“Spoliation is a rule of evidence applicable at the discretion of the trial court.” *Id.*

#### **B. SPOILIATION EXISTS HERE, AND ADVERSE INFERENCE SHOULD BE IMPOSED.**

Defendants have wrongfully withheld all evidence of their financial condition, interrelationships, and communications.

All Defendants are in default, and the factual allegations of the Fourth Amended Complaint are taken as true. However, default does not fully remedy the prejudice caused by Defendants' withholding of relevant evidence.

Perhaps the most important issue for which Plaintiffs were denied any discovery from the Defendants is their financial status. Financial status is relevant to punitive damages. *See, e.g., Weinstein v. Prudential Prop. & Cas. Ins. Co.*, 149 Idaho 299, 337 (2010); *Robinson v. State Farm Mut. Auto. Ins. Co.*, 2000 Ida. LEXIS 144, \*53 (2000) (“This Court has previously noted that evidence related to the defendant’s wealth and financial status may be offered for the purpose of determining the efficacy of a money judgment in deterring future tortious conduct.”); IDJI 9.20.5 (“You have been permitted to hear evidence pertaining to defendant’s wealth and financial condition.”). And punitive damages are at issue as to all Defendants. It is one thing for the jury to know that Defendants are liable on all the causes of action—and know that they can potentially award punitive damages. It is another to know how much, based on the Defendants’ net worth and assets, it would take to punish the Defendants.

There are other important issues for which Plaintiffs were denied any discovery from the Defendants—their coordinating communications in order to form talking points, any communications involving intent, planning, or violence, the numbers of people they expected to enlist in their disruption, and many other issues that relate to the outrageousness and maliciousness of the Defendants’ acts.

Plaintiffs received no communications among the Defendants in discovery. *See Jensen Decl.*, ¶ 2. Defendants made certain of that. The Court compelled their depositions and compelled Mr. Rodriguez’s responses in discovery. *Id.* Defendants simply refused to comply with Court orders, even though the orders were served, and even though Defendants were clearly

aware of what was happening in the lawsuit, as they made numerous statements commenting on the lawsuit, which they broadcasted to the public online. *Id.*, ¶ 3; Trial Exhibit 185 (Bundy talking about the lawsuit and discussing his decision not to participate) (Sept. 7, 2022); Trial Exhibit 197 (Bundy discussing court filings) (February 10, 2022); Trial Exhibit 336 (Rodriguez discussing lawsuit) (December 8, 2022); Trial Exhibit 338 (Rodriguez talking about discovery and Plaintiffs' discovery requests) (January 3, 2023).

Defendants' online commentary on the lawsuit shows that their withholding of evidence is not innocent, mistaken, or even negligent. It is intentional, and it is in bad faith. They should not be permitted to benefit from their own wrongdoing. Adverse inferences should be imposed here due to Defendants' spoliation.

The adverse inferences Plaintiffs request are set forth in their proposed jury instructions. The discovery requests to which the adverse inferences correspond are set forth in Plaintiffs' July 6, 2023 Proposed Adverse Inferences filing.

#### IV. CONCLUSION

For all the foregoing reasons, Plaintiffs request that this Court grant their Motion to Impose Adverse Inferences against all Defendants.

DATED: July 17, 2023.

HOLLAND & HART LLP

By: */s/Erik F. Stidham*

Erik F. Stidham

Jennifer M. Jensen

Alexandra S. Grande

Zachery J. McCraney

Anne E. Henderson

*Counsel for Plaintiffs*

## CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of July, 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

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*/s/ Erik F. Stidham*

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Erik F. Stidham  
OF HOLLAND & HART LLP

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