

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 DECISION AND  
ORDER ON PLAINTIFFS' MOTIONS  
TO RECONSIDER

Before the Court is (1) Plaintiffs' Motion to Reconsider in Part the June 13, 2023 Order Granting Plaintiffs' Amended Motion for Sanctions Against All Defendants and (2) Plaintiffs' Motion for Reconsideration Regarding Right to a Jury Trial. The Court held a hearing on both motions at a status conference on June 29, 2023. No Defendant appeared at the status conference. At that hearing, the Court orally granted both Motions for Reconsideration in part. The Court also issued a written order on June 30, 2023, setting forth the substantive terms of its oral ruling. The

Court reserved the right to put its analysis on Plaintiffs' Motions in writing for any appellate review and does so in this Memorandum Decision and Order.

## I. FACTUAL AND PROCEDURAL BACKGROUND

On May 11, 2022, Plaintiffs St. Luke's Health System LTD, St. Luke's Regional Medical Center LTD, Chris Roth, and Natasha Erickson filed a Complaint against the Defendants and properly requested a jury trial. *Complaint* at 32. The Complaint was subsequently amended several times, and each Amended Complaint also properly requested a jury trial. *First Amended Complaint* at 32; *Third Amended Complaint* at 38; 3-3-23; *Fourth Amended Complaint* at 40. Plaintiffs also reiterated their request for a jury trial in their Motion for Entry of Default. *See Plaintiffs' 8/12/2022 Motion for Entry of Default*. This proceeding was reassigned to this Court on June 21, 2023.

Prior to reassignment, the presiding Court entered default against Defendants Ammon Bundy, People's Rights Network, and Ammon Bundy for Governor on April 24, 2023. *See Order of Default Against Ammon Bundy, Ammon Bundy for Governor, and People's Rights Network ("Order Defaulting Bundy Parties")*. On June 1, 2023, the Court defaulted Defendants Freedom Man Press and Freedom Man PAC. *See 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. *See Order Striking Answers and Order for Default of Diego Rodriguez dated June 13, 2023*.

On June 13, 2023, the Court released a second order that addressed Defendants' various discovery violations and other misconduct over the course of this litigation and granted Plaintiffs the relief they requested in their Amended Motion for Sanctions. *See Memorandum Decision and Orders on Amended Motion for Sanctions against All Defendants (the Sanctions Order") dated June 13, 2023*. However, the Court also imposed an additional sanction *sua sponte*: the defaulted

Defendants would not be permitted to participate or present any argument at a hearing to determine damages conducted pursuant to Idaho Rule of Civil Procedure 55. *See the Sanctions Order* at 5.

In a third Order also issued on June 13, 2023, the Court found Plaintiffs were not entitled to a jury determination of compensatory and punitive damages. *See Order Following Pretrial Conference and Order on Plaintiffs' Motion for Jury Trial against Defaulted Defendants dated June 13, 2023 ("the Jury Trial Order")* at 7-9. The Court found that a jury trial is not required in determining liability for damages caused by defaulted defendants and that the Court was positioned to make the required determinations at an evidentiary hearing pursuant to Idaho Rule of Civil Procedure 55. *Id.*

On June 23, 2023, two days after this case was reassigned to this Court, Plaintiffs filed two motions, both requesting the Court to reconsider portions of the June 13, 2023, orders. *See Plaintiffs' Motion to Reconsider in Part the June 13, 2023 Order Granting Plaintiffs' Amended Motion for Sanctions Against All Defendants; Plaintiffs' Motion for Reconsideration Regarding Right to a Jury Trial (collectively "the Motions for Reconsideration")*. The Court held a hearing on the Motions for Reconsideration at a status conference on June 29, 2023, where the Court orally granted the Motions in part. As a result of the Court's decision to grant Plaintiffs' Motion for Reconsideration Regarding Right to a Jury Trial, a jury trial on the amount of default damages commenced on July 10, 2023.

## II. LEGAL STANDARD

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)). When a district court decides a motion to reconsider, “the district court must apply the same standard of review that the court applied when deciding the original order that is being reconsidered.” *Westby v. Schaefer*, 157 Idaho 616, 621, 338 P.3d 1220, 1225 (2014) (quoting *Fragnella v. Petrovich*, 153 Idaho at 276, 281 P.3d at 113).

The decision of whether to grant or deny a motion for reconsideration is left to the discretion of the trial court. *See Van v. Portneuf Med. Ctr.*, 147 Idaho 552, 560, 212 P.3d 982, 990 (2009). In making discretionary decisions, a trial court must “(1) correctly perceive[] the issue as one of discretion; (2) act[] within the outer boundaries of its discretion; (3) act[] consistently with the legal standards applicable to the specific choices available to it; and (4) reach[] its decision by the exercise of reason.” *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018).

### III. ANALYSIS

#### A. Plaintiffs’ Motion for Reconsideration Regarding Right to a Jury Trial.

Plaintiffs argue they are entitled, as a matter of right, to a jury determination on the amount of their compensatory and punitive damages under the Idaho Constitution and Idaho Rules of Civil Procedure 38 and 39. *See Plaintiffs’ Motion for Reconsideration Regarding Right to a Jury Trial*. In Plaintiffs’ view, the Court should reconsider the Jury Trial Order because Idaho Rule of Civil Procedure 55 should not be allowed to abrogate their constitutional right to a jury trial on damages. In the alternative, Plaintiffs request this Court to exercise its discretion to refer the question of the amount of damages to a jury as provided by Idaho Rule of Civil Procedure 39(c). The Court agrees Plaintiffs are entitled to a jury determination on the amount of damages and further finds it is

proper to refer the amount of damages in this case to a jury pursuant to Idaho Rule of Civil Procedure 39(c).

Article 1 section 7 of the Idaho Constitution states that the “right of trial by jury shall remain inviolate.” Idaho Const. Art. I, § 7. The Idaho Supreme Court has explained that “[t]his provision ‘secures [the right of trial by jury] as it existed at common law when the Idaho Constitution was adopted.’” *Smith v. Glenns Ferry Highway Dist.*, 166 Idaho 683, 694, 462 P.3d 1147, 1158 (2020) (quoting *State v. Straub*, 153 Idaho 882, 886, 292 P.3d 273, 277 (2013)). The right to a jury determination on damages in tort actions is well established. *See, e.g., Bentzinger v. McMurtrey*, 100 Idaho 273, 274, 596 P.2d 785, 786 (1979) (“It is axiomatic that a factual determination made by a jury will not be overturned if it is sustained by the evidence. This is particularly true in tort actions where the damages cannot be ascertained with mathematical precision.”). Additionally, “at the time of the adoption of the Idaho Constitution, damages for breach of contract or for physical injuries were issues required to be tried by a jury.” *Glenns Ferry Highway Dist.*, 166 Idaho at 694, 462 P.3d at 1158; *see also Brady v. Place*, 41 Idaho 747, 242 P. 314 (1925) (holding an appellant was not entitled to a jury trial because “the facts disclose nothing in the nature of a common-law action for tort.”).

These principles are reflected in the Idaho Rules of Civil Procedure. Idaho Rule of Civil Procedure 38(a) provides “[t]he 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.” I.R.C.P 38(a). The rule goes on to say that “[o]n any issue triable of right by a jury, a party may demand a jury trial.” I.R.C.P 38(b). Such a demand can only be withdrawn with the parties’ consent. I.R.C.P 38(d). Moreover, Idaho Rule of Civil Procedure 39 provides the court with the discretion to empanel a jury even on in an action not triable of right by a jury: “the court, on motion or on its own: (1) may try any issue

with an advisory jury; or (2) 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).

Idaho Rule of Civil Procedure 55 sets forth the default judgment procedure. In contrast to Rule 38, Rule 55 does not require a jury to determine damages. Rather, the Rule states, in relevant part:

**(b) Entering a Default Judgment.**

(1) For Sum Certain. If a claim is for a sum certain or a sum that can be made certain by computation, the court, on the claimant’s request, with an affidavit showing the amount due, must order judgment for that amount and costs against the party who has been defaulted for not appearing and who is neither a minor nor an incompetent person and has been personally served, other than by publication or personal service outside of this state. The affidavit must show the method of computation, together with any original instrument evidencing the claim unless otherwise permitted by the court. An application for a default judgment must also contain written certification of the name of the party against whom judgment is requested and the address most likely to give the defendant notice of the default judgment. The clerk must use this address in giving the party notice of judgment.

(2) Other Cases. In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing. *The court may conduct hearings or make referrals when, to enter or effectuate judgment, it needs to:*

- (A) conduct an accounting;
- (B) *determine the amount of damages;*
- (C) establish the truth of any allegation by evidence; or
- (D) investigate any other matter

I.R.C.P. 55(b) (emphasis added).

It does not appear that Idaho courts have considered the issue of whether trial by a jury on damages in the default context is required as a matter of right when a party demands it. Courts in other jurisdictions have analyzed language similar to that in the Idaho Constitution and Idaho Rule of Civil Procedure 38 and come to differing conclusions. For example, there is substantial federal

case law holding that the Seventh Amendment to the United States Constitution does not confer right to a jury trial for damages after an entry of default.<sup>1</sup> *See, e.g., Olcott v. Delaware Flood Co.*, 327 F.3d 1115, 1124 (10th Cir. 2003) (finding that a party has no constitutional right to a jury trial following the entry of default); *Sells v. Berry*, 24 F. App'x. 568, 572 (7th Cir. 2001); *Graham v. Malone Freight Lines*, 314 F.3d 7, 16 (1st Cir. 1999) (“Neither the Seventh Amendment nor the Federal Rules of Civil Procedure require a jury trial to assess damages after entry of default ....”); *Matter of Dierschke*, 975 F.2d 181, 185 (5th Cir. 1992) (“It is also ‘clear ... that in a default case neither the plaintiff nor the defendant has a constitutional right to a jury trial on the issue of damages.”); *Adriana Int'l Corp. v. Lewis & Co.*, 913 F.2d 1406, 1414 (9th Cir. 1990) ; *Henry v. Sneiders*, 490 F.2d 315, 318 (9th Cir. 1974) (“[T]he Seventh Amendment right to trial by jury does not survive a default judgment.”).

Several state courts, however, have found that a right to a jury trial on damages after an entry of default can exist. For example, the Alaska Supreme Court recently held that that a jury trial on damages following default is not required by Alaska statutes or the Alaska Constitution, but that a trial court nonetheless abused its discretion in granting a plaintiff’s application for entry of default without giving effect to the plaintiff’s express condition that damages be decided by a jury.<sup>2</sup> *Haines v. Comfort Keepers, Inc.*, 393 P.3d 422, 431 (Alaska 2017). The Alaska Supreme Court acknowledged the tension between Alaska Rules of Civil Procedure 38 and 55 (which largely mirror Idaho’s versions) and held:

If a party applies for default expressly conditioned [on a jury determination of damages], the court, in the exercise of its discretionary authority under Rule

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<sup>1</sup> The Seventh Amendment to the United States Constitution states: “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.” U.S. Const. amend. VII.

<sup>2</sup> The Alaska Constitution provides: “In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law.” Alaska Const. art. I, § 16.

55(c)(1), should first ascertain whether submitting damages to a jury would be “necessary and proper.” If it would be, then the court should enter the requested default and allow the jury to determine damages.

*Id.* at 434.

In Ohio, Courts have held that a trial court’s discretion whether to conduct a court hearing to determine default damages under the Ohio Rules of Civil Procedure is limited by a party’s right to a jury trial. *See Berube v. Richardson*, 2017-Ohio-1367, ¶¶ 19-20, 89 N.E.3d 85, 91 (Ct. App. Apr. 13, 2017); *Sharp v. M3C Investments LLC*, 2022 WL 1258246 (Ohio App. 8 Dist., 2022). The *Berube* court held that a trial court’s denial of the plaintiff’s request for a jury trial on default damages was reversible error. *Berube*, 89 N.E.3d at 91. That court endorsed another Ohio court’s approach to reconciling Ohio Rules of Civil Procedure 38 and 55:

In reconciling Civ.R. 55(A) with 38(D), the Tenth District Court of Appeals found that “the only result consistent with [both rules is] to require a trial by jury upon the issue of damages, when necessary, if it has been previously demanded by any party, even though default judgment” has been rendered. In holding that the defendant was entitled to a jury trial on damages, regardless of the fact that he did not dispute the issue of liability, the Tenth District found no ambiguity in the rules governing a party’s right to a jury trial.

*Id.* (internal citations omitted) (quoting *Harris v. Interstate Check Sys.*, 10th Dist. Franklin No. 77AP–275, 1977 WL 200414, at 2 (Sep. 20, 1977)).

Other state courts have similarly held a party retains the right to have a jury determine damages after default. *See, e.g., Hooock v. SLB Acquisition, LLC*, 620 S.W.3d 292, 301 (Mo. App. E.D. 2021) (“Although Missouri recognizes default as a harsh remedy, particularly where a judgment of default is issued on liability, a party maintains the right to have a jury determine the amount of damages.”); *Wolfe v. Steven A. Smilack, P.A.*, 100 So. 3d 166, 167 (Fla. 4th DCA 2012) (“[e]ven in a circumstance in which a default judgment is entered against the defendant on the issue of liability, if jury trial has been demanded by either party, the defendant has the right to



jury trial on the issue of damages when such damages are not liquidated.”); *Marshall Lasser, PC v. George*, 252 Mich. App. 104, 106, 651 N.W.2d 158, 160 (2002) (“Defendant's default on the issue of liability did not extinguish either party's right to a jury trial on the issue of damages.”).

Under the circumstances presented here, the Court finds Plaintiffs are entitled to jury consideration on the question of damages as a matter of right. Plaintiffs properly demanded a jury for their legal claims and reiterated their request for a jury trial in their Motion for Entry of Default. *See Plaintiffs' 8/12/2022 Motion for Entry of Default*. Plaintiffs never waived this right or attempted to withdraw their demand. The default procedures set forth in Idaho Rule of Civil Procedure 55 cannot abrogate a constitutional right. Nor do they trump Rule 38, which provides that a party may demand a jury trial “on any issue triable of right by a jury” and that a “demand may be withdrawn only if the parties consent.” I.R.C.P. 38. There is no question Plaintiffs would be entitled to a jury determination of damages on their legal claims if they were proceeding against Defendants who had appeared in the case, properly provided discovery, and participated in the legal process. It would be inequitable to hold that Plaintiffs may not have a jury decide their damages because of Defendants’ misconduct. To do so would essentially allow Defendants to unilaterally veto Plaintiffs’ constitutional right and circumnavigate Idaho Rule of Civil Procedure 38’s requirement that Plaintiffs’ demand be withdrawn only with the Plaintiffs’ consent.

Alternatively, the Court also finds it is proper to refer the question of the amount of damages in this case to a jury under to Idaho Rule of Civil Procedure 39(c). That rule gives the Court the discretion to empanel a jury even on in an action not triable by a jury as a matter of right: “[T]he court, on motion or on its own: (1) may try any issue with an advisory jury; or (2) 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). Moreover, the language in Rule 55(b) permitting the

Court to make “referrals” supports the Court’s discretionary decision to empanel a jury in this case. Thus, for the equitable reasons discussed above, the Court finds it is proper to refer the question of the amount of damages in this case to a jury pursuant to Idaho Rule of Civil Procedure 39(c). Plaintiffs have expressly consented to have damages tried by a jury, and Defendants have consented through their failure to appear or otherwise oppose Plaintiffs’ demand.

**B. Plaintiffs’ Motion for Reconsideration of portions of the June 13, 2023, Sanctions Order.**

Plaintiffs have also moved for the Court to reconsider portions of the June 13, 2023 Sanctions Order. Specifically, Plaintiffs request the Court to reconsider the sanction that the Court will not consider argument from Defendants or allow Defendants to participate in a default damages hearing or trial. In light of the Court’s decision to grant Plaintiffs’ request for a jury trial on damages, the Court also grants Plaintiffs’ request to reconsider the portion of the June 13, 2023 Rodriguez Default and Sanctions Order relating to the Defendants’ participation and presentation of argument at the a default damages jury trial.

“The imposition of sanctions for discovery violations is committed to the discretion of the trial court and will not be overturned on appeal absent a manifest abuse of that discretion.” *Ashby v. W. Council, Lumber Production and Industrial Workers*, 117 Idaho 684, 686, 791 P.2d 434, 436 (1990); *Southern Idaho Prod. Credit Ass’n (SIPCA) v. Astorquia*, 113 Idaho 526, 746 P.2d 985 (1987); *Devault v. Steven L. Herndon*, 107 Idaho 1, 684 P.2d 978 (1984); *Kleine v. Fred Meyer, Inc.*, 124 Idaho 44, 47, 855 P.2d 881, 884 (Ct.App.1992). Idaho Rule of Civil Procedure 37 allows the Court to impose a variety of sanctions, including striking pleadings in whole or in part, dismissing the action or proceeding in whole or in part; rendering a default judgment against the disobedient party, and treating as contempt of court the failure to obey any order. *See* I.R.C.P 37. However, “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.” *See Peterson v. McCawley*, 135 Idaho 282, 284, 960 (Ct. App. 2000).

In light of the Court’s decision to refer the question of damages in this case to a jury, the Court agrees with Plaintiffs that prohibiting Defendants from presenting argument at the damages trial may be harsher than necessary to address Defendants’ violations of discovery obligations, 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). The Court finds the other sanctions imposed by the June 13, 2023 Rodriguez Default and Sanctions Order, including striking Defendant Rodriguez’s Answer and barring introduction of evidence not produced in discovery are adequate to address Defendants’ violations. As such, the Court grants in Plaintiffs’ Motion for Reconsideration of portions of the June 13, 2023 Rodriguez Default and Sanctions Order as was set forth in the Court’s June 30, 2023 order granting Plaintiffs’ Motion.

#### IV. CONCLUSION

For these reasons, Plaintiffs’ Motions for Reconsideration are GRANTED as orally announced in court on June 29, 2023 and as set forth in the Court’s written order issued on June 30, 2023.

IT IS SO ORDERED.

DATED: 8/16/23.

  
\_\_\_\_\_  
NANCY A. BASKIN  
District Judge

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on \_\_\_\_\_, I caused a true and correct copy of the foregoing **MEMORANDUM DECISION AND ORDER ON PLAINTIFFS' MOTIONS TO RECONSIDER** to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Civil Procedure, to the following person(s):

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Deputy Clerk