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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 COMPEL DEPOSITION
OF AMMON BUNDY**

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 (collectively "Plaintiffs"), by and through their attorneys of record, pursuant to Idaho Rules of Civil Procedure 37(b) and 75, hereby submit this Memorandum in support of their Motion to Compel Deposition of Ammon Bundy.

I. INTRODUCTION

The contempt trial has been set to commence November 13, 2023. Plaintiffs are preparing to put on their contempt case against Ammon Bundy. Plaintiffs properly served Mr. Bundy with a notice for his deposition. Declaration of Erik F. Stidham in Support of Motion to Compel Deposition of Ammon Bundy ("Stidham Decl."), ¶ 2. Since serving the deposition notice, Plaintiffs' counsel met and conferred with Mr. Bundy, who has refused to attend, citing the privilege against self-incrimination. *See* Stidham Decl., ¶¶ 2-4, Ex. A. Mr. Bundy seems to argue that if he cannot be compelled to testify at the trial, Plaintiffs have no right to take his deposition either because contempt is criminal and depositions are civil. *Id.* This is incorrect. Plaintiffs have a right to discovery in contempt proceedings under Rule 75 and to pursue civil contempt (a coercive sanction to make Mr. Bundy remove the webpages that violate the Court's orders). There is no blanket privilege for civil contempt; rather the party asserting the privilege may assert it question-by-question.

Moreover, Mr. Bundy refuses to disclose whether he will waive any privilege against self-incrimination, instead stating that he will decide at trial whether he will take the stand. *See id.*, Ex. A at 2. Accordingly, a deposition is necessary because Mr. Bundy has confirmed that he may be a witness at the contempt trial. He can make his objections question-by-question at the deposition where there is reasonable grounds, but he cannot entirely refuse to attend a deposition.

Plaintiffs request an order compelling Mr. Bundy to attend a deposition.

II. ARGUMENT

A. CIVIL DISCOVERY IS PART OF THE CONTEMPT PROCESS.

As a threshold matter, civil discovery is part of the contempt process. Idaho Rule of Civil Procedure 75(n) states, “Rules regarding discovery and other rules of civil procedure, to the extent they are not in conflict with this rule, apply to nonsummary contempt proceedings. The Idaho Criminal Rules do not apply.”

Other than this express incorporation of Idaho discovery rules, there is no mention of discovery in Rule 75. Accordingly, there is no conflict with the discovery rules. Under I.R.C.P. 75(n), depositions are permitted. And here, a deposition is necessary to conduct discovery on Mr. Bundy’s state of mind and conduct with respect to the contempt charges. Plaintiffs have the burden to prove these elements at the contempt trial and the right to discovery with respect to them. *See State v. Rice*, 145 Idaho 554, 556, 181 P.3d 480, 482 (2008) (a finding of contempt requires the movant to establish (1) a violation of a clear and unequivocal order (2) done willfully); I.R.C.P. 75(n). Moreover, Mr. Bundy has asserted affirmative defenses, for which Plaintiffs have the right to discover any factual basis on which he intends to rely. *See* I.R.C.P. 75(n); I.R.C.P. 26(b)(1).

Under I.R.C.P. 37, Mr. Bundy should be compelled to sit for a deposition. Such an order is especially appropriate given that throughout the case Mr. Bundy has wrongly refused to sit for his deposition and has established a pattern of disregarding his discovery obligations. *See, e.g.*, 6-13-2023 Memo & Order for Sanctions on Motions Re Depositions at pp. 8-15; 6-13-23 Memo & Order for Sanctions against All Defendants at pp. 5-10. Accordingly, Plaintiffs have never been able to obtain regular civil discovery from Mr. Bundy, despite their entitlement to it.

B. THE PRIVILEGE AGAINST SELF-INCRIMINATION DOES NOT PROVIDE A VALID BASIS TO REFUSE TO APPEAR FOR DEPOSITION.

While the privilege against self-incrimination applies in the civil contempt context, it does not give the contemnor the right to refuse to take the witness stand. *See C&M Inv. Grp., Ltd. v. Campbell*, 164 Idaho 304, 308, 429 P.3d 192, 196 (Ct. App. 2018). In *C&M Investment Group*, the court held that I.R.C.P. 75 “does not afford an alleged contemnor a blanket right not to testify in contempt proceedings” with respect to civil contempt. *Id.* at 307, 429 P.3d at 195.

Instead, an alleged contemnor may object question-by-question on the basis of the privilege against self-incrimination. *See id.*; *McPherson v. McPherson*, 112 Idaho 402, 407, 732 P.2d 371, 376 (Ct. App. 1987) (affirming civil sanction over appellant’s privilege against self-incrimination arguments). The party asserting the privilege must provide an objectively reasonable basis for his asserted fear of criminal prosecution arising from answering each objected-to question. *McPherson*, 112 Idaho at 404-06, 732 P.2d at 373-75 (holding party did not set out any plausible scenario as to how describing his employment history would tend to expose him to future prosecution).

To be clear, the question-by-question objection on the basis of the privilege applies in the civil contempt context, not the criminal contempt context. *See C&M Inv. Grp., Ltd.*, 164 Idaho at 308, 429 P.3d at 196. Whether contempt is civil or criminal depends on the type of remedy the court imposes. *See In re Williams*, 120 Idaho 473, 480, 817 P.2d 139, 146 (1991) (“When sanctions are imposed to punish the contemnor for past acts, the contempt is criminal; when sanctions are imposed for compensatory or coercive reasons, the contempt is civil in nature.”).

Here, Plaintiffs seek civil sanctions in contempt—a coercive remedy requiring Mr. Bundy to remove the offending web pages identified in their Notice of Contempt Charges. *See, e.g., Smith v. Smith*, 136 Idaho 120, 124, 29 P.3d 956, 960 (Ct. App. 2001) (affirming civil

contempt sanction of incarceration until contemnor responded to discovery because orders to pay monetary sanctions had been ineffective). Here, like in *Smith*, a civil sanction is especially appropriate because Mr. Bundy has refused to pay court-ordered fees, indicating punishment by way of fines (a criminal sanction) would not be effective.

But ultimately the type of sanctions to impose for contempt is within the Court's inherent power and discretion, within the limits of I.C. § 7-610. *Chavez v. Canyon Cnty.*, 152 Idaho 297, 304, 271 P.3d 695, 702 (2012); *Smith*, 136 Idaho at 124, 29 P.3d at 960. Accordingly, despite the urging of Plaintiffs, it is possible that this Court will determine that all counts of contempt will be remedied through criminal contempt.

But in any event (whether the charges are considered civil or criminal), there is no basis to object to a deposition here. On the one hand, if all or some charges are considered civil, then Mr. Bundy could be compelled to testify at the contempt trial (and can object question-by-question). *See C&M Inv. Grp., Ltd.*, 164 Idaho at 308, 429 P.3d at 196. On the other hand, if **all** charges are considered criminal, then Mr. Bundy could refuse to take the stand at the contempt trial—but he could alternatively decide to waive the privilege and take the stand—a decision he refuses to disclose. *See Stidham Decl., Ex. A at 2.* If all charges are considered criminal, and he decides to waive the privilege, then Plaintiffs have the right to impeach him using his deposition testimony. There is no basis to preclude a deposition here.

III. CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court order Mr. Bundy to attend his deposition.

DATED: September 21, 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 21st day of September, 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

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- Overnight Mail
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