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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 IN LIMINE REGARDING
DEFENDANT AMMON BUNDY'S
UNFILED AND UNTIMELY WITNESS
LIST AND EXHIBIT LIST**

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" or "St. Luke's Parties"), by and through their attorneys of record, Holland & Hart LLP, hereby submit this Memorandum in Support of Motion in Limine to exclude evidence and witnesses from the contempt trial scheduled to begin November 13, 2023, pursuant to the Court's Order, Idaho Rule of Evidence 402, and Idaho Rule of Evidence 403.

I. INTRODUCTION

Ammon Bundy ("Bundy") should not be allowed to introduce any exhibits or witnesses at the Contempt Trial.

First, Bundy has not filed a witness list or exhibit list. The Court ordered Bundy to file and serve his witness and exhibit lists on or before November 6, 2023. He did not comply. Instead, Bundy emailed a list of 40 exhibits and a list of 34 witnesses ("Emailed List") to St. Luke's Parties' counsel on November 8—six days before the Contempt Trial. If Bundy is allowed to call witnesses and use exhibits on the Emailed List, the St. Luke's Parties will be prejudiced unfairly. Bundy should not be allowed to prejudice Plaintiffs with his untimely disclosure of 34 witnesses and 40 exhibits on the eve of trial.

Second, Bundy has not offered and cannot provide any justification for missing the deadline. Bundy has been on notice of the charges against him since at least April 4, 2023, when he was served with the renewed motion for contempt, charging affidavit, and other supporting papers. Bundy added about five months to the process by ignoring Court Orders to appear and by delaying his arrest with threats of violence. He was arraigned months ago. Recently, he was granted a two-month extension to pick apples. He has had ample time.

Third, Bundy's filings in this Court, his public statements, and his actions in a Gem County case all indicate that he intends to use the witnesses and exhibits on the Emailed List for an improper purpose. Bundy intends to use these witnesses and documents to relitigate the same defamatory statements that led to the \$52 million jury verdict and that he is barred from publishing pursuant to the Permanent Injunction dated August 25, 2023 ("Permanent Injunction"). Bundy's defamatory statements and his supposed support for his false statement were all rejected in proceedings before this Court. The scope of the Contempt Trial is relatively narrow, and the underlying facts of the defamatory conduct are established through issue preclusion. In turn, the witnesses and evidence contained on the Emailed List are not relevant here.

Finally, many of the documents identified by Bundy include protected health information that this Court has placed under seal to protect the confidentiality of the Infant.

Thus, the Court should exclude all evidence and witnesses on Bundy's Emailed List.

II. BACKGROUND

A. BUNDY CONTINUES TO VIOLATE THE PERMANENT INJUNCTION AND HAS MADE CLEAR STATEMENTS THAT HE WILL NOT STOP.

Bundy's actions indicate he intends to use the Contempt Trial to reassert his defamatory conspiracy theory to agitate his followers and harass the St. Luke's Parties. In the 77 days since the Court issued the Permanent Injunction, Bundy has repeatedly violated the order. *See e.g.*, Affidavit of Jennifer Jensen in Support of Motion for Contempt Against Ammon Bundy, People's Rights Network, and Ammon Bundy for Governor, dated October 10, 2023 at Exs. A-I. Bundy's defamatory statements have increased in frequency and repeatedly refer to the Contempt Trial. *Id.* On November 6, 2023, Bundy appeared on an extremist media outlet

making defamatory statements in connection with the Contempt Trial indicating his intent to relitigate issues relating to the Infant. As recently as November 9, 2023, Bundy used his @RealABundy account to post defamatory statements, media, and links to the freedomman.org site on the social media site X (formerly Twitter). *See* <https://twitter.com/RealABundy/status/1722485923504439579> (post also states “Learn more here 📄 <http://freedomman.org/cyrus>”)(last visited 11/10/2023).

In his filings relating to this Contempt Trial, Bundy repeatedly makes statements and attaches exhibits indicating he intends to use the Contempt Trial to further publish his defamatory conspiracy theory and introduce cherry-picked medical records to relitigate issues decided long ago. *See* Motion to Dismiss Contempt Charges dated October 4, 2023, at pp. 6-7, Ex. G (excerpts of sealed medical records relating to the Infant). On November 30, 2023, Bundy filed his Motion to Consolidate Contempt Proceedings and Schedule Trial Date (“Bundy Contempt Motion”). In the Bundy Contempt Motion, he cites many of the same documents that are listed in the Emailed List. *See* Contempt Motion, at Ex. 1-40. In the Bundy Contempt Motion, these exhibits are cited as “support” for Bundy’s reassertion of his defamatory kidnapping conspiracy. *See* Bundy Contempt Motion at pp. 1-5 (rearguing this Court’s finding relating to the Infant).

In Gem County, Bundy faces a fraudulent conveyance lawsuit relating to collection of the jury award in this case. *See St. Luke’s, et, al v. Ammon Bundy, et al.* (CV23-23-0551). In the Gem County case, on November 6, 2023, Bundy repeatedly violated the Permanent Injunction while indicating the Contempt Trial against him in this Court. *See e.g.*, <https://youtu.be/Ob3A2uYOvhA?si=hoBnp2IhDYDiS9qB> at 31:13-35:00; 1:20:20-1:23:11

(posting from PRN member of audio from November 6, 2023 hearing reflecting Bundy's refusal to abide by Permanent Injunction even when advised by Court)(last visited 11/10/2023).

B. THE EMAILED LIST CONTAINS 34 WITNESSES; MOST OF THE PROPOSED WITNESSES ARE BUNDY'S POLITICAL OPPONENTS AND EVIDENCE RELATING TO BUNDY'S DEFAMATORY STATEMENTS ABOUT THE ST. LUKE'S PARTIES.

On November 8, 2023, Bundy sent counsel for St. Luke's Parties an email entitled "Witness/Exhibit." Declaration of Erik F. Stidham dated November 10, 2023 ("Stidham Dec.") at Exs. A-C (Emailed List). The Emailed List included 40 proposed exhibits and 34 witnesses. *Id.*

On the Emailed List, Bundy identifies political officials and law enforcement personnel, including Governor Brad Little, Lieutenant Governor Scott Bedke, the Director of the Idaho Department of Administration, and many others. Stidham Dec. at Exs. C, D. For example, Blake Higly, Charles Ketchum, and Stephen Acheson are Idaho State Police troopers who arrested Bundy in August of 2020 when Bundy was protesting coronavirus-related measures. *See* Stidham Decl., Exs. C, D. Emily Lowe, Whitney Welsh, Payton Meredith, Kevin Cassidy, and Joe Mueller are people who were ostensibly involved in Bundy's criminal prosecutions or otherwise aided in Bundy's former arrests. *See id.* Keith Reynolds, Brent Hill, Greg Chaney, John McCrostie, Jeff Wall, Mary Sue Jones, Soren Jacobson, Sarah Jane McDonald, Eric Milstead, Julie Ellsworth, Patti Perkins, Julie Weaver, and Diane Blume are state officials or agents that, as best as Plaintiffs can tell, played no role in the underlying lawsuit or the issues before the Court. *See id.* And Ryan Hawes and Keith Ridler are media personalities. who have evidently written unfavorably of Bundy or that Bundy otherwise disagrees with. *See id.* The proposed witnesses relate to Bundy's false narrative that he is persecuted by powerful enemies who, in turn, led to the conspiracy to kidnap the Infant.

C. BUNDY’S EMAILED LIST CONTAINS 40 EXHIBITS RELATED TO HIS DEFAMATORY CONSPIRACY THEORY.

The proposed exhibits on the Emailed List include excerpts from the Infant’s sealed medical records. Stidham Dec. at Ex. B (Bundy’s proposed exhibits 5-15, 20-29, and 36). Over 20 of the proposed exhibits contain portions of the Infant’s medical records that have been modified and edited to serve Bundy’s defamatory narrative that a healthy infant was kidnaped by his enemies. *See* Stidham Decl., Ex. B. (Proposed 5-6, 8-12, 13-15, 20-28, 31, and 36). Other exhibits contain undated images of the Infant. *See id.* (Proposed 32-33).

For proposed exhibits, Bundy also includes documents, screen shots, texts, and links to websites that have no bearing on the issues before the Court in this contempt trial. *See* Stidham Decl., Ex B (Proposed 2-3, 4A, 12A, 16-17, 19, 30, 34 38-39). For example, one screen shot of a web post relates to dismissal of the Infant’s Child Protective Services case. *See id.* (Ex. 30). Another relates to Nazi activity during WWII, entitled “The children the Nazis stole in Poland.” *See id.* (Proposed 38). Stidham Dec. at (proposed exhibit 38). Other proposed exhibits are pictures of the Infant and his family and a picture of the Bundy family from a photo shoot on a beach. Stidham Dec. at Ex. B (Proposed 27, 29, 32, 33. 37). And Bundy also includes links to web sites and a text. Stidham Decl. at Ex. B (Proposed 7, 16, 17, 19, 29, 30, and 31).

III. ARGUMENT

This Court has broad discretion in determining the admissibility of evidence by ruling on motions in limine. *Sun Valley Potato Growers, Inc. v. Tex. Refinery Corp.*, 139 Idaho 761, 767, 86 P.3d 475, 481 (2004); *State v. Richardson*, 156 Idaho 524, 527, 328 P.3d 504, 507 (2014); *Cramer v. Slater*, 146 Idaho 868, 878, 204 P.3d 508, 518 (2009).

A. BUNDY FAILED TO MEET THE DEADLINE.

In relevant part, the scheduling order states: “Bundy shall disclose any potential witnesses and/or exhibits, if any, he may seek to rely upon for purposes of the motion for contempt court trial, one week prior to the hearing or November 6, 2023.” October 19 Order on Pending Motions and Contempt Court Trial Schedule (“Scheduling Order”) at 2; *see also* Loc. R. 2 (The Court “controls and sets its own calendar, subject to the rules of the Idaho Supreme Court and administrative orders.”). The Scheduling Order further states “[t]he witness list and exhibit list must be *filed* with the Court and served by email to Plaintiffs’ counsel on or before November 6, 2023.” *Id.* (emphasis in original). The Court warned that “[f]ailure to timely disclose this information may result in a witness not being able to testify or an exhibit not being admitted for consideration by the Court.” *Id.*

Bundy did not comply with the Court’s Scheduling Order. Even though the deadline passed four days ago, Bundy still has not filed an exhibit or witness list. Stidham Dec., ¶7. The Emailed List was sent to Plaintiffs’ counsel on November 8, 2023—two days after the deadline and less than a week before the Contempt Trial. *See* Stidham Decl., ¶ 2. Courts properly can conclude, based on a pattern of intentional discovery violations, that a party’s late disclosure is done for a wrongful purpose. *See Taylor v. Illinois*, 484 U.S. 400, 414 (1988)(the Supreme Court held “[i]t is . . . reasonable to presume that there is something suspect about a defense witness who is not identified until after the 11th hour has passed” and “a pattern of discovery violations is explicable only on the assumption that the violations were designed to conceal a plan to present fabricated testimony.”)

Bundy’s untimely disclosure is prejudicial to Plaintiffs. Bundy disclosed 34 witnesses and 40 exhibits. *See id.*, Exs. B-D. Accordingly, Plaintiffs are forced to prepare for potential

examination of 34 additional witnesses and analyze 40 potential exhibits days before trial. The consequences of Bundy's failure to timely produce his witness and exhibit lists should fall on Bundy, not Plaintiffs. The witnesses and exhibits on the Emailed List should be excluded.

B. BUNDY'S REFUSAL TO COMPLY WITH THE SCHEDULING ORDER IS NOT SUBSTANTIALLY JUSTIFIED OR HARMLESS.

Bundy's failure to meet the deadline is not substantially justified nor harmless. First, Bundy had notice of the contempt charges for almost eight months. St. Luke's Parties filed their renewed motion for contempt on March 30, 2023, and it was served on Bundy on April 4, 2023. Bundy delayed proceedings for months by defying court orders compelling him to appear and his arrest warrant. Moreover, it has been months since Bundy was finally arrested and arraigned. Bundy delayed the Contempt Trial claiming that he needed two months to harvest apples. Bundy has had the St. Luke's Parties' witness list and exhibit list since shortly after his arraignment. Bundy has had months since he was arraigned to identify witnesses and exhibits. He has had more than sufficient time.

Finally, St. Luke's Parties would be prejudiced if they were required to divert resources days before the contempt trial to review documents and investigate a long list of witnesses.

C. BUNDY SEEKS TO RELITIGATE BINDING RULINGS AND FINDINGS; EXHIBITS AND WITNESSES ON THE EMAIL LIST ARE IRRELEVANT TO THE CONTEMPT TRIAL.

1. Bundy Seeks to Use Witnesses and Evidence to Further His Defamatory Narrative in Violation of the Permanent Injunction.

Bundy is precluded from relitigating issues that have been decided in the underlying lawsuit. As described in Plaintiffs' Contempt Trial Brief, issue preclusion operates to prohibit litigants from relitigating the same issue with the same party. *See Ticor Title Co. v. Stanion*, 144 Idaho 119, 122, 157 P.3d 613, 616 (2007) ("Issue preclusion protects litigants from litigating an

identical issue with the same party or its privy.”) (citation omitted); Contempt Trial Brief at 5-10 (applying five-part test to the factual issues related to contempt). Issue preclusion applies with equal force to default judgments. *See Waller v. Dep’t of Health and Welfare*, 146 Idaho 234, 237, 192 P.3d 1058, 1061 (2008); *Lisher v. Krasselt*, 96 Idaho 854, 857, 538 P.2d 783, 786 (1975). Bundy has long since missed all deadlines to overturn or appeal the judgement and the Permanent Injunction. And even if he had not missed the deadlines, he could not have established the requisite fraud or legal error.

Here, Bundy’s ongoing violations of the Permanent Injunction, public statement, and legal filings establish that he intends to use excerpts from the Infant’s sealed medical records and pictures of the Infant to relitigate the issue of the Infant’s health when he was taken into protective care. And as shown in the Bundy Contempt Motion, he intends to dispute established findings and rulings by citing to these proposed exhibits and calling his political enemies as witnesses. *See Bundy Contempt Motion at p. 1* (falsely asserting defamatory statements regarding Dr. Erickson in violation of the Permanent Injunction).

2. Many, if Not All, of the Witnesses and Much, if Not All, of the Evidence on the Emailed List Are Irrelevant to the Contempt Trial.

The court exercises discretion in ruling on whether to admit evidence based on the rules of evidence. *Highland Enterprises, Inc. v. Barker*, 133 Idaho 330, 347, 986 P.2d 996, 1010 (1999). Irrelevant evidence, meaning evidence unrelated to any fact that is of consequence to the determination of the claims at issue, is generally inadmissible. I.R.E. 401; I.R.E. 402. Relevant evidence where the “probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence” is also generally inadmissible.

I.R.E. 403. Even relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or if the evidence tends to mislead the jury, create confusion or undue delay, waste time, or is cumulative. *L & L Furn. Mart, Inc. v. Boise Water Corp.*, 120 Idaho 107, 813 P.2d 918 (Idaho Ct. App. 1991).

Regardless of civil or criminal nature of the proceeding, Bundy does not “have the right to present unlimited evidence in his defense.” *State v. Hensley*, 145 Idaho 852, 858, 187 P.3d 1227, 1233 (2008). As in all cases, Bundy does not have the right to present irrelevant evidence. *Id.* And the Court “has broad discretion to limit cross-examination to prevent harassment, prejudice, confusion of the issues or if the testimony is only marginally relevant.” *Id.*

In this contempt action, the Court is faced with two relatively narrow issues. The first is whether Bundy violated either the Preliminary Injunction (which required Bundy to remove statements and allegations that Chris Roth is an accessory to child abduction) or the Protective Order (which forbade Bundy from intimidating, threatening, or harassing witnesses). *See* Plaintiffs’ Contempt Trial Brief (“Contempt Trial Brief”), filed Nov. 3, 2023, at 4. The second is whether Bundy’s violations of those orders were willful. *See id.* Accordingly, exhibits or witnesses that have no bearing on at least one of those issues are irrelevant and can be properly excluded. *See* I.R.E. 401; I.R.E. 402; *State v. Ogden*, 526 P.3d 1013, 1028 (Idaho 2023) (district court erred by admitting a statement that had no bearing on any fact in consequence).

Each of Bundy’s exhibits and witnesses should be excluded because they are irrelevant and/or are barred by issue preclusion. Most of the witnesses on the Emailed List are political figures or law enforcement personnel who have had conflicts with Bundy but who have no relevance to the issues at hand. *See* Stidham Dec., at Ex. D. The obvious conclusion is that Bundy seeks to use the Contempt Trial to harass those he believes have wronged him or his

political cause. None of the witnesses, other than Diego Rodriguez¹, appear to be relevant to this case. Stidham Dec. at Ex. D. The proposed exhibits do not relate to the issues at hand; instead, Bundy intends to use the proposed as “support” for his defamatory narrative. See Bundy Contempt Motion, at pp. 1-5 (citing some of the proposed exhibits to support his defamatory kidnapping narrative). The witnesses and exhibits on the Emailed List should be excluded as irrelevant and as being offered for the purpose of harassment.

D. BUNDY FILES MODIFIED EXCERPTS OF MEDICAL RECORDS THAT HAVE BEEN SEALED.

Bundy’s Emailed List contains about 20 modified excerpts of the Infant’s medical records. During the underlying trial in this matter, the Court was careful to protect the Infant’s medical records. And the end of the damages trial, the Court sealed the Infant’s medical records to protect confidentiality. *See* Stidham Decl., Ex. E (excerpts of trial transcript relating to sealing Infant’s medical records). Bundy has made no attempt to redact the medical records or file them under seal.

E. BUNDY INTENDS TO USE THE EXHIBITS AND WITNESSES TO HARASS, DEFAME, AND DISTRACT.

Based on the content of these lists, Bundy intends to use the exhibits and witnesses for improper purposes. One of Bundy’s exhibits is an article titled, “The children the Nazis stole in Poland.” Stidham Decl., Ex. B (Proposed 38). The article discusses how the Nazis “kidnapped tens of thousands of children,” and it includes photos of the taken children. *Id.* It’s clear that

¹ Bundy listed Rodriguez as a witness, albeit with a false address. *See* Stidham Dec. at Ex. B. Given Rodriguez’s ongoing violations of the Permanent Injunction, Plaintiffs anticipate any testimony Rodriguez would offer would be calculated to harass and defame. However, Plaintiffs would stipulate to the late addition of Rodriguez as a witness so long as he testifies in person, is available to be called in Plaintiffs’ case-in-chief, and can be arraigned on pending contempt charges.

Bundy intends to use this article to make some offensive and false comparison between Plaintiffs and the Nazis. Such comparisons have no place in the contempt proceedings and, in fact, put Plaintiffs at risk of violence from Bundy's followers.

Additionally, it appears Bundy intends to introduce witnesses to air old grievances and push his agenda. As stated, Bundy intends to call officers that arrested him for violations of coronavirus-related demonstrations, as well as news reporters that he disagrees with. *See above.* Bundy's disagreement with old coronavirus measures or his prior arrests from 2020 to 2021 are not at issue here. Nor is Bundy's dispute with the media. Bundy's purpose in calling them can only be to distract from the issues before the Court or further Bundy's conspiracy theory that the state and the media are conspiring against him. Again, this trial is about Bundy's willful violation of court orders. It's not an open forum for Bundy to criticize his political opponents or condemn those with whom he disagrees.

IV. CONCLUSION

Bundy believes that he is not subject to the orders of this Court, applicable laws, and rules of procedure. Bundy should be held to the same standard as other litigants. Without justification, Bundy has failed to meet the applicable deadline. And now, as evidenced by his list of proposed witnesses and evidence, Bundy seeks to turn the Contempt Trial into political theater to defame, intimidate, and harass the St. Luke's Parties, those who testified against him, his political enemies, and those who might oppose him in the future. For the foregoing reasons, Plaintiffs request the Court enter an order excluding Bundy's late disclosed evidence and witnesses from trial.

DATED: November 10, 2023.

HOLLAND & HART LLP

By: /s/Erik F. Stidham

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 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:

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