

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

St Lukes Health System LTD, St Lukes
Regional Medical Center LTD, Chris
Roth, Natasha Erickson, MD, Tracy
Jungman
Plaintiff,

vs.

Ammon Bundy, Ammon Bundy for
Governor, Diego Rodriguez, Freedom
Man PAC, Peoples Rights Network,
Freedom Man Press LLC
Defendant.

Case No. CV01-22-06789

Order Following Pretrial Conference and
Order on Plaintiffs' Motion for Jury Trial
against Defaulted Defendants

Date of Hearing: June 6, 2023

APPEARANCES:

Plaintiff Attorney: Erik Stidham

Defendant Diego Rodriguez: A self-represented litigant, did not appear

“Pro se litigants are held to the same standards and rules as those represented by an attorney.” *Suitts v. Nix*, 141 Idaho 706, 709, 117 P.3d 120, 123 (2005) (quoting *Twin Falls County v. Coates*, 139 Idaho 442, 445, 80 P.3d 1043, 1046 (2003)). Additionally, “Pro se litigants are not accorded any special consideration simply because they are representing themselves and are not excused from adhering to procedural rules.” *Nelson*, 144 Idaho at 718, 170 P.3d at 383 (citing *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 346, 941 P.2d 314, 318 (1997)).

A. Diego Rodriguez’s failure to appear and failure to comply with Notice of Trial Setting and Order Governing Proceedings

This final Pretrial Conference came before the Court on June 6, 2023 for a formal pretrial conference that was noticed for hearing in this Court’s Notice of Trial Setting and Order Governing Further Proceedings, filed October 17, 2022. That Notice and Order stated:



A pretrial conference is hereby set for **TUESDAY, JUNE 6, 2023 at 2:30 p.m.** All pretrial materials in J.R.C.P. 16 must be filed on or before the pretrial conference date. A copy of exhibit lists, witness lists, and requested jury instructions (jury trial) or proposed findings of fact and conclusions of law (court trial) shall be submitted no later than this hearing. It is sufficient for the parties to identify unmodified pattern jury instructions by number. Counsel will retain the exhibits until the day of trial and will not lodge actual exhibits with the clerk. All parties must be represented at the pretrial conference. Counsel must be the handling attorney, or be fully familiar with the case and have authority to bind the client and law firm to all matters within J.R.C.P. 16. This conference will include a discussion of whether an alternate judge may be available to try this case, if necessary, and any changes to the dates or times the alternate judge may require. If scheduling issues remain, an additional status conference will be set at the pretrial conference.

(Emphasis in original). A status conference was also noticed in that Notice and Order for May 23, 2023 at 2:30 p.m. On May 23, 2023, Diego Rodriguez also did not appear at the Court's status conference set in the Notice of Trial Setting and Order Governing Further Proceedings, filed October 17, 2022. Rather, a second Notice of Removal to Federal Court that was not file stamped by the Federal court and that had a blank certificate of service was left in the Clerk of the District Court's office on the first floor of the Ada County Courthouse by an unidentified person. This court reviewed the notice, with its lack of file stamp and lack of certificate of service, knowing that jurisdiction had already been returned to state court on a previous attempt to remove this matter to Federal court, and determined this Notice was "frivolous." Considering Judge Nye's ruling that Rodriguez's May 23, 2023 Notice was "moot" and that Rodriguez was not entitled to reconsideration of his previous order returning jurisdiction to the state court, this Court considers Rodriguez's second attempt to remove this matter to Federal Court on the day reset on a Motion for Contempt against Rodriguez and on the date of the status conference set in the Notice of Trial Setting to be bad faith on the part of Diego Rodriguez. The Court entered an Order Following Status Conference on May 23, 2023 capturing the discussion during the May 23, 2023 hearing, reiterating the information from the Notice of Trial Setting and Order Governing Proceedings, ordered that the final Pretrial Conference was an in-person hearing at the Ada County Courthouse, and reiterated that Diego Rodriguez attendance was required at the pretrial conference.

While Diego Rodriguez did not appear at the hearing on May 23, 2023, several of



his supporters did attend that hearing. No request to obtain approval of presiding judge to video/audio record, broadcast, or photograph a court proceeding was filed before this proceeding (or any proceeding to date in this case). Administrative Order No. 21-05-21-1—which notice is posted throughout the Ada County Courthouse—clearly states,

The use or possession of video, audio, and photographic equipment [defined in footnote 1, This includes any camera, body cam, gopro, or any other type of device or equipment that can be used to photograph or record and these devices will not be allowed into a courthouse or court facility without permission outlined in this Order; but this Order does not prohibit entering with a cell phone, so long as the cell phone is not being used to photograph, video, broadcast or record.] to cover, broadcast, or record court proceedings is permitted inside Ada County Courthouse courtrooms or other rooms where court proceedings are being held only with the prior written approval of the presiding judge in the particular proceeding sought to be recorded.

Pursuant to Idaho Court Administrative Rule 45, whether to permit recording, broadcasting, or photography of a court proceeding is within the discretion of the court and is not subject to appellate review. On May 23, 2023 on the record at 2:38 p.m., the Court noticed that David Pettinger was in the courtroom with a cell phone turned on and without permission of the court. Pettinger advised the court he was using his phone for news as a reporter for the Idaho Dispatch. The Court notes that the Idaho Dispatch published St. Luke's expert witness list prepared in this case about a month before any witness list was filed with the Court which has caused distress in a potential witness in this case and that witness feels the posts are intimidating.¹ Since no request to video/audio record, broadcast, or photograph a court proceeding had been made or approved, as was required by Fourth Judicial District Administrative Order No. 21-05-21-1² and Idaho Court Administrative Rule 45, Pettinger and all other attendees were told they could not record or use a digital device including any cell phone in the courtroom. Pettinger was given a pen and paper by the court to use during the hearing. Pettinger left the courtroom in a disruptive way after the Court announced its probable cause determination on the Motion for Contempt against Rodriguez and that the Court would enter a Warrant of Attachment for Rodriguez and set bond since the Court was

¹ Declaration of Rachel Thomas, M.D., filed May 10, 2023, ¶¶ 6, 18.

² Filed in this case and served on Diego Rodriguez on November 29, 2022.



convinced Rodriguez would not otherwise appear in a courtroom to address the Motion for Contempt. Pettinger later returned to the courtroom for the remainder of this hearing and also for the hearing at 4 p.m. the same day. Pettinger and others also attended multiple days of an unrelated jury trial before Judge Norton held between May 20, 2023 and June 5, 2023. Judge Norton and bailiffs have repeatedly informed them that use of cell phones during court proceedings is not permitted.

Plaintiffs filed a Notice to Court of Audio Recording, filed June 2, 2023, with a conventionally-filed digital file, and Declaration in support, alerting the court that an audio recording of the May 23, 2023 hearing had been posted by Devin Miller on a “Telegram” chat page for which Defendant Diego Rodriguez is the administrator of the page. This Court finds this recording and posting of the recording without this Court’s permission was a violation of this Court’s bench order entered at the May 23, 2023, as well as a violation of Fourth Judicial District Administrative Order No. 21-05-21-1 and Idaho Court Administrative Rule 45 since the recording was made and broadcasted without permission of the presiding judge.

This Court notes that Diego Rodriguez had previously tried to broadcast a videoconferenced deposition in this case and disrupted those proceedings which is why the court entered its Order for Protection re: Depositions,³ filed and served with the Court’s Notice of Fourth Judicial District Administrative Order No. 21-05-21-1 the same day, and also ordered Rodriguez to sit for an in-person deposition.⁴

Therefore, when Diego Rodriguez filed a Notice Requesting Remote Video Access to Hearing, filed at 11:06 p.m. on June 5, 2023 but not brought to the judge’s attention until 1:01 p.m. on the day of the Pretrial Conference, the Court denied this late-filed request to convert the in-person pretrial conference to a videoconference. For the reasons stated above, the Court denied Rodriguez’s late-filed request to attend the June 6, 2023 hearing by videoconference. Pursuant to Idaho Supreme Court Order in re: Remote Court Proceedings, entered January 6, 2023 but effective April 1, 2023, the assigned judge has the discretion to hold proceedings in person or remotely, subject to

³ Order for Protection re: Depositions, filed Nov. 29, 2022,

⁴ Order Compelling Defendant Rodriguez to Respond to Discovery, filed Feb. 8, 2023. Sanctions for violation of this order are addressed in a separate decision by this Court.



the approval of each Administrative District Judge, and the order provides that “To protect the integrity of the remote proceeding, an assigned judge has the discretion to enter other orders or impose additional requirements to promote the safety of participants or to promote efficiency.” That order only permits live streaming of proceedings with specific findings by the assigned judge which this judge could not find given the prior violations of this court’s orders in these proceedings. Since the Court had not granted leave for Rodriguez to attend the formal Pretrial Conference by videoconference, his appearance was required in person at the Ada County Courthouse.

Diego Rodriguez failed to attend the formal Pretrial Conference.

Diego Rodriguez also failed to file all pretrial materials required in Idaho Rule of Civil Procedure 16 and this Court’s Notice of Trial Setting and Order Governing Further Proceedings, filed October 17, 2022. All witness lists, exhibit lists, proposed jury instructions were ordered to be filed on or before the June 6, 2023 pretrial conference date. Diego Rodriguez has also failed to comply with the Stipulation for Scheduling and Planning filed October 11, 2022, and ordered by the Notice of Trial Setting and Order Governing Further Proceedings. The Court also determined other Motions for Sanctions against Rodriguez addressed in this Court’s Memorandum Decision and Orders for Sanctions on Motions for Sanctions Re: Depositions and also the Order Granting in Part Plaintiffs’ Amended Motion for Sanctions against All Defendants, issued contemporaneously with this Order.

Idaho Rule of Civil Procedure 16(c), Final pretrial conference and order, requires that at least 30 days before trial, the court must engage in a pretrial process, which may include a formal pretrial conference, where the parties are required to confirm that the matter is proceeding to trial in manner required by the scheduling order. If a formal pretrial conference is held, it must be on the record. Idaho Rule of Civil Procedure 16(e)(1) then states,

The court may sanction any party or attorney if a party or attorney if a party or attorney:

- (A) fails to obey a scheduling or pretrial order;
- (B) fails to appear at a scheduling or pretrial conference;
- (C) is substantially unprepared to participate in a scheduling or pretrial conference; or
- (D) fails to participate in good faith.



Idaho Rule of Civil Procedure 16(e)(2) then provides,

The court may make such orders as are just, and may, along with any other sanction, make any of the orders allowed under Rule 37(b)(2)(A). Also, in addition to or in the place of any other sanction, the court must require the party or the party's attorney, or both, pay any expenses incurred because of noncompliance with this rule, including attorney's fees, unless the court finds noncompliance was substantially justified or that circumstances are such that such an award of expenses would be unjust.

Idaho Rule of Civil Procedure 37(b)(2)(A) includes a list of permissible sanctions for the court which includes, but is not limited to:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;
- (vi) rendering a default judgment against the disobedient party; or
- (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination and initiating contempt proceedings.

For Diego Rodriguez's noncompliance with the Notice of Trial Setting and Order Governing Further Proceedings, filed October 17, 2022, the Stipulation for Scheduling and Planning, filed October 11, 2022, and the Order Following Status Conference, filed May 23, 2023, this Court strikes Diego Rodriguez's Answer, filed September 6, 2022, and his Answer to the Fourth Amended Complaint and Demand for Jury Trial, filed March 15, 2023.

The Court has already entered sanctions against Diego Rodriguez for his failures to comply with discovery requests and notices of depositions in the Motions for Sanctions against Rodriguez addressed in this Court's Memorandum Decision and Orders for Sanctions on Motions for Sanctions Re: Depositions and also the Order Granting in Part Plaintiffs' Amended Motion for Sanctions against All Defendants entered contemporaneously. If the Court had not already stricken his answer and entered an



order of default for the reasons stated in those decisions, the Court would order the same sanctions under Idaho Rule of Civil Procedure 16 for his failure to comply with the pretrial conference requirements in Rule 16 and this Court's Notice of Trial Setting and Order Governing Proceedings.

B. Plaintiffs' Motion for Hearing on Damages Before Jury

The Plaintiffs filed a Motion and Memorandum in Support of Motion for Hearing on Damages Before a Jury Relating to Defaulted Defendants Ammon Bundy, Ammon Bundy for Governor, and People's Rights Network, both filed May 9, 2023. The matter was originally noticed for oral argument on May 23, 2023 and then re-noticed for June 6, 2023.

No written opposition brief was filed by any defendant to this motion, including Diego Rodriguez.

The Court notes that by the time this matter came before the Court for hearing, Orders of Default had been entered Ammon Bundy, Ammon Bundy for Governor, the People's Rights Network, Freedom Man PAC, and Freedom Man LLC who have all failed to file any responsive pleading.⁵ Diego Rodriguez was the only defendant that had filed an Answer to the Fourth Amended Complaint, the operative complaint in this proceeding. However, as sanctions for Diego Rodriguez's conduct in this case and pursuant to separate orders, the Court has stricken Diego Rodriguez's Answer and also entered an Order of Default against Diego Rodriguez.

The Plaintiffs' motion advocates for the Court to conduct a jury trial as a default damages hearing for the defaulted defendants, citing Article I, Section 7 of the Idaho Constitution which states, in relevant part, "The right of trial by jury shall remain inviolate...." The Court does not find that this constitutional provision mandates that Idaho courts must conduct every evidentiary matter as a jury trial, so this Court finds that a jury trial is not required related to determining liability for damages by defaulted defendants.

Rather, Idaho Rule of Civil Procedure 55 states:

⁵ The following are the Orders of Default related to the Fourth Amended Complaint filed March 3, 2023: Order of Default on Fourth Amended Complaint Against Ammon Bundy, Ammon Bundy for Governor, and People's Rights Network, filed Apr. 24, 2023; and Order of Default by Freedom Man Press LLC and Freedom Man PAC, filed June 1, 2023.



(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.

The Idaho rules specifically identify that an evidentiary hearing by the court before a default judgment differs from an uncontested trial.⁶ Idaho Rule of Civil Procedure

⁶ If any default is set aside before default judgment is entered, this Court notes that a jury trial and default damages evidentiary hearing are not required to be separate proceedings. The Court can conduct a default damages hearing related to the defaulted damages simultaneously with a trial related to claims against Rodriguez since some of the evidence may be the same evidence although offered against different defendants, especially related to the Plaintiffs' civil conspiracy claim. Further, this Court notes that Idaho Rule of Civil Procedure 39(c), enacted in 2016 related to trial by jury or by the court, permits an advisory jury, stating:

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.

So, if any Order of Default is set aside, and claims against that defendant are tried by a jury, then the Court may have all but the equitable claims against the defaulted defendants presented to the same jury



55(a)(3) clarifies that an “uncontested trial is not a default,” stating, “This rule [related to entry of default] does not prevent trial of an action if a responsive pleading has been filed even if the defendant does not participate in the trial or oppose the claim. A trial in this circumstance is not a default hearing.”

Considering these rules, this Court finds that a jury trial is not required for defaulted defendants. The Court can make the required determinations at an evidentiary hearing before entry of a default judgment for the defaulted defendants. Since Diego Rodriguez’s Answer to the Fourth Amended Complaint and Demand for Jury Trial was stricken as a sanction for a variety of violations of court orders in this case, then Plaintiffs may proceed to a default damages hearing against Diego Rodriguez as a defaulted defendant as well.

The Court sets the default damages hearing for Ammon Bundy, Ammon Bundy for Governor, the People’s Rights Network, Freedom Man PAC, and Freedom Man LLC, along with a default damages evidentiary hearing for Diego Rodriguez, for ten hearing days beginning July 10, 2023 as detailed in this Order since that time was previously reserved as the trial of this matter.

C. Pretrial Conference Matters

Considering the decision entering an Order of Default against Diego Rodriguez as a sanction for his violation for not attending the Pretrial Conference and sanctions for other motions, and the fact that the five remaining defendants already have Orders of Default entered, this Court will convert the ten-day jury trial that is set to begin July 10, 2023, into a default damages hearing for all defendants. There are other matters scheduled on Judge Norton’s trial calendar during that time. If this case is assigned to an alternate judge for the damages hearing, you will receive notice by a separate order.

HEARING SCHEDULE: The hearing schedule will be as follows:⁷

Monday, July 10, 2023 from 8:30 a.m. until 5 p.m.

Tuesday, July 11, 2023 from 8:30 a.m. until 2 p.m.

as an advisory jury, although the court would still retain its authority to render its own decision on damages and other matters involving the defaulted defendants.

⁷ This schedule applies only if the case is heard by Judge Norton.



Wednesday, July 12, 2023 from 8:30 a.m. until 1 p.m.

Skip Thursday, July 13, 2023.

Friday, July 14, 2023 from 8:30 a.m. until 5 p.m.

Monday, July 17, 2023 from 8:30 a.m. until 5 p.m.

Tuesday, July 18, 2023 from 8:30 a.m. until 2 p.m.

Wednesday, July 19, 2023 from 8:30 a.m. until 1 p.m.

Skip Thursday, July 20, 2023.

Friday, July 21, 2023 from 8:30 a.m. until 5 p.m.

Monday, July 24, 2023 from 8:30 a.m. until 5 p.m.

Tuesday, July 25, 2023 from 8:30 a.m. until 2 p.m.

COURT REPORTER:

There is currently a court reporter shortage in the Fourth Judicial District that is addressed in Fourth Judicial District Administrative Order 22-09-02, Court Reporter Attendance Suspension and Fourth Judicial District Administrative Order 22-04-29, Court Reporter Assignment Priority. Civil evidentiary hearings in district court are eighth in priority for assignment of a court reporter. There may not be a court reporter available for this hearing and the For The Record audio recording would be the official record in this hearing if no court reporter is available to cover this hearing. This hearing may also be reported remotely. If it is reported remotely, please be mindful to always speak clearly and near a microphone to assist in accurate reporting.

JURY INSTRUCTIONS/PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Plaintiffs filed their proposed jury instructions related to claims against Diego Rodriguez on June 6, 2023. The Plaintiffs also filed their proposed findings of fact and conclusions of law for a default damages hearing, and their alternative jury instructions for defaulted defendants, on June 6, 2023. The Court will provide an opportunity to amend before closing the evidentiary hearing.

Diego Rodriguez did not file any proposed jury instructions or proposed findings of fact and conclusions of law on or before June 6, 2023.

EXHIBITS:

The Plaintiffs filed their exhibit list on June 6, 2023. Diego Rodriguez failed to file any exhibit list on or before June 6, 2023. The Plaintiffs counsel inquired about digital



exhibits and the Court informed him that the Exhibits Clerk in the Clerk of the District Court's Office could provide additional instruction on the format (e.g., CD, DVD, flash drive, etc.) of any digital exhibits offered at trial.

WITNESSES:

The Plaintiffs filed their witness list on June 6, 2023 and Diego Rodriguez did not file any witness list on or before June 6, 2023. The Plaintiffs list thirty-five witnesses.

If any witness testimony is to be offered through affidavits, declarations, or depositions, the Court orders that those exhibits are to be marked and lodged with the in-court clerk no later than July 6, 2023.

No scheduling conflicts for any witnesses were noticed at the pretrial conference. Any scheduling conflicts of witnesses should be noticed to the court no later than July 6, 2023.

MOTIONS:

The Plaintiffs filed their Motions in Limine on June 6, 2023.

The Court set a status conference in this case for June 20, 2023 at 4 p.m. The Court will also hear the Plaintiffs Motions in Limine at that time. The Court will also discuss its trial calendar and trial priorities at that conference.

Please contact Judge Norton's in-court clerk, Janine Korsen, if any additional hearings are requested in this case.

IT IS SO ORDERED.

Dated 6/12/2023 10:29:25 PM



Lynn G. Norton
District Judge



CERTIFICATE OF SERVICE

I certify that on this day I served a copy of the attached to:

Erik F. Stidham
Diego Rodriguez

efstidham@hollandhart.com
freedommanpress@protonmail.com

E-mail
 E-mail

Trent Tripple
Clerk of the Court

Dated: 06/13/2023

By: Janine Korsen
Deputy Clerk

