

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

Memorandum Decision on Motion for
Sanctions and to Compel against Ammon
Bundy, Ammon Bundy for Governor, and
People's Rights Network

Plaintiffs filed a Motion for Sanctions for Failure to Appear and Motion to Compel against Ammon Bundy, Ammon Bundy for Governor, and People's Rights Network on March 7, 2023 that came before the Court for hearing on March 21, 2023.

Appearances: Erik Stidham for Plaintiffs

Ammon Bundy did not appear at this hearing; Ammon Bundy who was served with notice of the hearing did not appear for Ammon Bundy for Governor or People's Rights Network at this hearing

Plaintiffs filed a Motion for Sanctions for Failure to Appear and Motion to Compel against Ammon Bundy, Ammon Bundy for Governor, and People's Rights Network,¹ with Memorandum² and Declaration³ in support, all filed on March 7, 2023.

An Amended Complaint was filed in this case on June 2, 2022. Before Bundy was originally defaulted, on July 12, 2022, the Court ordered Bundy to respond to certain expedited

¹ Plaintiffs' Motion for Sanctions for Failure to Appear and Motion to Compel against Ammon Bundy, Ammon Bundy for Governor, and People's Rights Network, filed Mar. 7, 2023.

² Memorandum in Support of Plaintiffs' Motion for Sanctions for Failure to Appear and Motion to Compel against Ammon Bundy, Ammon Bundy for Governor, and People's Rights Network, filed Mar. 7, 2023.

³ Declaration of Erick Stidham in Support of Plaintiffs' Motion for Sanctions for Failure to Appear and Motion to Compel against Ammon Bundy, Ammon Bundy for Governor, and People's Rights Network, filed Mar. 7, 2023.



discovery by August 5, 2022.⁴ An Order for Entry of Default against Ammon Bundy, Ammon Bundy for Governor, and People's Rights Network was then entered September 2, 2022.

On September 8, 2022, while these defendants were defaulted but before default judgment was entered, this Court ordered Ammon Bundy to sit for a deposition to answer the questions posed in Interrogatories numbers 1, 2, 3, 4, and 5 since no responses to these Interrogatories in the expedited discovery requests were received.⁵ On October 12, 2022, at Plaintiffs' request, the Court granted in part a motion for further sanctions against Ammon Bundy for failing to answer these interrogatories or sit for a deposition with the sanctions including entry of the Order for Preliminary Injunction against all Bundy Defendants. The Court denied the request for contempt or a warrant of attachment against Bundy made in conjunction with that request.

Plaintiffs then proceeded to serve Ammon Bundy with Plaintiff St. Luke's Health System, Ltd's, Second Interrogatories, First Requests for Production to Defendant Ammon Bundy on October 19, 2022 and noticed his deposition for January 31, 2023; Ammon Bundy for Ammon Bundy for Governor with Plaintiff St. Luke's Health System, Ltd's, First Interrogatories and Requests for Production to Defendant Ammon Bundy for Governor on October 24, 2022 and noticed a 30(b)(6) deposition for February 7, 2023; and served Ammon Bundy for People's Rights Network with Plaintiff St. Luke's Health System, Ltd's, First Interrogatories and Requests for Production to Defendant People's Rights Network on December 9, 2022 and noticed a 30(b)(6) deposition for February 2nd and 3rd, 2023. None of the Defendants responded to the discovery requests and no one attended any of the noticed depositions. All of these requests were made while the Bundy Defendants were defaulted and the operative Complaint was the Amended Complaint. All of these discovery requests and deposition notices were served before the Third and Fourth Amended Complaints were filed.

Then, Plaintiffs amended the Complaint two more times. The Third Amended Complaint was filed February 10, 2023. The Fourth Amended Complaint was filed March 3, 2023.

Before the Bundy Defendants were served with the Fourth Amended Complaint, the Plaintiffs filed this Motion for Sanctions and Motion to Compel (filed four days after the Fourth Amended Complaint was filed).

Idaho Rule of Civil Procedure 45(c)(1) requires that any subpoena for a party to attend a deposition must comply with Rule 34 and the party must be allowed at least 30 days to comply.

⁴ Amended Order Granting Motion to Expedite Discovery, filed Jul. 12, 2022.

⁵ Orders on Motions for Sanctions, filed Sept. 8, 2022.



Idaho Rule of Civil Procedure 33 allows interrogatories to be served on a party with or after service of the summons and complaint, and provides 30 days to serve any answers or objections.

The Court notes the Bundy Defendants have since defaulted and failed to defend against the Fourth Amended Complaint and an Order of Default was entered April 24, 2023.

Ammon Bundy did not appear at the hearing on March 21, 2023 and no written response to the motion was filed.

The Fourth Judicial District Local Rules provide the following when a party fails to appear at a civil hearing:

5.2. If the moving party or his or her attorney appears to argue the motion at the time set, if the opposing party or his or her attorney does not appear, and if the motion has been properly and timely noticed for hearing with proof of due service, the court may render a decision on the merits of the motion.

Therefore, the Court considered the motion, memorandum, and declaration filed.

LEGAL STANDARD

Idaho Rule of Civil Procedure 37 provides the mechanism for a party to obtain an order compelling disclosure or discovery if a deponent fails to answer questions under Rule 30 or 31, a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4), a party fails to answer an interrogatory under Rule 33 or fails to permit inspection under Rule 34.

Idaho Rule of Civil Procedure 37(d)(2) provides that if a party fails, after being served with proper notice, to appear for that person's deposition; or after being properly served with interrogatories or a request for production or inspection, fails to serve its answers, objections, or written response, then the Court may order sanctions which may include those listed in Rule 37(b)(2)(A)(i) through (vi).

- (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.

Instead of or in addition to these sanctions, Idaho Rule of Civil Procedure 37(d)(3) provides the court must require the party failing to act pay the reasonable expenses, including



attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

The trial court must balance the equities by comparing the culpability of the disobedient party with the resulting prejudice to the innocent party and consider whether lesser sanctions would be effective. *Noble v. Ada County Elections Board*, 135 Idaho 495, 499-500, 20 P.3d 679, 683-84 (2000). After applying this balancing test, the court should impose a sanction which will most substantially lead to the efficient administration of justice. *Roe v. Doe*, 129 Idaho 663, 666, 931 P.2d 657, 660 (Ct. App. 1996).

ANALYSIS

This Court does not find that the filing of the Third or Fourth Amended Complaint excused parties from sitting for a noticed deposition or responding to interrogatories within 30 days of service of the notice or discovery requests. The filing of an amended complaint does not stay proceedings under the rules of civil procedure.

Therefore, the Bundy Defendants were still required to answer the discovery requests and sit for noticed depositions even though an Order of Default was entered when served and another Order of Default has been entered since the Fourth Amended Complaint was filed.

The Plaintiffs request sanctions asking for an order mandating that the Bundy Defendants sit for depositions within ten days of the Court's order and pay all reasonable costs and attorney fees associated with the depositions that they did not attend on January 31, February 2, and February 7, 2023. The Plaintiffs also requests an Order to Compel the Bundy Defendants to answer the discovery requests served October 19, October 24, and December 9, 2022.

While the Court understands that the Bundy Defendants have defaulted and failed to defend in this litigation, the Court is required to determine that lesser sanctions were tried but were ineffective before the Court can enter a default judgment as a sanction. Since these discovery requests and depositions were noticed on issues more broad than requested in expedited discovery, this Court finds that Plaintiffs will be prejudiced on their presentation for damages without the evidence requested. So, the Court finds that entry of an order compelling responses to the discovery requests and compelling the depositions are appropriate. The Court recognizes that the preference in the law is for issues to be decided on their merits and the rules of civil procedure provide opportunities for a default judgment to be set aside for certain reasons, including excusable neglect.

The Court GRANTS the Motion to the extent it requests an order compelling the Bundy Defendants to sit for consecutive depositions within ten days of entry of this order.



Reasonable fees and costs are awarded to the Plaintiffs as the prevailing party pursuant to Idaho Rule of Civil Procedure 37(a)(5) for filing and pursuing the Motion to Compel and fees and costs that the Plaintiffs incurred as a sanction under Idaho Rule of Civil Procedure 37(d)(1)(A)(i) for the Bundy Defendants' failure to appear at the depositions noticed for January 31, February 2, and February 7, 2023.

The Plaintiffs MUST file a memorandum of fees and costs related to the Motion for Sanctions for Failure to Appear and Motion to Compel against Ammon Bundy, Ammon Bundy for Governor, and People's Rights Network, filed on March 7, 2023, and containing costs incurred because of failure to attend the depositions. That memorandum of fees and costs must be filed within fourteen days of service of this decision. Any Bundy Defendant may file any written objection to the fees and costs memorandum within fourteen days of the date that memorandum is served.

CONCLUSION

The Court enters this ORDER compelling Ammon Bundy and the designated representative(s) for Ammon Bundy for Governor and People's Rights Network to sit for depositions that are to be renoticed by Plaintiffs within ten days of this order.

The Court also enters this ORDER compelling Ammon Bundy, Ammon Bundy for Governor, and People's Rights Network to answer the discovery requests served October 19, October 24, and December 9, 2022.

IT IS ORDERED

Dated: 4/24/2023 _____



Lynn 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

Ammon Bundy
4615 Harvest Lane
Emmett ID 83617-3601

By mail

Ammon Bundy for Governor
c/o Ammon Bundy
4615 Harvest Lane
Emmett ID 83617-3601

By mail

Peoples Rights Network
c/o Ammon Bundy
4615 Harvest Lane
Emmett ID 83617-3601

By mail

Trent Tripple
Clerk of the Court

Dated: 4/24/2023

By: Janine Korsen
Deputy Clerk

