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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

**JUDGMENT CREDITORS'
MEMORANDUM IN SUPPORT OF
MOTION FOR ORDER
AUTHORIZING CLERK TO ISSUE
SIMULTANEOUS WRITS OF
EXECUTION AS TO ALL
DEFENDANTS AND LISA BUNDY
(ADA COUNTY AND GEM COUNTY)**

The above-captioned Plaintiffs (collectively, “Judgment Creditors”) submit this memorandum in support of their motion filed herewith (the “Motion”). In the Motion, the Judgment Creditors request that the Court enter an order authorizing the Clerk to issue new writs of execution to the Ada County Sheriff and the Gem County Sheriff (the “Sheriffs”) even though the Sheriffs have not yet returned the prior November 28, 2023 writs the Clerk previously issued to them (the “Original Writs”).

I. INTRODUCTION

Judgment Creditors find themselves in a dilemma not of their making. The Original Writs have expired since they were only actionable for 60 days. Judgment Creditors wish to engage in new judgment collection activities in Ada and Gem Counties. Accordingly, they need new writs.

However, the Clerk of the Court takes the position that it cannot issue *new* writs until the Sheriffs return the *Original* Writs. However, because both the Ada County Sheriff and the Gem County Sheriff have levied on assets under the Original Writs; because those levies remain outstanding as of the date hereof; and because the Sheriffs both take the position that the levies would be lost were they to return the writs now, Judgment Creditors do not want the Original Writs returned yet.

Accordingly, by their Motion, Judgment Creditors move the Court to enter an order instructing the Clerk of the Court to issue new writs notwithstanding that the Original Writs remain outstanding. Such relief is warranted because it is not inconsistent with Idaho law; it is consistent with the law of other jurisdictions; it is consistent with common sense; and it does not prejudice the Judgment Debtors.

II. STATEMENT OF FACTS

Judgment Creditors have filed a declaration of Robert A. Faucher (“Faucher Declr.”) in support of the Motion.

1. Judgment Creditors hold a \$50+ million judgment for which the above-captioned defendants (“Judgment Debtors”) are jointly and severally liable. Lisa Bundy’s community assets are also subject to the judgment. Judgment Debtors still owe Judgment Creditors more than \$50 million under the judgment. *Faucher Declr.*, ¶¶ 3, 4, 5.

2. The Clerk issued the Original Writs on or about November 28, 2023. *Faucher Declr.*, ¶ 6.

3. The Ada County Sheriff levied on tax returns owing by the State of Idaho to Judgment Debtors. *Faucher Declr.*, ¶ 7.

4. That levy remains outstanding for 150 days. I.C. § § 11-718. It does not expire until May 14, 2024. *Faucher Declr.*, ¶ 8.

5. The Ada County Sheriff takes the position that (1) the levy on the tax refund remains enforceable under the Original Writ, (2) he cannot engage in new collection activities under the Original Writ, and (3) were he to return the Original Writ now, he would lose the levy on the tax refunds. *Faucher Declr.*, ¶ 9.

6. The Gem County Sheriff levied on, and took possession of, a motor vehicle of Diego Rodriguez (the “RV”) under the Gem County Original Writ. No Sheriff’s sale has yet taken place because a third party (“RV Creditor”) holds a perfected security interest in the motor vehicle. Judgment Creditors and RV Creditor are negotiating toward a resolution that would permit the Sheriff’s sale to go forward. *Faucher Declr.*, ¶ 10.

7. The Gem County Sheriff takes the position that (1) he can conduct the Sheriff's sale of the RV under the Original Writ, (2) he cannot engage in new collection activities under the Original Writ, and (3) were he to return the Original Writ, he would lose the levy on the RV. *Faucher Declr.*, ¶ 11.

8. Judgment Creditors do not want the Sheriffs to return the Original Writs now because Judgment Creditors will have lost the benefit of the levies without the property at issue being applied to reduce Judgment Debtors' liability. Essentially, Judgment Creditors would be starting over and they would risk losing the assets forever. *Faucher Declr.*, ¶ 12.

III. ARGUMENT

A. Judgment Creditors seek new writs notwithstanding that the Sheriffs have not returned the Original Writs.

Judgment Creditors' post-judgment discovery is continuing. Judgment Creditors' efforts to collect on their judgment are continuing. To engage in new collection activities, Judgment Creditors seek new writs because the Sheriffs take the position they can no longer levy or garnish on the basis of the Original Writs.

Typically, the issuance of a writ is a ministerial action to be performed by the Clerk. *See* I.R.C.P. Rule 69 ("The clerk may rely upon an affidavit in issuing a writ of execution."); Idaho Code § 11-102 ("The writ of execution must be . . . sealed with the seal of the court[] and subscribed by the clerk.").

However, the Clerk has informed Judgment Creditors that, in accordance with its standard policy, it won't issue a new writ until the Sheriffs return the Original Writs.

Judgment Creditors do not wish to lose the assets on which the Sheriffs have levied. They believe this Court has authority to issue new writs—putting Judgment Creditors in a position to

continue their collection efforts in Ada and Gem Counties—without insisting upon return of the Original Writs.

B. Nothing in Idaho law forbids the relief Judgment Creditors seek.

Nothing in the Idaho statutes or case law forbids the relief Judgment Creditors seek. No statute provides that there cannot be simultaneous writs. In fact, the statute expressly provides that simultaneous writs can be outstanding in different counties. I.C. § 11-107 (“[Writs] may be issued at the same time to *different counties*[.]”) (emphasis added). So, for example, the Clerk of this Court issued a new writ to the Franklin County Sheriff on March 19, 2024, and to the Canyon County Sheriff on March 22, 2024, notwithstanding that the Ada County writ and the Gem County writ had not been returned. There is no meaningful distinction between the issuance of those two new writs and the issuance of the new writs sought in the Motion.

Of course, collection practices usually proceed in customary ways. The custom of the Sheriffs and the Clerk is that prior writs must be returned before a new writ can issue in the same county. Judgment Creditors certainly do not take issue with application of this custom in the ordinary course. However, statute does not require it.

C. Idaho case law suggests that the relief Judgment Creditors seek is permissible.

Judgment Creditors were able to find an Idaho case on point: *Curtis v. Campbell*, 105 Idaho 705, 672 P.2d 1035 (1983). *Curtis* clearly supports the relief Judgment Creditors seek here.

In *Curtis*, the judgment debtor moved to quash a writ of execution because the most recent writ had been issued while the prior writ of execution remained outstanding. *Id.* at 706-07; 672 P.2d at 1036-37. The Supreme Court denied judgment debtor his requested relief.

The Supreme Court held that the fact that two writs were outstanding at once did not render the second writ void. Instead, the second writ was merely voidable. The Court held that

where, as in *Curtis*, the irregularity was not prejudicial to the judgment creditors, the irregularity was without significance and the second writ was not void.

Curtis, accordingly, stands for the principle that simultaneous writs are permissible where the judgment debtors are not prejudiced. Here, the Judgment Debtors will obviously not be prejudiced. Their judgment liability exceeds \$50 million. There is no realistic possibility that the Sheriffs of Ada County and Gem County will seize assets in excess of the judgment amount. It is not inequitable that the Sheriffs will be entitled to levy on additional assets notwithstanding that (1) the Ada County Sheriff has levied on tax returns that may or may not exist, and (2) the Gem County Sheriff has levied on a single recreational vehicle that has not yet been subject to a Sheriff's sale.

D. Case law from other jurisdictions suggests that this Court can enter an order authorizing the Clerk to issue simultaneous writs.

In *Curtis*, the Court's consideration of the second writ was conducted after the fact. The second writ had already been issued before being passed upon by the Court.

Here, however, the Judgment Creditors seek this Court's permission for simultaneous writs *ex ante*. Although Judgment Creditors were unable to locate any Idaho law addressing such a request, other case law addresses exactly this question.

In *Tedder v. Morrow*, the Florida Supreme Court relied on the treatise Freeman on Executions (3d ed. 1910), 100 Fla. 1486, 131 So. 387 (Fla. 1931). *Tedder* noted that common law required that "no execution can regularly issue if any attempt has been made to execute a former writ to which no return has been made." *Id.*, 100 Fla. at 1491 (citing Freeman on Executions § 49). However, *Tedder* held that the trial court could grant leave for the issuance of a second, simultaneous writ "[w]hen the preceding writ has not been returned, and a sufficient reason exists

for the issuing of another writ without requiring a return of the former.” *Id.* at 1490 (citing Freeman on Executions § 48).

For the reasons set forth herein, Judgment Creditors satisfy that standard here.

E. Judgment Creditors request that the Court enter the order authorizing the issuance of simultaneous writs without further notice or hearing.

In light of (1) the showing made herein, and (2) the fact that writs are typically issued in this Court without the necessity of a hearing, Judgment Creditors request that the Court enter its order authorizing the Clerk to issue simultaneous writs without further notice or hearing. In the unlikely event of actual prejudice, the Judgment Debtors could move to quash the writ of execution and vacate the sale made thereunder, just as the judgment debtor in *Curtis v. Campbell* did.

Notice of this Motion is being provided to the judgment debtors, Lisa Bundy, the Civil Division of the Ada County Sheriff, and the Civil Division of the Gem County Sheriff.

IV. CONCLUSION

WHEREFORE, Judgment Creditors pray that the Court enter an order instructing the Clerk of the Court to issue new writs to the Ada County Sheriff and the Gem County Sheriff.

DATED: April 17, 2024.

HOLLAND & HART LLP

By: /s/ Robert A. Faucher

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Zachery J. McCraney

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April, 2024, 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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People's Rights Network
c/o Ammon Bundy
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/s/ Robert A. Faucher

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