

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set

4 Date: Friday January 12, 2018

5 Time: 9:00 a.m.

6 Judge James J. Dixon

7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 TIM EYMAN, *et al.*,

13 Defendants.

NO. 17-2-01546-34

PLAINTIFF STATE OF
WASHINGTON'S MOTION FOR
ORDER OF CONTEMPT OF COURT

14 **I. INTRODUCTION AND RELIEF REQUESTED**

15 Tim Eyman and his fellow Defendants in this matter are ignoring this Court's orders
16 and their discovery obligations. Between June and September of last year, the State issued
17 discovery requests to Defendants asking for a variety of information and documents related to
18 their violations of state campaign finance laws. Defendants failed to comply with those
19 requests, so in November this Court ordered Defendants to fully answer the State's requests by
20 November 14 and to certify they had done so. Defendants refused, and have still to this day not
21 complied with the Court's order. After attempting to address this directly with Defendants with
22 no success, the State now has no choice but to bring this motion seeking an order of contempt,
23 the imposition of sanctions, injunctive relief, and the award of fees and costs. Defendants have
24 shown by their own recalcitrance that no lesser sanction will suffice to ensure their compliance
25 with their discovery obligations and this Court's orders.
26

1 **II. FACTS UNDERLYING STATE’S MOTION FOR CONTEMPT**

2 The State served its first round of written discovery requests designed to obtain
3 preliminary information concerning communications, agreements, and the exchange of money
4 between the Defendants, how the Defendants used the money that came from campaign
5 contributions to political committees with which they were involved, and the basis for their
6 Answers to the State’s complaint. The discovery was designed to obtain evidence as to the
7 veracity of the Defendants’ statements and identify possible witnesses. It was also designed to
8 obtain information that Defendants refused to provide during the investigation. In short, the
9 discovery requests directly addressed facts and potential evidence in this case. To those ends,
10 the State served its first discovery requests in June 2017.

11 The State served its first discovery requests on the Eyman Defendants (Tim Eyman and
12 Tim Eyman Watchdog for Taxpayers) on June 13, 2017. *See* Dalton Declaration filed October
13 12, 2017, ¶ 3.¹ The Eyman Defendants served partial responses on August 3, 2017 and August
14 9, 2017. *Id.* at ¶¶ 6, 7. Despite a CR 26(i) conference to obtain complete responses, the Eyman
15 Defendants never served full responses and never provided any documents. *Id.* at ¶ 6, 14, 17.

16 The State served its first discovery requests on the Citizen Solutions Defendants
17 (Citizen Solutions LLC and William Agazarm) on September 6, 2017, seeking the same sorts
18 of information. *See* Dalton Declaration filed 10/26/17, ¶ 3. When the Defendants failed to
19 respond, the State contacted opposing counsel and discussed when the responses would be
20 forthcoming. *Id.* at ¶ 5. The Citizen Solutions Defendants did not answer the requests.

21 After months of promises and failed commitments, on November 3, 2017, the State
22 sought the Court’s intervention to compel the Defendants to fully answer the State’s discovery
23 requests. At the November 3, 2017 hearing, the Citizen Solutions Defendants handed the State
24 partial responses to the State’s discovery. First Declaration of Linda Dalton, ¶ 4, Ex. B. That
25

26 ¹ Courtesy copies of the declarations filed in support of the State’s previously filed discovery motions
will be supplied as bench copies for the Court’s ease.

1 day, the Court granted the State's motion to compel answers and responses "as requested." The
2 Court ordered that all Defendants answer the discovery requests and certify their full
3 compliance no later than November 14, 2017. *See* Order to Compel dated December 8, 2017.
4 The Court then issued a protective order for documents that the Defendants claimed contained
5 private and privileged information. *See* Order dated November 9, 2017.

6 On November 14, 2017, the Eyman Defendants submitted partial updated responses.
7 Dalton Decl., ¶ 3, Ex. A. They did not submit a certification stating that their responses were "the
8 complete production of the answers/responses in compliance with [the Court's] order." *Id.* They
9 instead simply stated that Mr. Eyman had read the discovery requests and answers, "know the
10 contents thereof, and believe the same to be true." *Id.* at Ex. A at 31. The responses did not
11 include all information requested and provided no documents. First Dalton Decl., ¶ 3, Ex. A at
12 24-30. For example, the discovery requests sought the identity of persons who may be
13 witnesses and a short summary of the witness' knowledge. First Dalton Decl., Ex. A at 10-12.
14 The Eyman Defendants did not provide that information. *Id.*

15 Contrary to the Court's November 3, 2017 direction, the Citizen Solutions Defendants
16 also did not provide full responses and did not certify their answers were complete. They also
17 did not provide documents. First Dalton Decl., ¶ 4, Ex. B. The Citizen Solutions Defendants'
18 certification was signed by Defendant Agazarm and simply stated that he had read the discovery
19 requests and answers, "know the contents thereof, and believe the same to be true." First Dalton
20 Decl., ¶ 5, Ex. C at 20.

21 The State carefully reviewed Defendants' answers to interrogatories and responses to
22 requests for production of documents. After that review, the State notified Defendants' counsel on
23 December 14, 2017 that the answers remained incomplete. First Dalton Decl., ¶ 6, Ex. D. The
24 State also notified Defendants that they had not produced the documents that were now subject to
25 the protective order. *Id.* The Defendants have not updated any responses or supplied any records
26 or responded in any way to the State's December 14, 2017 letter. First Dalton Decl., ¶ 6. In order

1 to assist the Court in evaluating which discovery responses are outstanding, the State attaches an
2 annotated set of the most recent discovery responses from the Defendants, highlighting those
3 requests that remain unanswered. First Dalton Decl., ¶¶ 3-4, Exs. A, B.

4 III. ISSUES

- 5 **A. Should each defendant be held in contempt for their failure to comply with the**
6 **Court's December 8, 2017 order compelling their complete responses to discovery**
7 **requests?**
- 8 **B. Once the Court finds the Defendants in contempt, what remedies should the Court**
9 **order until the Defendants purge contempt?**
- 10 **C. Should the Court award the State its fees and costs for bringing this motion?**

11 IV. EVIDENCE RELIED UPON

12 The State's motion relies upon the legal authority cited below, the First Declaration of
13 Linda Dalton in support of this motion with exhibits attached, and the declarations identified in
14 this motion previously filed by the State in support of its prior discovery motions.

15 V. ARGUMENT

16 The Defendants stand in contempt of the Court's order compelling their full answers to
17 the State's first set of discovery requests. Their answers are incomplete and they have not
18 produced documents they acknowledge exist. They did not certify that their answers were
19 complete. In fact, they did little to update their responses at all.

20 The State requests that the Court issue an order of contempt and assess sanctions. As
21 Defendants seem very willing to ignore this Court's directions, anything short of a contempt
22 finding will only perpetuate Defendants' long-standing refusal to timely or fully comply with
23 their discovery obligations and this Court's orders.

24 **A. Remedial Contempt Is Appropriate Where Defendants Failed to Comply With a** 25 **Court Order Compelling Answers To Discovery**

26 Where a party fails to comply with a court order, a finding of contempt and remedial
sanctions are appropriate. RCW 7.21.010 defines contempt of court to mean an intentional act of a
party and includes the party's intentional refusal, without lawful authority, to produce a record,

1 document, or other object. RCW 7.21.010(1)(d). It also includes the intentional “disobedience of
2 any lawful judgment, decree, order, or process of the court.” RCW 7.21.010 (1)(b).

3 The trial court whose order is at issue is the proper arbiter of contempt. RCW 7.21.020.
4 Once a finding of contempt is made, two types of sanctions are available, punitive and remedial.
5 RCW 7.21.010 (2), (3). A remedial sanction applies in situations where a party’s performance
6 must be coerced “when the contempt consists of the omission or refusal to perform an action that
7 is yet in the person’s power to perform.” RCW 7.21.010 (3). Remedial sanctions are designed to
8 prompt a party’s compliance with the court order and a variety of sanctions are available to a
9 court. RCW 7.21.030 (2) (a-e), (3). Remedial sanctions include:

- 10 a. Imprisonment if the contempt of court is of a type defined in RCW
11 7.21.010(1) (b) through (d). The imprisonment may extend only so long as it
12 serves a coercive purpose.
- 13 b. A forfeiture not to exceed two thousand dollars for each day the contempt of
14 court continues.
- 15 c. An order designed to ensure compliance with a prior order of the court.
- 16 d. Any other remedial sanction other than the sanctions specified in (a) through
17 (c) of this subsection if the court expressly finds that those sanctions would be
18 ineffectual to terminate a continuing contempt of court.

19 RCW 7.21.030(2) (emphasis added). In addition to these sanctions, a court may order a person
20 found in contempt of court to pay a party for any losses suffered by the party as a result of the
21 contempt and any costs incurred in connection with the contempt proceeding, including
22 reasonable attorney’s fees. RCW 7.21.030(3).

23 Here, as detailed above and below, Defendants violated the Court’s order compelling
24 answers by failing and refusing to supplement their answers and by not producing responsive
25 records they acknowledge exist, despite the existence of a protective order. They failed to certify
26

1 the completeness of their answers as the order required. They simply did not comply with the
2 Court's order. As such, they are in contempt.

3 **B. The Eyman Defendants Failed to Fully Answer Discovery; They Should Be Held**
4 **in Contempt**

5 The Eyman Defendants have not fully responded to the State's discovery requests as
6 the Court directed. The State attaches to this motion a copy of the Eyman Defendants' most
7 recent responses served on November 14, 2017. The copy is highlighted to identify for the
8 Court those sections or provisions of these answers where full responses have not been
9 provided. The particulars for each deficient interrogatory are as follows:

- 10 1. Interrogatory 3 – no answer provided. The Eyman Defendants reasserted objections the
11 Court has already overruled and required answers be submitted.
- 12 2. Interrogatory 5 – no account number provided for the cell phone service identified. To the
13 extent the Court denied the State's request for cell phone records, it did not deny the State's
14 request for account number information.
- 15 3. Interrogatory 6(d) – no identification of the actual person providing the compensation.
- 16 4. Interrogatory 6(e) – no identification of the specific terms of performance for the
17 agreements.
- 18 5. Interrogatory 6(f) – no answer to whether any changes to the agreements were made.
- 19 6. Interrogatory 8 – does not include dates on which the agreements were entered into, who
20 had knowledge of the agreements, and the terms of the agreements.
- 21 7. Interrogatory 9 – does not answer whether there were any verbal agreements. The Eyman
22 Defendants also did not answer any other parts of Interrogatory 9.
- 23 8. Interrogatory 11 – does not include a “short statement of” each identified witness’
24 “knowledge and the topics to which he or she would likely testify.”
- 25 9. Interrogatory 11(f) – fails to identify William Agazarm or Edward Agazarm.
- 26 10. Interrogatory 11(g) – does not identify anyone who would know how the Eyman
Defendants spent funds they received from political committees since 2010.

- 1 11. Interrogatory 15 – fails to identify any ballot measures or initiative since 2015. It also fails
2 to identify which ballot measures or initiatives that Citizen Solutions Inc. or Citizen
3 Solutions LLC worked on.
- 4 12. Interrogatory 16 – fails to identify any payments the Eyman Defendants received from
5 Citizen Solutions Inc. prior to 2012, including a payment in 2009 that was previously
6 identified to the Court. The Eyman Defendants failed to describe the services performed in
7 consideration for the 2012 payment from Citizen Solutions LLC.
- 8 13. Interrogatory 18 – fails to answer the interrogatory with respect to any political committee
9 with whom the Eyman Defendants are associated.
- 10 14. Interrogatory 19 – fails to identify any committees or payments for 2016 and 2017.
- 11 15. Interrogatory 20 – fails to provide any answer to the interrogatory.
- 12 16. Interrogatory 24 – fails to identify whether a competitive bid process was used.
- 13 17. Interrogatory 25 – fails to identify the price per signature Voters Want More Choices
14 agreed to initially pay.
- 15 18. Interrogatory 30 – fails to identify by name the persons with whom the Eyman Defendants
16 spoke.
- 17 19. Interrogatory 32 – fails to describe the terms of the agreement, when it was actually signed,
18 and who has a copy of the agreement.
- 19 20. Interrogatory 34 – fails to answer the interrogatory. The Eyman Defendants reference that
20 they will provide “more detailed” responses “under the terms of the protective order.” The
21 protective order was issued prior to November 14 when these answers were served on the
22 State. Further, the State notified the Eyman Defendants that the answers were still
23 incomplete on December 14, 2017. This particular answer deficiency was specifically
24 identified in that letter. The Eyman Defendants have not provided any further information.

25 *See* First Dalton Decl., Ex. A. Based on these deficiencies alone, the Eyman Defendants are in
26 contempt of the Court’s order.

The Eyman Defendants also failed to produce responses or documents for the Requests
for Production. In their original responses to the State’s requests for production, the Eyman
Defendants objected to all of them and refused to produce any records. Their answers did not
change with their November 14, 2017 update. First Dalton Decl., Ex. A at 24-30. This is
despite the Court’s issuance of a Protective Order on which they insisted before they would

1 supply any responsive financial records. Again, the State identified these deficiencies in its
2 letter requesting complete responses. First Dalton Decl., Ex. C.

3 The Eyman Defendants acknowledged that responsive records exist. *See* First Dalton
4 Decl. filed 10/12/17 at ¶ 17, Ex. E. They also actively resisted providing banking records and
5 tax information, insisting that a protective order should be issued. And yet, once it was issued,
6 the Eyman Defendants still refuse to supplement their answers to Requests for Production 1-
7 18. Their November 14, 2017 response failed to provide any records. They should be held in
8 contempt and sanctions assessed for failing to produce records.

9 Among other information, the State's discovery requests to the Eyman Defendants seek
10 to test the representations that they make concerning the payment they received in July 2012
11 from Citizen Solutions LLC. While the July 2012 transaction is sufficient to prove a violation
12 of the law, it is not the only potentially relevant evidence; identifying a history of payments
13 between Defendants would also be relevant to the Eyman Defendants' defenses. As the State
14 has previously informed the Court, banking records from Citizen Solutions Inc. show a
15 \$200,000 payment from Citizen Solutions to Defendant Eyman in 2009. *See* Perkins Decl. filed
16 10/31/17, ¶ 13. Without access to the records requested, it is impossible for the Court to
17 ultimately judge the Eyman Defendants' assertions.

18 **C. The Citizen Solutions Defendants Failed to Fully Answer Discovery; They Should**
19 **Be Held in Contempt**

20 As with the Eyman Defendants, the Citizen Solutions Defendants are likewise in
21 contempt of the Court's order compelling them to fully respond to the State's first set of
22 discovery. The State attaches to this motion a copy of the Citizen Solutions Defendants'
23 discovery responses originally served on November 3, 2017. The copy is highlighted to
24 identify for the Court those sections or provisions of these answers that are incomplete. The
25 Citizen Solutions Defendants did not amend any responses on November 14, 2017. First
26 Dalton Decl., Ex. C. The particulars for each deficient interrogatory are as follows:

- 1 1. Interrogatory 2 – fails to identify email provider.
- 2
- 3 2. Interrogatory 5 – fails to identify the specific services provided by Defendant Eyman and
4 the dates upon which those services were provided.
- 5 3. Interrogatory 6 – fails to identify the date upon which the agreement was made, individuals
6 with knowledge of the agreement, and a summary of the terms of the agreement.
- 7 4. Interrogatory 7 – fails to identify whether any verbal agreements exist. If they do, then fails
8 to answer the remainder of the interrogatory.
- 9 5. Interrogatory 11 – fails to provide a short statement of the witness’ knowledge and topics
10 about which they would likely testify for witnesses identified in the answers to
11 Interrogatory 11(f) and (g).
- 12 6. Interrogatory 13 – fails to identify any documentary evidence whatsoever. Given that the
13 documents provided during the investigation stage were limited to 2012 and these requests
14 are for a broader time period, this answer is on its face deficient.
- 15 7. Interrogatory 18 – fails to answer in any way this interrogatory.
- 16 8. Interrogatory 19 – fails to identify or explain the factual basis for the denial in paragraph
17 4.11 of their Answer to the State’s complaint. Additionally, the Citizen Solutions
18 Defendants fail to identify who was responsible for Citizen Solutions’ operations from
19 2004-2011.
- 20 9. Interrogatory 20 – fails to fully answer this interrogatory because does not explain fully the
21 factual basis for the denial to the first sentence in paragraph 4.14 of the State’s complaint.
- 22 10. Interrogatory 21 – fails to fully answer this interrogatory because does not provide how
23 much per signature was paid to individual signature gatherers.
- 24 11. Interrogatory 22 – fails to fully answer this interrogatory because does not provide how
25 much per signature was paid to individual signature gatherers.
- 26 12. Interrogatory 25 – fails to identify who drafted the agreement, when the agreement was
signed, who signed the agreement, and who has a copy of the agreement.
13. Interrogatory 26 – fails to identify by name, contact information, and what fault was being
attributed to the non-party for this case.
14. Interrogatory 28 – fails to fully answer this interrogatory as to 28(b) and (c).

1 See First Dalton Decl., Ex. B. Based on these deficiencies alone, the Citizen Solutions
2 Defendants are in contempt of the Court's order.

3 Additionally, the Citizen Solutions Defendants failed to provide any documents in
4 response to the State's Requests for Production by either objecting or claiming all documents
5 have been provided without identifying what "material" has been provided. These answers are
6 extremely deficient especially based on the limitations the Citizen Solutions Defendants placed
7 on their production of records during the investigation process. See Perkins Decl. filed
8 10/31/17 in opposition to Defendants' Motion for Protective Order. As such, they are in
9 contempt of this Court's order compelling their answers.

10 **D. The Court Should Issue Sanctions Against All Defendants**

11 Once the Court finds Defendants in contempt, the Court must then determine what
12 sanctions should be employed to force Defendants' compliance. The State requests the Court
13 issue a sanction of forfeiture against each defendant of \$2,000 for each day they remain in
14 contempt. In the event Defendants refuse to comply by the date set by this Court, they should
15 be prohibited from presenting any of their affirmative defenses and their counterclaims should
16 be dismissed with prejudice. Finally, Defendants should be estopped from making any
17 arguments that would rely on facts or evidence that is being withheld in discovery, for
18 example, arguing that the July 2012 payment to the Eyman Defendants was the sole payment
19 between the parties. Measures like these are the only ones that will force Defendants to
20 comply.

21 **E. The Court Should Award the State its Attorneys Fees and Costs Associated With**
22 **Bringing This Motion**

23 RCW 7.21.020 also allows for the award of attorneys' fees and costs for having to seek
24 a contempt order. Fees and costs are appropriate here. Prior to filing this motion, the State
25 provided notice to the Defendants about the deficiencies in their answers. Dalton Decl., Ex. D.
26

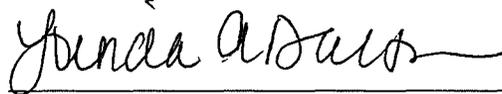
1 And yet, Defendants failed to even respond or to update their responses. No other recourse
2 existed to obtain the full responses from Defendants.

3 **VI. CONCLUSION**

4 Obtaining full and meaningful answers to discovery should not require multiple
5 discovery motions. It should not require having to seek contempt once an Order compelling
6 answers has been ignored. Based on the foregoing, the State respectfully requests the Court
7 hold the Defendants in contempt for their non-compliance with the Court's Order Compelling
8 their answers to the State's discovery. The Court should issue a sanction until the contempt has
9 been purged, and if contempt is not purged, the Court should strike the Defendants' affirmative
10 defenses, dismiss their counterclaims, and prohibit them from making arguments that would
11 rely on facts or evidence being withheld in discovery. Finally, the Court should award the State
12 its expenses for having to bring this motion.

13 DATED this 4 day of January, 2018.

14
15 ROBERT W. FERGUSON
Attorney General

16 

17 LINDA A. DALTON, WSBA No. 15467
18 Senior Assistant Attorney General
19 JEFFREY T. SPRUNG, WSBA No. 23607
Assistant Attorney General
20 S. TODD SIPE, WSBA No. 23203
Assistant Attorney General
21 Attorneys for Plaintiff State of Washington
22
23
24
25
26

Thurston County Clerks eFile - Status Confirmation

Print Date: 1/4/2018 12:02:24 PM
Case Number: 17-2-01546-34
Case Title: State v. Tim Eyman, et al.
Case Type: Civil
Document List: Motion
Uploaded File Name: Mtn 20180104 contempt_145182018.pdf
Bench Copy Request: Yes
File Upload Time: 1/4/2018 11:51:33 AM
Case Status: SUCCESS

Thurston County Clerks eFile - Status Confirmation

Print Date: 1/4/2018 12:01:12 PM
Case Number: 17-2-01546-34
Case Title: Bench-Copy_State v. Tim Eyman, et al.
Case Type: Civil
Document List: Motion
Uploaded File Name: Mtn 20180104 contempt_145182018.pdf
Bench Copy Request:
File Upload Time: 1/4/2018 11:51:33 AM
Case Status: SUCCESS