

- 1  EXPEDITE  
2  No Hearing Set  
3  Hearing Set

4 Date: August 5, 2016  
5 Time: 9:00 a.m.  
6 The Honorable Mary Sue Wilson

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

9 STATE OF WASHINGTON,

10 Petitioner,

11 v.

12 CITIZEN SOLUTIONS, LLC,  
13 ROY RUFFINO, and WILLIAM  
14 AGAZARM,

Respondents.

NO. 16-2-02277-34.

STATE'S MOTION FOR CONTEMPT  
OF COURT

15 Citizen Solutions and the other Respondents (Respondents) failed to comply with this  
16 Court's Order compelling production of records. What limited records they produced on July  
17 13, 2016 do not begin to satisfy their obligations. As a result, the State of Washington asks this  
18 Court to hold Respondents in contempt of court and provide the relief requested below.

19 **I. RELIEF REQUESTED**

20 This motion for contempt of court is made pursuant to RCW 7.21.020 and .030. The State  
21 seeks the following:

- 22 1) A forfeiture by each Respondent of two thousand dollars (\$2,000.00) for each  
23 day the contempt of court continues after the order of contempt is issued, until  
24 such time as they individually purge themselves of contempt.  
25 2) An order directing Respondents to provide all financial institution information  
26 for any accounts they maintained from 2009 to present.  
3) An order authorizing the State to issue a Civil Order to the bank of Respondent  
Citizen Solutions to directly obtain the records sought from Respondents.

1 4) An order directing Respondents to execute releases authorizing the State to  
2 obtain federal tax return information.

3 5) An order awarding the State further costs and reasonable attorney's fees  
4 incurred in connection with the bringing of this contempt motion.

## 5 II. STATEMENT OF FACTS

6 On June 9, 2016, the State sought to compel Respondents' compliance with its previously  
7 issued Civil Order. By Order dated July 1, 2016, the Court ordered Respondents to comply by  
8 July 13, 2016. Specifically, the Court directed Respondents to produce all responsive records. The  
9 Court further required Respondents to execute a declaration or affidavit attesting that all  
10 responsive records had been provided. Finally, the Order directed Respondents to pay the State all  
11 costs and reasonable attorneys' fees associated with this case.<sup>1</sup>

12 By email on July 13, 2016, Respondents provided the State with 50 pages of records.  
13 Declaration of Derrick Millett, ¶ 6. This brought the total number of pages they produced to  
14 70. Millett Decl., ¶ 6. The State investigators reviewed the records produced and analyzed  
15 whether they fully responded to the Civil Order. Millett Decl., ¶ 7. The analysis revealed that  
16 Respondents failed to fully comply with this Court's order.

### 17 A. Tax Records

18 Civil Order Request No. 6 directed the Respondents produce all tax returns and tax  
19 information for filing years 2009-2014. While Respondents produced tax returns for  
20 Respondent Citizen Solutions for the years requested, they did not supply the required  
21 supporting schedules or tax information documentation. Millett Decl., ¶ 10.

### 22 B. Banking Records

23 Civil Order Request Nos. 1-2 sought financial records including bank checks, cashiers  
24 checks, wire transfers, bank statements, and loan documents related to financial transactions  
25

26 <sup>1</sup> A motion for costs and attorneys' fees was filed on July 11, 2016, and is set for consideration by this  
Court on August 5, 2016.

1 with Tim Eyman, Jack Fagan, Mike Fagan, Stan Long, or Barbara Smith and any political  
2 committee with whom they are associated. Millett Decl., ¶ 11.

3 In their pre-July 13 productions, Citizen Solutions provided a single bank statement for  
4 the month of July 2012 in response to item 2 of the Civil Order. It reflected a payment of  
5 \$308,185.50 to Tim Eyman from Citizen Solutions. Millett Decl., ¶ 12. The bank statement,  
6 however, contained extensive redactions. *Id.*; see also Crummer Decl. in Support of Show Cause  
7 Order, ¶ 13. They produced no other financial or banking information.

8 Then on July 13, 2016, Respondents provided 10 pages of records containing four checks  
9 received and six deposit records. Millett Decl., ¶ 13. Despite the Court's July 1 Order requiring it,  
10 Respondents failed to produce a full set of financial records. They did not produce further records  
11 of the additional 21 payments they received from political committees associated with Tim  
12 Eyman, Jack Fagan, Mike Fagan, Stan Long, or Barbara Smith. Millett Decl., ¶ 14. Public filings  
13 with the State Public Disclosure Commission (PDC) identify at least 25 payments from political  
14 committees to Citizen Solutions. Respondents did not produce any financial records identifying  
15 those payments. Millett Decl., ¶ 14.

16 **C. Contracts/Billing Records between Respondents and Citizen Solutions**

17 In addition to financial or banking records, Respondents should have produced any  
18 other records of the above described and any other transactions with Tim Eyman, and any  
19 financial transactions with Jack Fagan, Mike Fagan, Stan Long, or Barbara Smith or the  
20 political committees identified in the Civil Order. Respondents did not produce any contracts,  
21 invoices, billings, agreements, emails, or any other documentation to support the services  
22 provided to Mr. Eyman or the identified political committees. Millett Decl., ¶¶ 15-16.

23 **D. Certification of completeness of production**

24 The Court ordered Respondents to provide a declaration or affidavit attesting that all  
25 records responsive to the Civil Orders had been produced. *See* Order Compelling Compliance, ¶  
26 3.3. As of July 13, 2016, no declarations or affidavits have been received by the State from any

1 of the Respondents. Millett Decl., ¶ 7. The single reference to the production came from  
2 Respondents' counsel in a July 13, 2016, 8:46 p.m. email. Millett Decl., Att. A. Mr. Lamb  
3 stated "Because of the enormous volume of material, it is entirely possible that some  
4 documents have been inadvertently omitted; but at this point I believe I have transmitted all  
5 available material responsive to these orders." *Id.*

### 6 III. ISSUE STATEMENTS

- 7 **A. Should Respondents be held in contempt for violating the terms of this Court's**  
8 **Order Compelling Compliance issued on July 1, 2016?**
- 9 **B. If the Court holds the Respondents in contempt, what remedy should the Court**  
10 **impose?**

### 11 IV. EVIDENCE RELIED UPON

12 This motion is supported by the previously filed Declaration of Chad Crummer and the  
13 Declaration of Derrick Millett with attachment filed with this motion.

### 14 V. ARGUMENT AND LEGAL AUTHORITY

15 A simple review of the records Respondents produced establishes that they continue to fail  
16 to respond fully to the State's Civil Order, despite this Court's Order compelling them to do so.  
17 Nothing short of a finding of contempt and the imposition of remedial sanctions will impress upon  
18 them the importance that they comply now. The Court has full authority to impose the remedial  
19 sanctions the State requests.

#### 20 **A. Respondents Are In Contempt Of This Court's Order**

21 As detailed above, on July 1, 2016, this Court found that the State's Civil Order, which  
22 functions as a subpoena, was properly issued, and ordered Respondents to comply with them. The  
23 Court gave Respondents until July 13, 2016 to do so. While Respondents did produce some  
24 additional documents on July 13, they have yet to fully comply with the Order Compelling  
25 Compliance.

26 Respondents did not fully provide all banking records associated with payments they  
received from political committees associated with Tim Eyman, Jack Fagan, Mike Fagan, Stan

1 Long, or Barbara Smith. Millett Decl., ¶ 14. They did not provide all banking records associated  
2 with payments made to Tim Eyman. *Id.* They did not provide any other financial documents  
3 related to services rendered to the political committees or services they received from Tim  
4 Eyman. Respondents did not even provide unredacted versions of records produced prior to July  
5 13, 2016. Millett Decl., ¶ 6.

6 Similarly, this Court ordered Respondents to comply with the State’s request for all of  
7 Respondents’ tax returns and tax information for filing years 2009-2014. Respondents failed to  
8 supply the required supporting schedules or documentation. Millett Decl., ¶ 10.

9 Finally, but perhaps most importantly, Respondents have not even attested that they have  
10 completely responded to the Civil Order. Rather, Respondents’ counsel made a vague statement  
11 that he believes all the “available” records are produced. Millett Decl., ¶ 7, Att. A. Unfortunately,  
12 the evidence shows that even that vague claim is simply wrong.

13 **B. State Law Authorizes the Court to Find Respondents in Contempt and Impose the**  
14 **Sanctions Sought by the State**

15 RCW 7.21.020 provides that “[a] judge or commissioner of the supreme court, the court of  
16 appeals, or the superior court, . . . may impose a sanction for contempt of court under this  
17 chapter.” “[C]ontempt of court means intentional: . . . (b) disobedience of any lawful judgment,  
18 decree, order, or process of the court.” RCW 7.21.010(1). The court may impose a sanction for  
19 contempt “[i]f the court finds that the person has failed or refused to perform an act that is yet  
20 within the person’s power to perform.” RCW 7.21.030(2). Respondents’ conduct clearly meets  
21 this standard given that they have failed to produce records they must have and have failed to  
22 attest that their production of records is complete.

23 Once the court finds contempt, the court may “impose one or more of the following  
24 remedial sanctions: . . . (b) A forfeiture not to exceed two thousand dollars for each day the  
25 contempt of court continues. (c) An order designed to ensure compliance with a prior order of the  
26 court.” *Id.* The court may also “order a person found in contempt of court to pay a party for any

1 losses suffered by the party as a result of the contempt and any costs incurred in connection with  
2 the contempt proceeding, including attorney's fees." RCW 7.21.030(3). Whether to impose  
3 "[p]unishment for contempt is within the sound discretion of the trial court." *Templeton v.*  
4 *Hurtado*, 92 Wn. App. 847, 852, 965 P.2d 1131 (1998) citing *In re the Marriage of Matthews*, 70  
5 Wn. App. 116, 126, 853 P.2d 462, *rev. denied* 122 Wn.2d 1021, 863 P.2d 1353 (1993).

6 The State asks the Court to order three sanctions based on Respondents' contempt: (1) that  
7 each Respondent forfeit a sum of \$2,000 for each day Respondents remain in contempt of the July  
8 1 Order Compelling Compliance; (2) that the Court design an order to ensure compliance by  
9 allowing the State to obtain records directly from Respondents' banks and the IRS; and (3) that  
10 the Court order Respondents to pay the State's costs and reasonable attorney's fees incurred as a  
11 result of the contempt. Each of these sanctions is appropriate here.

12 **1. A Remedial Sanction Of Up To \$2,000 Per Day Is Appropriate In Light of**  
13 **Respondents' Noncompliance**

14 This Court's July 1 Order put Respondents on notice that compliance with the State's  
15 Civil Order was mandatory and that a complete response was required by July 13, 2016. Yet  
16 Respondents disregarded the Court's authority by not producing all required records or any  
17 certification of completion. Given Respondents' willingness to flout a court order, it is clear  
18 that stronger measures are necessary to ensure their compliance. RCW 7.21.030(2)(b) gives the  
19 Court authority to impose "[a] forfeiture not to exceed two thousand dollars for each day the  
20 contempt of court continues." That remedy is appropriate here as to each Respondent.

21 Sanctions for civil contempt are remedial, in other words, intended to coerce a party's  
22 compliance with a judgment or order. *In re Detention of Young*, 163 Wn.2d 684, 693, 185 P.3d  
23 1180 (2008). Where a remedial sanction has been imposed, the contemnor effectively "carries  
24 the keys of his prison in his own pocket." *Int'l Union, United Mine Workers of Am. v. Bagwell*,  
25 512 U.S. 821, 828, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994) (internal quotation marks omitted)  
26 (quoting *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 442, 31 S.Ct. 492, 55 L.Ed. 797

1 (1911)). “An order of remedial civil contempt must contain a purge clause under which a  
2 contemnor has the ability to avoid a finding of contempt and/or incarceration for non-  
3 compliance.” *In re Marriage of Didier*, 134 Wn. App. 490, 501, 140 P.3d 607, 612 (2006),  
4 citing *In re Interest of Rebecca K.*, 101 Wn. App. 309, 314, 2 P.3d 501 (2000).

5 Here, it is quite clear what Respondents must do to escape contempt: provide the State  
6 with all documents requested in the Civil Order and attest that a full response has been  
7 provided. Purging contempt will be completely within Respondents’ control. They possess the  
8 records. They should have produced them timely. They did not. Each day that goes by without  
9 compliance, the State’s investigation is hindered. And because the non-compliance goes to all  
10 Respondents, the remedy should be applied to each Respondent separately until they  
11 individually comply and so attest.

12 The statute allows up to \$2,000 per day in sanctions. This is the appropriate amount for  
13 each Respondent. They have been on notice since November 2015 of what records the State  
14 wanted. Now, in July 2016, the State is forced to seek this Court’s intervention once again. The  
15 Court should not tolerate such conduct. The people of this State deserve to have this  
16 investigation completed. If Respondents are going to delay further in violation of this Court’s  
17 orders, they should face meaningful consequences.

18 **2. Court Authorization For The State To Obtain Respondents’ Financial**  
19 **Records Directly From Banks and Tax Information Directly From the**  
20 **Internal Revenue Service Is Appropriate**

21 In addition to a per day penalty, the State requests this Court’s authorization for it to  
22 directly subpoena financial records from Respondents’ banks as a means to obtain the  
23 information it requested. The State requests that the Court order Respondents to provide all  
24 bank account information including name of the banking institutions where they transacted  
25 business since 2009, the names of the account holders, and the account numbers for each such  
26 account. The State also seeks an order ordering Respondents to execute releases so the State  
may seek tax information relating to Respondents directly from the Internal Revenue Service.

1 RCW 7.21.030(2)(c) provides the Court authority to make additional orders designed to  
2 ensure compliance with a prior order of the court. In addition, a court may use its inherent  
3 contempt power to coerce compliance with its lawful order and is not limited in its exercise of  
4 this power by the punishments prescribed by the civil contempt statute. *Yamaha Motor Corp.*,  
5 *U. S. A. v. Harris*, 29 Wn. App. 859, 631 P.2d 423 (1981).

6 The State's Civil Order has been outstanding since November 2015, yet Respondents  
7 still have not provided full responses. Even after this Court ordered full compliance,  
8 Respondents fell short. And Respondents represented, through their counsel, that they  
9 "believed" they were providing all "available" documents, even though that was plainly  
10 inaccurate. Millett Decl., Att. A. The State is losing confidence that it will ever receive full  
11 responses from Respondents. Therefore, in addition to imposing financial consequences to  
12 urge Respondents' compliance, the Court should authorize the State to obtain records directly  
13 from banks and the IRS. Only then will the Court (and the public) be able to have confidence  
14 that the State has actually received the relevant records. The outstanding bank records and tax  
15 information sought are described with particularity in the declarations filed in support of this  
16 motion. Millett Decl., ¶¶ 10, 14, 16.

17 **3. The Court Should Award Reasonable Attorneys' Fees and Costs To The**  
18 **State**

19 Finally, RCW 7.21.030(3) provides that the Court may award costs incurred in  
20 connection with the contempt proceeding, including attorney's fees. This is in addition to the  
21 Court's general authority under RCW 42.17A.765(5) to "award to the state all costs of  
22 investigation and trial, including reasonable attorneys' fees," in actions to enforce the  
23 campaign finance laws. These statutory provisions provide a clear basis for the Court to award  
24 the State its costs and reasonable attorneys' fees incurred as a result of having to file this motion.  
25 The cost to the people of Washington is substantial. It is not a cost that should be borne by them,  
26 but rather by Respondents who defy the Court's order.

VI. CONCLUSION

1 Respondents largely ignored this Court's prior order. The Court should ensure that that  
2 does not happen again by holding Respondents in contempt and imposing the remedial sanctions  
3 the State requests here.

4 DATED this 27th day of July, 2016.

5 ROBERT W. FERGUSON  
6 Attorney General

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**PROOF OF SERVICE**

I certify that I served a true and correct copy of this on all parties or their counsel of record on the date below as follows:

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 27th day of July, 2016, at Olympia, Washington.

\_\_\_\_\_  
STACY HIATT  
Legal Assistant