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I. RELIEF REQUESTED

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

- 1) A forfeiture by each Respondent of two thousand dollars (\$2,000.00) for each day the contempt of court continues after the order of contempt is issued, until such time as they individually purge themselves of contempt.
- 2) An order directing Respondents to provide all financial institution information for any accounts they maintained from 2009 to present.
- 3) An order authorizing the State to issue Civil Orders to the Respondents' third party banks to directly obtain the banking and financial records sought from Respondents.
- 3) An order directing Respondents to execute releases authorizing the State to directly obtain federal tax return information sought from Respondents.
- 4) An order awarding the State further costs and reasonable attorney's fees incurred in connection with the bringing of this contempt motion.

II. STATEMENT OF FACTS

On June 9, 2016, the State sought to compel Respondents' compliance with its previously issued Civil Orders. The Court considered the State's request on June 29, 2016, and ordered Respondents to comply by July 13, 2016. Specifically, the Court directed Respondents to produce all responsive records. The Court further required Respondents to execute a declaration or affidavit attesting that all responsive records had been provided. Finally, the Order directed Respondents to pay the State all costs and reasonable attorneys' fees associated with this case.¹

Respondents provided the State with 247 pages of records by email during the afternoon and evening of July 13, 2016. Declaration of Chad Crummer, ¶¶ 4-5. This brought the total number of pages produced to 1,038. Crummer Decl., ¶ 5. The State investigators reviewed the records produced and analyzed whether they fully responded to the Civil Orders.

¹ A motion for costs and attorneys' fees was filed on July 11, 2016, and is set for consideration by this Court on August 12, 2016.

1 Declaration of Derrick Millett, ¶ 5. The analysis revealed that Respondents failed to fully
2 comply with this Court's June 29 order.

3 **A. Tax Records**

4 Civil Order Request No. 11 directed to Respondents requested all tax returns and tax
5 information for filing years 2009-2014. Respondents produced only partial materials for Mr.
6 Eyman and his business, Tim Eyman Watchdog for Citizens LLC. Millett Decl., ¶¶ 8-12.
7 Respondents failed to supply the required supporting schedules or documentation. Millett
8 Decl., ¶ 10. Respondents also provided no income tax records for any of the Respondent
9 political committees. Millett Decl., ¶ 12.

10 **B. Banking Records**

11 Civil Order Request Nos. 1-7 directed to the Respondent political committees sought
12 financial records including bank checks, cashiers checks, wire transfers, bank statements, and
13 loan documents related to financial transactions with the signature gathering firm Citizen
14 Solutions. Respondents did not produce a complete set of financial records. Millett Decl., ¶ 13.
15 They produced no checks, wire transfers, or deposit slips for any of the Respondent political
16 committees. Millett Decl., ¶ 14. They only produced 17 partial bank statements and then only
17 for one political committee, Voters Want More Choices. Millett Decl., ¶ 13. In fact, none of the
18 Respondent political committees produced any other documents related to financial
19 transactions they had with Citizen Solutions.

20 Respondents produced no such records even though filings with the state Public
21 Disclosure Commission show that in 2015 alone, one respondent committee, 2/3-For-Taxes
22 Constitutional Amendment, made 11 separate payments to Citizen Solutions prior to the date
23 of the Civil Order. This political committee did not produce any corresponding financial
24 records. Filings with the Public Disclosure Commission also show that in 2013, Respondent
25 Voters Want More Choices paid Citizen Solutions \$50,000; again, this committee did not
26 provide all financial records reflecting this payment. Millett Decl., ¶ 15. And in 2012,

1 Respondent Voters Want More Choices made six payments to Citizen Solutions totaling
2 \$623,324.99. But it did not submit all financial records to support these transactions. Millett
3 Decl., ¶ 15.

4 As to payments made or received by Mr. Eyman from Citizen Solutions, he supplied
5 only partial bank statements. Millett Decl., ¶ 13. As to payments made or received by Tim
6 Eyman Watchdog involving Paul Jacob, Citizens In Charge, or Citizen Solutions, Respondents
7 did not provide any supporting records about payments Respondents claim were loan
8 repayments from Mr. Jacob. Millett Decl., ¶ 13. These records would be responsive to the Civil
9 Orders.

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

11 In addition to banking records, Respondents should have produced any other records of
12 their transactions with the signature-gathering firm of Citizen Solutions. Respondent Voters
13 Want More Choices produced a single year contract for services with Citizen Solutions dated
14 January 2015. Millett Decl., ¶ 18. Respondent political committees publicly reported making
15 25 payments to Citizen Solutions covering the years 2011, 2012, 2013, and 2015. Millett Decl.,
16 ¶ 19. They did not produce any contracts, invoices, agreements, emails, or any other
17 documentation to support the services provided to support these payments. Millett Decl., ¶¶18-
18 19.

19 **D. Certification of completeness of production**

20 The Court ordered Respondents to provide a declaration or affidavit attesting that all
21 records responsive to the Civil Orders had been produced. *See* Order Compelling Compliance, ¶
22 3.3. As of July 13, 2016, no declarations or affidavits have been received by the State from any
23 of the Respondents. Crummer Decl., ¶ 6. The single reference to the production came from
24 Respondents' counsel in a July 13, 2016, 8:46 p.m. email. Crummer Decl., Att. A. Mr. Lamb
25 stated "Because of the enormous volume of material, it is entirely possible that some
26 documents have been inadvertently omitted; but at this point I believe I have transmitted all

1 available material responsive to these orders.” *Id.* With that final email, Respondents have
2 produced 1,038 pages of records. Crummer Decl., ¶ 5.

3 **III. ISSUE STATEMENTS**

4 **A. Should Respondents be held in contempt for violating the terms of this Court’s**
5 **Order Compelling Compliance issued on June 29, 2016?**

6 **B. If the Court holds the Respondents in contempt, what remedy should the Court**
7 **impose?**

8 **IV. EVIDENCE RELIED UPON**

9 This motion is supported by the Declarations of Chad Crummer and Derrick Millett filed
10 with this motion.

11 **V. ARGUMENT AND LEGAL AUTHORITY**

12 A simple review of the records Respondents produced establishes that they continue to fail
13 to respond fully to the State’s Civil Orders, despite this Court’s Order directing them to comply.
14 Nothing short of a finding of contempt and the imposition of remedial sanctions will impress upon
15 them the importance that they comply now. The Court has full authority to impose the remedial
16 sanctions the State requests.

17 **A. Respondents Are In Contempt Of This Court’s Order**

18 As detailed above, on June 29, 2016, this Court found that the State’s Civil Orders, which
19 function as subpoenas, were properly issued, and ordered Respondents to comply with them. The
20 Court gave Respondents until July 13, 2016, to do so. While Respondents did produce some
21 additional documents on July 13, they have yet to fully comply with the Order Compelling
22 Compliance.

23 As outlined above in the Facts, Respondents’ public filings alone demonstrate that they
24 have more financial records to produce. The State requested all documentation of the Respondent
25 political committees’ financial transactions with the signature gathering firm Citizen Solutions.
26 The committees’ filings with the Public Disclosure Commission show that they engaged in

1 dozens of financial transactions with Citizen Solutions during the time period covered by the
2 Order Compelling Compliance, yet they produced no records of those transactions.

3 Similarly, this Court ordered Respondents to comply with the State's request for all of
4 Respondents' tax returns and tax information for filing years 2009-2014. Yet most
5 Respondents produced no tax records at all. Even the Respondents who produced some tax
6 records, Mr. Eyman and Tim Eyman Watchdog for Citizens LLC, failed to supply the required
7 supporting schedules or documentation.

8 Finally, but perhaps most importantly, Respondents have not even attested that they have
9 completely responded to the Civil Orders. Rather, Respondents' counsel made a vague statement
10 that he believes all the "available" records are produced. Unfortunately, the evidence shows that
11 even that vague claim is simply wrong.

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

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

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

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

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

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

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

20 Sanctions for civil contempt are remedial, in other words, intended to coerce a party's
21 compliance with a judgment or order. *In re Detention of Young*, 163 Wn.2d 684, 693, 185 P.3d
22 1180 (2008). Where a remedial sanction has been imposed, the contemnor effectively "carries
23 the keys of his prison in his own pocket." *Int'l Union, United Mine Workers of Am. v.*
24 *Bagwell*, 512 U.S. 821, 828, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994) (internal quotation marks
25 omitted) (quoting *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 442, 31 S.Ct. 492, 55
26 L.Ed. 797 (1911)). "An order of remedial civil contempt must contain a purge clause under

1 | which a contemnor has the ability to avoid a finding of contempt and/or incarceration for non-
2 | compliance.” *In re Marriage of Didier*, 134 Wn. App. 490, 501, 140 P.3d 607, 612 (2006),
3 | citing *In re Interest of Rebecca K.*, 101 Wn. App. 309, 314, 2 P.3d 501 (2000).

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

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

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

20 | In addition to a per day penalty, the State requests this Court’s authorization for it to
21 | directly subpoena financial records from Respondents’ banks as a means to obtain the
22 | information it requested. The State requests that the Court order Respondents to provide all
23 | bank account information including name of the banking institutions where they transacted
24 | business since 2009, the names of the account holders, and the account numbers for each such
25 | account. The State also seeks an order ordering Respondents to execute releases so the State
26 | 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 Orders have been outstanding since November 2015, yet Respondents
7 did not provide full responses. Even after this Court ordered full compliance, Respondents fell
8 short. And Respondents represented, through their counsel, that they "believed" they were
9 providing all "available" documents, even though that was plainly inaccurate. The State is
10 losing confidence that it will ever receive full responses from Respondents. Therefore, in
11 addition to imposing financial consequences to urge Respondents' compliance, the Court
12 should authorize the State to obtain records directly from banks and the IRS. Only then will the
13 Court (and the public) be able to have confidence that the State has actually received the
14 relevant records. The outstanding bank records and tax information sought are described with
15 particularity in the declarations filed in support of this motion.

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

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

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VI. CONCLUSION

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

DATED this 27th day of July, 2016.

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PROOF OF SERVICE

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

MARK LAMB
THE NORTH CREEK LAW FIRM
12900 NE 180TH STREET, SUITE 235
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- U.S. mail via state Consolidated Mail Service (with proper postage affixed)
- courtesy copy via facsimile:
- courtesy copy via electronic mail:
mark@northcreeklaw.com
- ABC/Legal Messenger

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

