Hearing date: Friday, October 4, 2019
Hearing time: 9:00 a.m.
Judge/Calendar: Hon. James J. Dixon

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON, Plaintiff, v. TIM EYMAN, *et al.*, Defendants.	NO. 17-2-01546-34 PLAINTIFF STATE OF WASHINGTON'S RESPONSE TO MOTION FOR RECONSIDERATION

I. INTRODUCTION

Defendant Eyman is still in contempt. He last supplemented his discovery responses three months ago. As of the filing of this brief, it has been 18 days since this Court assessed non-monetary sanctions against him, and he still has not supplemented his discovery in any way. He has not filed a motion to purge contempt because he knows that he still has not met his discovery obligations. Instead, he asks this Court to reconsider its finding of non-monetary sanctions by simply returning to the old refrain of claiming to have done something, when in fact he has done nothing except admitting to hiding even more information, ***including two new bank accounts***.

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Even if Defendant Eyman's completely invented progress were real, it would simply be a concession that he could have purged contempt all along, and he just chose not to. In the ten days following the Court's ordering non-monetary sanctions, Defendant Eyman hired a lawyer to help him, and he drafted letters purportedly releasing his bank records to the State. Neither of these actions changes anything, other than confirming that the Court did the right thing. If, after two years of orders and penalties, he was able to comply in only ten days, he could have done so two years ago, and he chose not to, which is definitive proof that he was intentionally ignoring the Court's orders.

The same can be said for his hiring a lawyer. For eight months, Defendant Eyman has been pleading that his failure to provide responses to discovery is due to his lack of a lawyer. He repeatedly told this Court that he does not have a lawyer through no fault of his own. Miraculously, when this Court ordered a substantial sanction against him, he was able to hire a lawyer within days, demonstrating that he was not being forthright to the Court about his ability to hire a lawyer in the past.

Of course, he was not being forthright. He has hired four other lawyers since he filed for bankruptcy: his bankruptcy lawyer, a special counsel to assist him with his taxes, a personal injury lawyer, and Mr. Ard, who briefly appeared in this case. His sudden decision to hire a lawyer simply shows that the Court's sanction decision was the correct decision, as it finally spurred some action.

If this Court were to reverse itself and reconsider the non-monetary sanction, there would be no consequences for Defendant Eyman's years of defiance. He has not paid a penny of discovery sanctions in more than a year, and when the State asked the Bankruptcy Court to order

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them paid, Defendant Eyman filed a brief fighting for the right to continue to ignore this Court's order to pay, so he could keep his ill-gotten gains.

Finally, Defendant Eyman pleads that the Court's order requires him to report the identities of his donors to the PDC, but the Court's order does not require him to disclose anything to the PDC. Of course if he does not, and the Court later finds that he was required to disclose those donors, then he will be subject to additional penalties. To be fair, that is probably what is going to happen, but it is up to him to decide what he is going to do right now. What he has admitted by filing this motion is that he is continuing to fight to conceal his donors, despite being ordered to reveal them to the State two years ago. He is either going to have to tell the State through discovery or tell the PDC, and likely both, but this Court ordered him to provide those names 23 months ago, and he continues to refuse. There is nothing to reconsider here.

II. STATEMENT OF FACTS[1]

A. Defendant Eyman's Responses Remain Deficient

Deficiencies that the State sought to address in its September 5, 2019 motion included the Eyman Defendants' deficient responses to Interrogatory No. 20 from the State's first discovery requests, and defendants' deficient responses to Interrogatory Nos. 68, 69, 74, 75, 76, and 77 from the State's fifth discovery requests. *See* First Declaration of Tony Perkins (Perkins Decl.) ¶ 25.

Interrogatory No. 20 requires Defendant Eyman to identify and provide certain information for his sources of income received since January 1, 2002, including the person who paid Defendant Eyman, the years of such compensation, the services provided by Defendant

[1] Due to page limits, a full account of Defendant Eyman's discovery abuse is contained in the First Declaration of Tony Perkins.

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Eyman for such compensation, and the last date compensation was paid to Defendant Eyman. *Id.* ¶ 26. He still has not done so, and his bank records, even if they were available, would not answer all of these questions. *Id.* ¶¶ 31, 71, 74.

Similar to Interrogatory No. 20 from the State's first set of discovery requests, Interrogatory Nos. 68, 69, 74, 75, 76, and 77 from the State's fifth discovery requests were designed to identify solicitations by Defendant Eyman and payments to him labelled as "gifts," "donations," or "contributions," as well as any compensation or other payments for election-related activity. *Id.* ¶ 27. These responses also remain deficient. *Id.* ¶¶ 25, 68.

Defendant Eyman's responses to the requests for production (RFP) in the State's fifth set of discovery requests also remain deficient. *Id.* ¶ 28. RFPs 33, 34, 35, 36, and 38 seek bank records that Defendant Eyman has not previously produced, including unredacted copies of items deposited, deposit slips, checks/withdrawals connected with those accounts, and records of wire transfers made to or from the Eyman Defendants. *Id.* These records have not been provided, and because of document retention policies, anything received from the banks will be incomplete. *Id.* ¶¶ 32, 45.

Other deficiencies remaining in the Eyman Defendants' discovery responses are indicated by emails, correspondence and other documents produced from Defendant Eyman's own computer. *Id.* ¶ 33. Although the State has provided copies of these documents to Defendant Eyman on multiple previous occasions, for months he has refused to acknowledge the documents or address their contents in his written discovery responses, contributing to his contempt of this court. *Id.* Defendant Eyman does not explain how his banks could elucidate

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Defendant Eyman's position on documents that are already in his possession, if he is unwilling to address those documents himself. *Id.*

Payments from signature gathering companies, like Citizen Solutions have not been addressed. *Id.* ¶ 74. Interrogatories No. 16 and 17 require Defendant Eyman to identify and provide specific information for any payments that he, his business(es), or family members received from any company or individual retained or used for signature gathering, and payments from any other person that provided services to Defendant Eyman's ballot proposition committees. *Id.* ¶ 73.

Defendant Eyman's July 1, 2019 supplemental responses to Interrogatories No. 16 and 17 simply refer to Defendant Eyman's response to Interrogatory No. 7, and provide no additional information. *Id.* ¶ 74. Defendant Eyman's supplemental response to Interrogatory No. 7 fails to identify or provide all required information for at least $90,000 in cash and check payments that Roy Ruffino and Edward Agazarm made to Defendant Eyman for the period of 2010 – 2012, as described in detail in Eyman's document production. *Id.* ¶ 74, Exs. E, F. Defendant Eyman's response to Interrogatory No. 20, discussed above, is deficient for failing to provide this same information. *Id.*

Still other deficiencies in Defendant Eyman's responses to the State's fifth set of discovery requests are ignored by his September 23, 2019 motion and attached declaration seeking reconsideration of the Court's award of non-monetary sanctions. *Id.* ¶ 75. These deficient responses include Defendant Eyman's responses to Interrogatory Nos. 71, 72, and 79. *Id*.

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Defendant Eyman last submitted updated responses to the State's first set of interrogatories and requests for production on July 1, 2019, in connection with his failed eighth motion to purge contempt. *Id.* ¶ 34, Ex. C. Most of the interrogatory responses identified as deficient in the May 7, 2019 and May 29, 2019 hearings on Defendant Eyman's sixth and seventh motions to purge contempt were deficient in his July 1, 2019 responses, and remain deficient today. *Id*., Exs. C, D.

Defendant Eyman last supplemented responses to the State's fifth set of discovery requests on July 2, 2019. *Id.* ¶ 19, Ex. A. Nearly all the deficiencies that the State previously identified remained in Defendant Eyman's responses. *Id.* ¶ 21, Ex. B. In addition, Defendant Eyman continued to maintain his untimely objections to the State's requests. *Id.*

Defendant Eyman has not supplemented any of his responses to discovery for almost three months, including the nearly three weeks since this Court ordered the non-monetary sanctions.[2] *Id.* ¶ 19.

B. Defendant Eyman's Purported Release of Banking Records Is Insufficient

In his September 23, 2019 motion and attached declaration seeking reconsideration of the Court's award of non-monetary sanctions, Defendant Eyman proposed to remedy his deficient discovery responses by offering signed releases that would allow the State to obtain Defendant Eyman's banking records directly from his financial institutions. *Id.* ¶ 31. However, such production would not remedy the deficiencies in Defendant Eyman's discovery responses. *Id.*

[2] Additional deficiencies are explained in the First Declaration of Tony Perkins.

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For example, the State's first discovery requests sought information and documentation concerning payments that the Eyman Defendants solicited or received as early as 2002. *Id.* ¶ 32. The State's fifth discovery requests sought information and documentation concerning payments solicited or received as early as 2004. *Id.* Because banks only maintain records for seven years, records of responsive to these requests were destroyed in 2012. *Id.* By failing to provide complete, timely responses to the State's first set of discovery requests in 2017, the Eyman Defendants deprived the State of more than two years' worth of records and information relevant to the State's claims. *Id.*

C. Discovery Was Conducted Without the Benefit of Complete Responses From Eyman Defendants

Because the Eyman Defendants' discovery violations have continued for 26 months and have encompassed two sets of written discovery, the State has had to proceed with all of its depositions without the benefit of documents and interrogatory responses it sought, including the depositions of the Eyman Defendants, the Citizen Solutions Defendants, and non-party witnesses including several donors to Defendant Eyman and his political committees. *Id.* ¶ 86.

D. Recent Revelations of Financial Activity Concealed by Defendants

Defendant Eyman's September 10, 2019 motion for reconsideration purports to commit Defendant Eyman to completing discovery and complying with the orders of this court and the Special Discovery Master in order to purge contempt. *Id.* ¶ 90. However, in his declaration and attached exhibits, Defendant Eyman disclosed two new bank accounts that he was required to identify in his discovery responses years ago but has concealed until now. *Id.*

Defendant Eyman describes the first of these accounts, a Chase account ending in x9053, as an account related to "gifts for Tim Eyman and family." *Id.* ¶ 91. The second account, also

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at Chase and ending in x8733, is described as an account related to "gifts for Tim Eyman Legal Defense Fund." *Id.* These accounts were not previously disclosed in the Eyman Defendants' written discovery responses, and no documents related to these accounts have been produced. *Id.* It is unknown what payments responsive to the State's discovery requests may have been concealed through these hidden accounts. *Id.*

It bears noting, no checking or savings account at Chase that could be used to deposit "gifts" or similar payments from Defendant Eyman's political supporters was disclosed in Defendant Eyman's November 28, 2018 bankruptcy petition, or in his periodic reports of financial activity submitted to the bankruptcy court. *Id.* ¶ 92, Exs. P, Q.

III. EVIDENCE RELIED UPON

First Declaration of Tony Perkins with exhibits attached.

IV. ARGUMENT

A. Substantial Justice Has Only Begun To Occur

Defendant Eyman cites Rule 59 and asks this Court to reverse itself after it finally reached the end of its patience and levied a substantial sanction against him for his two years of discovery abuse. In his argument, Defendant Eyman cites no error by the Court in its original ruling, no new evidence, and no mistake. He does not argue that there was an irregularity in the proceedings or misconduct by the State. He simply argues, "A motion for reconsideration may be granted due to substantial justice." Eyman Br. at 2 (citing CR 59(a)(9)). Of the nine grounds upon which reconsideration can be granted under CR 59(a), it is particularly ironic that he chose that one to rely upon.

The State has waited a long time for justice in this matter because of Defendant Eyman's antics. The State is still awaiting that justice. There is nothing unjust about a discovery sanction

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against a defendant who defied this Court's orders and his discovery obligations for two years, especially when the discovery violations continue even after the sanction. The Court's order is only the first step toward the State's finally having the issues in this case resolved. Defendant Eyman's hollow gesture does not change anything.

1. Defendant Eyman's sudden disclosure of information that is two years overdue, does not remedy the past prejudice.

In its order, this Court held, "The State's ability to prepare for trial has been substantially and ***irreparably*** prejudiced by the Eyman Defendants failure to comply with their discovery obligations." Court's Order (dated Sept. 13, 2019) (emphasis added). What Defendant Eyman has done does not remedy the prejudice he has caused to the State's case. He does not even argue that it does. There is nothing he can do to remedy that prejudice, but he has not even purged contempt, let alone providing a remedy for past harm. In fact, his recent disclosure provides further support for the Court's finding of intentional defiance, in light of the two new accounts he disclosed.

2. Defendant Eyman's sudden retention of counsel shows he was intentionally misleading and defying the Court.

Defendant Eyman chose to proceed without an attorney for eight months. He intentionally avoided hiring an attorney so that he could falsely tell this Court and the Special Discovery Master that his failure to respond to discovery was out of ignorance, not defiance.[3] He repeatedly claimed that it was the State that was preventing him from getting a lawyer, despite that assertion being patently false.[4] His proposed new attorney is furthering the objective of

[3] *See, e.g.*, Def's Sixth Motion to Purge Contempt (dated April 23, 2019) ("I have done the best I could, without legal advice or legal counsel, to fully comply with the Special Master's orders.")

[4] *See, e.g.*, *id.* ("The State has legions of lawyers assigned to it – they're throwing the kitchen sink at me. I've declared bankruptcy and they've used my bankruptcy to block me from being represented, including by the legal counsel that successfully got me purged from contempt.")

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blaming the State for Defendant Eyman's malfeasance, reportedly stating, "'The thing that killed Tim is not having a lawyer, and the state did everything it could to discourage him from getting a lawyer,' Sanders said. 'It's a lot better to litigate with someone that doesn't have a lawyer.' "[5]

Contrary to Defendant Eyman's and his attorney's propaganda, the State has repeatedly advised Defendant Eyman *in writing* to obtain an attorney. The State also objected to his last attorney's withdrawal. The State argued to this Court, "Mr. Ard should be required to continue until at least discovery is complete." *See* Plaintiff State of Washington's Objection to Notice of Intent to Withdraw at 2 (dated Jan. 14, 2019). This Court ruled against the State on that issue and allowed defense counsel to withdraw. *See* Order (dated Jan. 18, 2019).

The false narrative from Defendant Eyman and his proposed attorney regarding the State's action demonstrates that, even with counsel, this Court can expect Defendant Eyman to continue to be unapologetic for his past malfeasance and continue to refuse to take responsibility for his own actions and decisions. This should provide the Court comfort that it made the correct decision in sanctioning him as it did.

The State's focus in this case has always been on obtaining Defendant Eyman's compliance with the law, and the State has repeatedly encouraged him to obtain an attorney, with the express objective of his being informed by that attorney of how out of compliance with the law he is.

Nothing has changed since this Court made its ruling on September 13. Nothing happened in the ten days following this Court's ruling that made hiring a lawyer any easier for

[5] https://www.heraldnet.com/news/former-supreme-court-justice-willing-to-take-on-eymans-case/ (last visited Oct. 1, 2019).

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Defendant Eyman. What he did to obtain a lawyer in the days after this Court's ruling, he could have done in the eight months prior. His suddenly hiring a lawyer demonstrates that the last eight months of feigning desperation was all an act because he thought there would be no consequences for his behavior. Now that this Court has levied substantial consequences, Defendant Eyman thinks he can just hire a lawyer, send a few letters, and ask this Court to ignore his last two years of defiance.

3. The Court cannot reconsider based on new behavior.

Defendant Eyman does not ask this Court to grant reconsideration based on new evidence, but he does ask this Court to reconsider based on purportedly new circumstances. Though allegedly better behavior is not a ground recognized by CR 59 for reversing a prior ruling, if the "new evidence" standard is used as a guide, Defendant Eyman has failed to meet it.

With respect to new evidence, "If the evidence was available but not offered until after that opportunity passes, the parties are not entitled to another opportunity to submit that evidence." *Wagner Dev., Inc. v. Fid. & Deposit Co. of Maryland*, 95 Wn. App. 896, 907, 977 P.2d 639 (1999). Likewise, if the compliant behavior was possible before the Court's ruling, then Defendant Eyman is not entitled to another opportunity to submit to the Court's orders. This is especially true because the monetary sanctions continue.

This Court contemplated future compliance when it imposed the non-monetary sanctions by also continuing the monetary sanctions. Compliance with the Court's orders will stop the monetary sanctions, but the non-monetary sanctions were set as a penalty to address past non-compliance.

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Of course, all of this discussion is unnecessary because nothing has changed. Defendant Eyman is still not compliant. He has not supplemented his discovery responses in any way. His letters contain no new information, and are of no use even for their stated purpose, as the State either needs an order from this Court or a release in order to obtain personal banking records, not a simple letter. *See State v. Miles*, 160 Wn.2d 236, 156 P.3d 864, 866 (2007).

B. Defendant Eyman Should Have Named the Does Two Years Ago

As the Court may be aware, two of Defendant Eyman's secret donors have filed a motion with this Court asking that this Court keep their identities concealed. That means that there are at least two donors who Defendant Eyman has concealed completely, despite this Court's order that they be identified almost two years ago. Defendant Eyman certainly knows who they are, as disclosure of their identity would be necessary for Defendant Eyman to knowingly waive any conflict Mr. Ard has. Despite, knowing who they are, and despite falsely telling this Court that he has complied with its orders, Defendant Eyman still has not disclosed them.

C. This Ruling Does Not Affect the Rights of Non-Parties

1. The Court has the authority to determine the facts and law in this case.

Defendant Eyman argues, "By allowing the characterization of all gifts as a matter of law as political contributions, the Court is unwittingly foisting political speech into the mouths of its citizens." Eyman Br. at 3. The Court's ruling as it stands has nothing to do with third parties. The Court's discovery sanction is only binding on Defendant Eyman and requires no action by Defendant Eyman or anyone else.

The finding that the contributions in questions were in support of a ballot initiative is something that was going to happen sooner or later. If the Court had not made its finding on September 13, it would have simply delayed the inevitable. At the end of this case, when the

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State gets a verdict against Defendant Eyman, had it not already done so here, this Court would have found that those purported "gifts" were actually contributions in support of ballot initiatives anyway, and Defendant Eyman would be in the same position he is in now. It just happened sooner because this Court found that Defendant Eyman actively obstructed the truth-seeking objective of the discovery process.

Of course, the State is assuming here that it would have won at trial on this issue, which it would have, but setting that assumption aside does not change the calculus here. If the State won at trial, Defendant Eyman could make the same fallacious argument then, and it would be equally invalid. The question is: Does this Court have the authority, under any circumstances, to find that these payments were contributions in support of ballot initiatives without the permission of the donors? The answer is: of course it does. Because the Court has the authority to make such a finding, it has the authority to do so at trial or under CR 37(b)(2)(B).

If Defendant Eyman's argument were accepted, then when a person donates to a political committee, no matter how obvious it is that it is a political contribution, if they simply say that it is not, then the State has no enforcement power against the political committee because it would foist political speech into their mouths. People who donate money to political committees do so with the knowledge that their donations are going to be reported to the PDC. "[T]he public's right to know of the financing of political campaigns . . . far outweighs any right that these matters remain secret and private." RCW 42.17A.001(10).

The Court has not ordered Defendant Eyman to disclose anything. Of course if he does not, and the Court later finds that he was required to disclose these contributions, then he will be subject to penalties. That is probably what is going to happen, but it is up to Defendant Eyman

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to decide what he is going to do right now, and this Court's order does not take it out of his hands.

D. There Should Be No Stay

Defendant Eyman mentions without further discussion that there should be a "stay in further proceedings until such time as attorney Richard Sanders . . . can be appointed by the bankruptcy court to serve as legal counsel in this case." Eyman Br. at 1. Defendant Eyman does not provide any argument or authority why a stay should be granted, and the last time Defendant Eyman caused a stay in this case, the State lost its trial date. There should be no more stays of this matter.

V. CONCLUSION

Defendant Eyman has given this Court nothing to reconsider. He did not supplement his discovery in any way. He asks this Court to reconsider its prior ruling for no reason at all. His motion should be denied.

DATED this 1st day of October 2019.

ROBERT W. FERGUSON
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PROOF OF SERVICE

I declare that I did not serve on Defendants William Agazarm and Citizen Solutions, LLC due to Default Order entered on May 17, 2019.

I certify that I served a copy of this document, via electronic mail, on the following:

Tim Eyman
Pro Se
tim_eyman@comcast.net

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 1st day of October 2019, at Tumwater, Washington.

/s/ Jessica Buswell
JESSICA BUSWELL, Legal Assistant

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