IN THE UNITED STATES DISTRICT COURT

MAX ZWEIZIG, )
Plaintiff, ) No. 3:15-cv-02401-HZ
vs. ) January 17, 2018
TIMOTHY C. ROTE, a citizen of ) Portland, Oregon the state of Oregon, NORTHWEST ) DIRECT TELESERVICES, INC., an ) Oregon for-profit corporation, ) NORTHWEST DIRECT MARKETING OF ) OREGON, INC., an Oregon ) for-profit corporation, ) NORTHWEST DIRECT MARKETING, ) INC., an Oregon for-profit ) corporation, NORTHWEST DIRECT ) OF IOWA, INC., an Iowa ) for-profit corporation, ROTE ) ENTERPRISES, LLC, an Oregon ) limited liability company, ) NORTHWEST DIRECT MARKETING, ) INC., aka Northwest Direct ) Marketing (Delaware), Inc., a ) Delaware Corporation, and ) DOES 1 through 5, )

Defendants. )
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TRIAL - DAY 2
PLAINTIFF'S CLOSING ARGUMENT
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARCO A. HERNANDEZ
UNITED STATES DISTRICT COURT JUDGE
FOR THE PLAINTIFF: Joel Christiansen
Vogle \& Christiansen
812 N. W. 17th Avenue
Portland, OR 97209
FOR THE DEFENDANT
TIMOTHY C. ROTE: Timonthy C. Rote
Pro se
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MR. CHRISTIANSEN: Thanks, Your Honor.
Fourteen years, and Mr. Zweizig would like to be done.

You've seen the evidence today. We've gone through this. You'll have copies of everything. I don't want to go through that again. What $I$ do want to talk to you about is jury instructions, kind of how we tie that to the law and what do we do about this.

So as the jury instructions that you've heard said and as you'll be able to see in the jury room, there two legal claims that we're involved with, and it's retaliation and aiding and abetting. I kind of want to go through those with some slides and talk you through them.

So the first is retaliation, and there's a few elements to this. The first one, that Mr. Zweizig participated in a legal proceeding against his employer for whistleblower retaliation, that's not a dispute in this case $I$ don't believe. You've heard all about this arbitration. It's because of whistle blowing. There's just no question about that.

Exhibit 2, you have the Complaint in New Jersey. Exhibit 3, you have the Opinion and Order from the arbitrator. This case lasted for six years. That's the protected activity in this case.

No. 2, the business entity subjected Mr. Zweizig to an adverse employment action; that is, published disparaging employment-related statements concerning Mr. Zweizig in a public manner on the Internet.

You heard from Mr. Rote that this is not the business entities doing this, this is just him. I'd encourage you to look at the evidence, because that is absolutely not what is before you today.

You'll have it in the room with you. We sort of went through it. It's Defense Exhibit 546. This is a license agreement that Mr. Rote prepared, signed on behalf of three corporations and himself. That's his signature on each line. And the licensor is this incorporation -- this corporation with an address in West Linn; a telephone, 722-1640; e-mail, Tim@nwdirectmarketing. The licensee is Mr. Rote at that same address. It doesn't say "West Linn," but the street address is the same, and an e-mail of RoteEnterprises.com.

And what's more important than this agreement, though, is what Mr. Rote has represented to the public about my client. And when you look at what's on the website, what jumps out immediately is that it's "Our History with Max Zweizig." And when you look through this, there is some stuff where Mr. Rote says, "I am doing this" and "I am doing that." But peppered throughout this thing is "we," "us," "our."

And the content of this thing, it is about an
employee. It's an employer speaking about them. And so this business entity fiction that Mr. Rote has created, please, please don't let that fool you. I'm confident it won't, but I need to point it out.

The content, it's clear: "Because of the unrestrained legal action by Marshall, we need to monetize our experience."

What Mr. Rote testified to is that there's a licensing agreement. And the intention of that was so that the company could make money from this thing somehow and, in this case, pay for the defense. So, again, it's a legal fiction.

Mr. Rote also represented to a former employee of the company that this whole thing is about the company. So, again, despite the fact that he comes up here and says, "This is just me" -- I mean, it is him, he's correct, but it's the business entities. It's the outside world. When whoever comes and looks at this, when Mr. Zweizig's fiancee looks at this, is anyone really distinguishing, oh, this is one person, not a company? We're talking about someone's work in the world. So that's not an issue.

The business entities subjected Mr. Zweizig to an adverse employment action. So the instructions tell you adverse employment action -- that is, publishing disparaging employment-related statements concerning Mr. Zweizig in a
public manner on the Internet -- the legal question is whether this might dissuade a reasonable worker from making or supporting a charge of whistleblower retaliation. And I'm not going to argue too much about this, but $I$ will ask you, what reasonable worker would ever sue their employer if they knew they'd endure years and years and years of this about them?

So the second element of the retaliation claim is that Mr. Zweizig was subjected to the activity because of his participation -- subjected to the activity of Mr. Rote because of his participation in the protected activity. This is also absolutely not a question.

I have two examples, but I could have like a hundred.
"Sitting Duck Portland story is about an arbitration involving one of my companies and a former IT manager by the name of Max Zweizig."

The protected activity is an arbitration. He's saying it right here. It's because of that. Actually, the second one, he actually uses the word "because."
"So because of the unrestrained legal action by Marshall" -- that's Mr. Zweizig's former attorney -- "we need to monetize our experience as much as possible to pay for the defense of this baseless lawsuit."

It's really not a question. And with those three things, retaliation is -- $I$ don't think that's a question.

And that brings us to aiding and abetting. The
aiding and abetting claim is against Mr. Rote individually. It's him as a person. And so what we look at there is whether Mr. Rote aided, abetted, incited, compelled, or coerced retaliation by the business entities against Mr. Zweizig.

And I printed some dictionary definitions of these words. I think it's also obvious. But "aid" means to provide with what is useful or necessary in achieving an end. That licensing agreement granted him a license to all the materials he put on this website. He signed it on behalf of the company and himself. He provided himself with what was necessary to carry out this website.
"Abet" is to assist or support someone in the achievement of a purpose. He supported the company by writing 96,000 words on the Internet.
"Incite," to move to action. Well, a company is not a human being. It can't act. It needs a voice or, in this case, fingers on a keyboard and eyes on a screen. And Mr. Rote told you he was those fingers, he was the eyes.

The second element is that Mr. Rote acted outside the scope of his executive authority with respect to any of the business entities; i.e., not for the benefit of the business.

So the analogy I'd draw here, it's mild, but Mr. Rote is coloring outside the lines. There might be a situation where, you know, on behalf of the company, he could write some things on the Internet that would help. But when you get into
accusing your former employee of downloading vile, terrible things on your work computer and call his fiancee's attention to it, that's so far outside the lines, it has zero benefit for the business.

So in terms of the elements for aiding and abetting, again, like retaliation, $I$ think the evidence is overwhelming.

So that brings us to the real question and what $I$ want to talk to you about is non-economic damages. And that's the only claim for damages Mr. Zweizig is making. And non-economic damages are tough to put your finger on. They're squishy. They're ambiguous. It's not something we can punch into a calculator or run through an Excel spreadsheet. It would be nice if $I$ could just hit "space" and show you the numbers and send you back. It doesn't work like that.

Mr. Zweizig hasn't sought economic damages. He did not want to provide Mr. Rote or anyone with his employer's information. He's not saying he hired a PR firm to go clean this stuff up on the Internet. He's not seeking, you know, hard dollar money that he paid out of his pocket because of any of this. It's non-economics.

And the standard we have is what's in the jury instructions, and that's what I'd like to walk through with you. Ultimately it's your decision. I'm just going to give you some suggestions.

The instructions will say subjective non-monetary
losses that Mr. Zweizig sustained or will sustain in the future. So, again, it's subjective, no spreadsheet, no calculator. It's what do we -- what do we think? What do we believe?

Non-monetary, again, it's not money. Sustained or will sustain in the future. And $I$ argue to you that both of these things are true, and we have plenty of evidence for that.

The jury instructions will also -- it will say that you must be reasonable. And in law school they teach us about what is called a reasonably prudent person, and that's the jurors. So what's reasonable, to a large extent, is what you think we do about this, how do we address this.

There's words like "mental suffering," "emotional distress," "humiliation," "inconvenience," "interference with normal and usual activities," and "injury to reputation." All of those are the case here. The words that aren't on the jury instructions, but they feed into these words are "terror," "torment." The list, it -- yeah. You saw Mr. Zweizig testify. That's -- that's obvious.

So what do we look at? I mean, how do you -- how do you put a number on that? What I'm going to encourage you to do is look to the community. What kind of message do we want to send to the world to say this -- not only is this wrong, but it's real. What Mr. Zweizig has gone through, it's not
just a blog on the Internet. We're not up here about a couple comments that hurt his feelings on Facebook. This is a smear campaign, being stalked on the Internet. What do we do with that fear?

So when you look at community, there's a couple contexts $I$ want to talk to you about. The first is the broad context. The community here is massive, and the problem is great. And blogging, Googling, Facebooking, Twittering, LinkedIn, that's part of our world today. And what $I$ argue to you is you need to be responsible about how you use that stuff. And we need to send a message to that big community that that's not acceptable. You can't do that. That really hurts people.

And it affects young and old, rich and poor, middle class. It's the whole spectrum. It doesn't matter what you do for work or who you spend your time with. We all check the phone sometimes. We all look things up. And like Mr. Zweizig said, sometimes you're looking up how to find a shortcut for a Unix code and you end up with koala bears. And that's the reality we live in.

The other reality we live in is Mr. Rote can create a free WordPress site, and anyone can create a free WordPress site, and you can do specific things to make sure that things on the Internet work the way you want them to. You can put Mr. Zweizig's picture on a post. You can put his name in a
title. You can put his fiancee's name in a tag. And these things actually make a difference in the world. People see this stuff.

And is it that Mr. Zweizig thinks, you know, tomorrow someone he met on the street is going to Google this stuff and think he's a pedophile and unfit to do his work? Maybe. But it's the fact that he doesn't know. He doesn't get to control that. That's out of his hands. Mr. Rote has taken that away from him and terrorized him with that.

And the other context is it's the small context. It's about the individual, the family, what happens at home day to day. You know, how do we interact with ourselves? How do we interact with the people we love? What kind of messages do we want to send to our children or our neighbors, that small community? And that's really important here, too.

And as I'll go through in a minute here, we are -what we're asking for is $\$ 2$ million. And the reason, it's because of how calculated and geared specifically toward Mr. Zweizig all of this content is. And, as a result, he's -this has had a real impact on him. It's really -- it's rattled his life. It's changed his world view. It's in the back of his mind every morning when he wakes up.

And to give some context for that, I first want to talk about what Mr. Rote talked to us about yesterday. He told you that he was running a telemarketing call center, a
series of telemarketing call centers in Oregon and Iowa.
You'll see -- it's in Chapter 90 of the website,
Exhibit 18. He plans to open in the Dominican Republic. You heard that at that time he had 175 employees. Mr. Zweizig worked there. He knew about this stuff. And in the context of "Hey, I'm going to publish this to the world. I'm going to send out a million e-mails," when you stop and think about that, that actually is -- it is really scary.

This is a man who can pull together 175 people and have them make, hypothetically, say a hundred calls a day. That's 17,500 calls a day. That's not -- an e-mail is a lot easier to send. This is a person who not only knows how to do that, they've impressed upon Mr. Zweizig that they have the resources to do that and are willing to cross that line and go there.

Mr. Rote's LinkedIn account describes him as the owner of a holding company and simultaneously an author and a screenwriter in Los Angeles. Assuming this is true -- maybe it is; maybe it's not -- Mr. Zweizig worked at this company and saw all these employees, has reason to believe that this man is sitting at home and has nothing to do, doesn't need to make money, he can just sit there and terrorize him.

And that's -- that's -- the thought of that is -it's, like I said, changed Mr. Zweizig's life.

Mr. Rote has said that he spent $\$ 350,000$ just to
defend claims against Mr. Zweizig that remain unpaid today. As the arbitration order and opinion shows, the attorneys remain unpaid today. So the $\$ 350,000$, what did that bring? It brought years of suffering for everyone.

So, again, Mr. Zweizig sees a man with resources who is willing to go to great lengths to avoid doing what's right, not just doing what's right, to stop doing what's so terrible. There's a history, and I think that makes this chilling and terrifying as well.

This is from the arbitrator's opinion: "The vitriol found in the submissions and the accusations of fraud, lying, and intentional misconduct have been of little benefit to the arbitrator."

This same vitriol of fraud, lying, and intentional misconduct is exactly why we're here today. This is in 2011, after six years of arbitration. So when we talk about future turmoil, this doesn't stop today. We just get some sense of what it is.

When Mr. Rote testified about this order, he said that the arbitrator was poking at him. He said as a result of how this went, he felt a compelling need to go into a deep dive. And you saw what that deep dive was about.

Yeah, there was some talk about evidence and fraud and all that stuff, but this was calling Mr. Zweizig out for things he didn't do to his fiancee and implicating her in this
thing. Attorneys, anyone he can get to rattle Mr. Zweizig's cage, he was going for it.

When Mr. Zweizig and Mr. Rote and his companies were litigating back in New Jersey -- Exhibit 22, you'll see. It's a letter from Mr. Rote to a federal judge in New Jersey on his company's letterhead, saying that "Our diagnostic review of the computer plaintiff used" -- and plaintiff in this case is Mr. Zweizig -- "in New Jersey provides a history of information on what plaintiff may have been doing with his time. One page follows." We don't have that page.
"The information was recovered from a hard drive plaintiff attempted to destroy by reformatting it prior to returning it to us. Note that plaintiff has been downloading video from a pedophile site. Is it possible your clerk" -"that plaintiff has some contact with your clerk?"

This is a federal judge. And then years later, when Mr. Rote talks about this, it's a picture of Mr. Kugler, Judge Kugler, on the website.
"But in my somewhat emotional way, I fired off a letter challenging the why of dismissing our case with prejudice and brought to his attention the conclusions reached by our investigator. Judge Kugler was not very happy with me, and what was to follow became one of the most entertaining periods of my life, in the courtroom anyway."

This is not serious. This is entertainment.
Mr. Zweizig sees this and sees this -- this is
Chapter 41 of a 97 -page website, 96,000 words. That's longer than The Hobbit.
"Judge Kugler ordered me to New Jersey to stand trial for contempt and interference of the Court."

This is a federal United States District Court.
"He demanded that $I$ be there in person some 30 days after his notice. So I hired yet another attorney, paid him 10,000 bucks, and he went about the business of claiming" -"of what he claimed was trying to keep me out of jail."

Mr. Rote talked about rebranding his website. He talked about changing it from the Sitting Duck Portland to the First Duty Portland. I don't know if you noticed when you walked in the courtroom this morning, there's a huge sign that says, "The first duty of society is justice." It's not just using this website to put some silly things about Mr. Zweizig on the Internet. He's using it to torment him.

Not just him. In the same website about this judge and his interaction with the judge, "I received a call from an investigator that told me Sandra Ware, Max's girlfriend, went to law school with one of the federal judge's law clerks, and he suspected they had met and discussed this matter."

Whether or not it's true, I don't know. But what Mr. Zweizig saw here is that an investigator was following his
fiancee, following her to meetings and watching discussions. Mr. Zweizig said that absolutely didn't happen, and there's no reason to believe it did. But what matters is the fact that Mr. Rote is terrorizing Mr. Zweizig and making him look over his shoulder, hit the refresh button.

And he's taking specific steps to show Mr. Zweizig, who is in IT and gets this stuff, that Mr. Rote is going to do this in a way that garners attention from anyone he can get. What we see here are these tags we talked about. This is a tag -- it doesn't matter what the chapter is about. But you see "Max Zweizig," "Sandra Ware," and then Chapter 1, "The Seven-Year Bitch or Arbitrators in Action."

Again, that could mean anything. But when
Mr. Zweizig looks at it, you know, "Is someone going to Google 'Sandra Ware' and see 'Sandra Ware bitch,' or is someone going to Google me and see -- like what is this? And what's next? When is it going to stop?"

Well, Mr. Rote has told him what's going to happen next: "What are we going to do? Well, we are going to publish, disseminate, write our Congressional delegation, challenge our media to critically evaluate this issue, raise the awareness, and send out a million e-mails."

Again, this is a man who has employed -- has 175 employees to actively contact as many people all day long as he possibly can, and employed Max Zweizig to write the code
that feeds them the leads so they have a new call on the phone three seconds when they're done with the previous one. This is a guy who actually does this stuff.

And here we have a passage that says, "My blog is examining the abuse of civil procedure, arbitration, and even litigation itself, which may taint the legacy of all involved, including me."

What that says is it's not -- he'll stop at literally nothing: "I'll take you down with me." This is a kamikaze mission.

You saw an e-mail from Mr. Rote years ago that shows how his state of mind has remained the same, where he offers to make some statement to the community, preserve Mr. Zweizig's professional standing or something like that. And at the bottom it says, "Allegations of crimes follow you for a lifetime." Legacy, lifetime.

So, again, $I$ bring you back to community, big picture, little picture. And this is -- it's about Mr. Zweizig's non-economic damages. That's what the whole discussion is about and why I'm asking you for $\$ 2$ million for him. It's the little moments. It's that feeling that there's something in the back of his head, there's this cloud that's going to just be there, hanging out on the horizon, no sunny days. It's always out there.

It's not that Mr. Zweizig doesn't have positive
moments. I'm not suggesting to you that's the case. He said he goes to work. He's able to make a living. He can go about his day. It's just always there. You know, it's like his existence has turned like eight degrees.

And so the question is what do we, as a community -how do we value that? It's been 14 years. Mr. Zweizig would like to be done. At the very least, he would like your help to show him that what he's going through is real. So later on, if he needs to, when he Googles his name, it's not just a bunch of lawsuits he's had to file, and hopefully not for long, these things that are written out there, but there's something that says this is real.

And then the bigger picture, it's not just Mr. Zweizig. It's so when our community looks, when you click and say, what is this thing, like what is it when you write terrible things about people on the Internet, that it's real. When the technology companies in San Francisco sit down and decide, what is our privacy policy or how are we going to deal with takedowns or whatever, it's another drop in the bucket to say that human lives matter and these things actually affect real people. So that's why I'm asking for \$2 million. And $I$ beg of you to award every penny of that. Thank you.

THE COURT: Closing argument for the defense.
Mr. Rote.
(Defendant Rote's closing argument is then given, not herein transcribed.)

THE COURT: Rebuttal for plaintiff?
MR. CHRISTIANSEN: I just want to cover a couple things Mr. Rote brought up.

Number one is this offer to redact the website.
Mr. Zweizig testified about this. It was an offer to edit a 96,000-word novel of terrible, awful things about him. You've seen two separate letters. Mr. Zweizig's attorney clearly and unequivocally told Mr. Rote to take the blog down and stop making disparaging statements about Mr. Zweizig. It is not Mr. Zweizig's job to come back and edit this thing for Mr. Rote, just to be perfectly clear about that.

The second thing, Mr. Rote refers to this corporation being dissolved. You'll see an exhibit where there is a corporate entity that was dissolved the April after this February blog was put up. But between the licensing agreement and what Mr . Rote represents to the public, which is what he's using to terrorize Mr. Zweizig, it's a red herring. It's not an issue in the case.

He's asked about or brought up the point of Mr. Zweizig hasn't sued him for defamation, because then truth would be a defense. Mr. Zweizig is his former employee. It's not two people off the street. Mr. Zweizig testified he had
zero relationship with Mr. Rote outside of work. This is not
a situation where it's two buddies who happened to work
together. That's not the case.
The last thing I want to point out about not just
Mr. Rote's closing argument, but the whole case yesterday,
today: zero apology.
Thank you.

4-3-18 DATE

NĀNCY M. WALKER, CSR, RMR, CRR Official Court Reporter Oregon CSR No. 90-0091

| \$ | 8 | analogy [1] - 7:22 | bring [2] - 13:3, 17:17 | clerks [1] - 15:22 |
| :---: | :---: | :---: | :---: | :---: |
| $\begin{aligned} & \$ 350,000[2]-12: 25, \\ & 13: 3 \end{aligned}$ | 812 [1] - 2:3 | anyway $[1]-14: 25$ apology $[1]-20: 6$ | broad [1] - 10:6 <br> brought [4]-13: | client ${ }_{[1]}$ - 4:20 CLOSING [1] - |
|  | 9 | APPEARANCES ${ }_{[1]}$ $2: 1$ | $\begin{gathered} \text { 14:22, 19:6, 19:2 } \\ \text { bucket }[1]-18: 20 \end{gathered}$ | $\begin{aligned} & \text { closing [3] - 18:24, } \\ & 19: 1,20: 5 \end{aligned}$ |
|  | $\begin{aligned} & \mathbf{9 0}[1]-12: 2 \\ & \mathbf{9 0 - 0 0 9 1}[1]-21: 13 \\ & \mathbf{9 6 , 0 0 0}{ }_{[2]}-7: 14,15: 3 \\ & \mathbf{9 6 , 0 0 0} \text {-word }{ }_{[1]}-19: 9 \\ & \mathbf{9 7 - p a g e}[1]-15: 3 \\ & \mathbf{9 7 0 6 8}[1]-2: 6 \\ & \mathbf{9 7 2 0 4}{ }_{[1]}-2: 9 \\ & \mathbf{9 7 2 0 9}[1]-2: 3 \end{aligned}$ | $\begin{aligned} & \text { April }[1]-19: 17 \\ & \text { arbitration }[6]-3: 19, \\ & 6: 13,6: 16,13: 2, \\ & 13: 16,17: 5 \\ & \text { arbitrator }[3]-3: 23, \\ & \text { 13:13, } 13: 20 \\ & \text { arbitrator's }[1]-13: 10 \end{aligned}$ | $\begin{aligned} & \text { bucks }[1]-15: 10 \\ & \text { buddies }[1]-20: 2 \\ & \text { bunch }[1]-18: 10 \\ & \text { business }[10]-4: 1 \text {, } \\ & \text { 4:5, } 5: 2,5: 17,5: 22, \\ & 7: 4,7: 21,8: 4,15: 10 \\ & \text { button }[1]-16: 5 \end{aligned}$ | cris |
| 'Sandra [2]-16:15 |  |  |  | code [2] - 10:19, 16:2 |
| 1 |  |  |  | coerced $[1]-7: 3$ coloring [1] - 7:23 |
| /s [1] - 21:11 |  |  |  | $\begin{aligned} & \text { community }[9]-9: 23, \\ & \text { 10:5, 10:7, 10:11, } \\ & \text { 11:15, 17:13, 17:17, } \\ & \text { 18:5, 18:14 } \end{aligned}$ |
| 1 |  |  |  |  |
| 1 [2]-1:15, 16:11 |  | $\begin{aligned} & \text { argue }[3]-6: 4,9: 6, \\ & 10: 9 \end{aligned}$ | C |  |
| $\begin{aligned} & 10,000[1]-15: 10 \\ & 1000[1]-2: 8 \end{aligned}$ |  |  | cage ${ }_{[1]}-14: 2$ | $14: 3,18: 17$ |
|  | abet [1]-7:12 | $\begin{aligned} & \text { argument }[3]-18: 24, \\ & 19: 1,20: 5 \end{aligned}$ |  | company [11]-1:12, |
| 14 [1] - 18:6 | abetted [1]-7:3 | ARGUMENT ${ }_{[1]}-1: 20$ | calculator [2]-8:12, | $\begin{aligned} & \text { ::10, 5:14, 5:20, 7:9, } \\ & 7: 13,7: 15,7: 24, \end{aligned}$ |
| 17 [1]-1:5 | abetting $[4]-3: 13$,$6: 25,7: 1,8: 5$ | assist $[1]-7: 12$ | 9:3 |  |
| 17,500[1] - 12:11 |  | assuming ${ }_{[1]}-12: 18$ | campaign ${ }_{[1]}$ - 10:3 | 12:17, 12:19 |
| 175[3]-12:4, 12:9, | $\begin{gathered} 6: 25,7: 1,8: 5 \\ \text { able [2] - } 3: 11,18: 2 \end{gathered}$ | attempted $[1]$ - 14:13 | carry [1]-7:11 | company's [1] - 14:6 |
| 16:23 | able [2] - 3:11, 18:2 <br> above-titled [1] - 21:5 | attention [3]-8:2, |  | compelled [1] - 7:3 <br> compelling [1] - 13:21 |
| 17th [1] - 2:3 | absolutely [3]-4:7, | 14:22, 16:8 | 3:25, 5:11, 7:17, |  |
| 18[1] - 12:3 | 6:11, 16:2 <br> abuse [1] - 17:5 <br> acceptable [1] - 10:12 | $\begin{aligned} & \text { attorney }[3]-6: 20, \\ & 15: 9,19: 10 \end{aligned}$ | $\begin{aligned} & \text { 9:17, 14:7, 14:21, } \\ & \text { 18:1, 19:21, 20:3, } \\ & 20: 5 \end{aligned}$ | Complaint [1] - 3:22 computer [2]-8:2, |
| 2 |  | 15:9, 19:10 <br> attorneys [2] - 13:2, |  |  |
| 2 [6]-1:19, 3:22, 4:1, | nt [1] - 12:16 | 14:1 | center ${ }_{[1]}$ - 11:25 <br> centers [1]-12:1 | concerning [2] - 4:3, |
| $11: 17,17: 20,18: 22$ | $13: 11$ | authority [1] - 7:20 | certified [1]-21:8 | conclusions [1] - |
| 2011 [1] - 13:15 | accusing ${ }_{[1]}-8: 1$ | Avenue [2]-2:3, 2:8 | certify ${ }_{[1]}-21: 3$ | 14:22 |
| $22[1]-14: 4$ | achievement ${ }_{[1]}$ | avoid [1] - 13:6 | challenge ${ }_{[1]}$ - 16:21 | confident [1] - 5:3 |
|  | 7:13 | award [1] - 18:22 | challenging [1] - | conformed [1]-21:7 |
|  | ct ${ }_{[1]}-7: 16$ | awful [1]-19:9 | changed [2] - 11:2 | 16:20 |
| 3 | ted ${ }_{[1]}-7: 19$ |  | 2: | contact [2] - 14:1 |
| 3[1] - 3:23 | Action [1] - 16:12 <br> action [6]-4:2, 5:6, | B | $\begin{gathered} \text { Chapter }[3]-12: 2, \\ 15: 3,16: 11 \end{gathered}$ | contempt [1] - 15:6 |
| 30 [1] - 15:8 | $\begin{aligned} & 5: 23,5: 24,6: 19, \\ & 7: 15 \end{aligned}$ | baseless [1] - 6:2 |  | content $[3]-4: 25,5: 5$, |
| 326-8186 [1] - 2:9 |  | became [1] - 14:24 | 15:3, 16:11 <br> chapter [1] - 16:10 | 11:19 |
| $\begin{aligned} & \text { 3:15-cv-02401-HZ }{ }_{[1]}- \\ & 1: 4 \end{aligned}$ | $\begin{aligned} & \text { actively }[1]-16: 24 \\ & \text { activities }[1]-9: 16 \\ & \text { activity }[5]-3: 24,6: 8, \\ & 6: 9,6: 10,6: 16 \end{aligned}$ |  | charge ${ }_{[1]}$ - 6:3 | context [5] - 10:7, |
|  |  | BEFORE [1]-1:22 <br> beg [1] - 18:22 <br> behalf $[3]-4: 11,7: 9$, | check [1] - 10:16 <br> children [1]-11:14 <br> chilling [1]-13:8 | contexts [1]-10:6 <br> control [1]-11:7 |
| 4 |  |  |  |  |
|  | $\begin{aligned} & \text { 4:16, 9:13 } \\ & \text { adverse }[3]-4: 2,5: 23, \end{aligned}$ | below [1] - 21:3 | Christiansen [2]-2:2,2:2 | copies [1] - 3:6 <br> corporate [1] - 19:17 |
| $\begin{aligned} & 4-3-18[1]-21: 11 \\ & \mathbf{4 1}[1]-15: 3 \end{aligned}$ |  |  |  | corporate [1] - 19:17 corporation [6] - 1:7, |
|  | adverse [3]-4:2, 5:23, $5: 24$ | $\begin{aligned} & \text { benefit }[3]-7: 21,8: 3 \text {, } \\ & 13: 12 \end{aligned}$ | CHRISTIANSEN[2] - $3: 2,19: 5$ | $\begin{gathered} \text { corporation }[6]-1: 7, \\ \text { 1:9, 1:10, 1:11, 4:13, } \end{gathered}$ |
| 5 | affect [1] - 18:21 <br> affects [1] - 10:14 <br> ago [1] - 17:11 | Big [1] - 2:6 | civil [1] - 17:5 <br> claim [3]-6:7, 7:1, 8:9 | 19:15 |
| $5_{[1]}-1: 15$ |  |  |  | Corporation [1] - 1:14 |
| $\begin{aligned} & 503{ }_{[1]}-2: 9 \\ & 546{ }_{[1]}-4: 10 \end{aligned}$ | ago [1] - 17:11 <br> agreement [5] - 4:11, | bigger $[1]-18: 13$ | claimed [1] - 15:11 | corporations [1] - $4: 12$ |
|  | 4:18, 5:9, 7:8, 19:18 <br> aid $[1]$ - $7: 6$ <br> aided [1] - 7:3 <br> aiding $[4]-3: 13,6: 25$, <br> 7:1, 8:5 <br> aka [1] - 1:13 <br> Allegations [1] - 17:15 <br> ambiguous [1]-8:11 | $\begin{aligned} & \text { Bitch }[1]-16: 12 \\ & \text { bitch }[1]-16: 15 \\ & \text { blog }[4]-10: 1,17: 4, \\ & \text { 19:11, 19:18 } \end{aligned}$ | claiming [1] - 15:10 <br> claims [2]-3:12, 13:1 <br> class [1]-10:15 | $\begin{aligned} & \text { correct }[2]-5: 16,21: 4 \\ & \text { couple }[3]-10: 1, \\ & 10: 5,19: 5 \end{aligned}$ |
| 7 |  |  |  |  |
| 722-1640 [1] - 4:14 |  | blogging [1] - 10:8 | clear [2]-5:5, 19:14 | Court [3] - 15:6, 15:7, 21:13 |
|  |  | blowing [1] - 3:20 | clearly [1] - 19:10 | COURT ${ }_{[5]}$ - 1:1, 1:23, |
|  |  | bottom [1] - 17:15 | clerk [2]-14:15, 14:16 | $\begin{gathered} \text { 2:7, 18:24, 19:4 } \\ \text { Courthouse [1] - } 2: 8 \end{gathered}$ |


| $\begin{aligned} & \text { courrtroom }[2]-14: 25, \\ & \text { 15:15 } \\ & \text { cover }[1]-19: 5 \\ & \text { create }[2]-10: 21, \\ & 10: 22 \\ & \text { created }[1]-5: 2 \\ & \text { crimes }[1]-17: 15 \\ & \text { critically }[1]-16: 21 \\ & \text { cross }[1]-12: 14 \\ & \text { CRR }_{[2]}-2: 7,21: 12 \\ & \text { CSR }_{[3]}-2: 7,21: 12, \\ & 21: 13 \end{aligned}$ | 19:17 <br> dissuade ${ }_{[1]}-6: 2$ <br> distinguishing ${ }_{[1]}$ - <br> 5:19 <br> distress [1] - 9:15 DISTRICT [3]-1:1, <br> 1:2, 1:23 <br> District [2]-2:8, 15:7 <br> dive ${ }_{[2]}-13: 22$ <br> DOES ${ }_{[1]}-1: 15$ <br> dollar ${ }_{[1]}$ - 8:19 | 1:12 <br> entertaining [1] - <br> 14:24 <br> entertainment [1] - <br> 15:1 <br> entities [5] - 4:6, 5:17, <br> 5:22, 7:4, 7:21 <br> entity $[3]-4: 1,5: 2$, <br> 19:17 <br> evaluate [1] - 16:21 <br> evidence [5] - $3: 5,4: 7$, <br> 8:6, 9:7, 13:23 | 17:15 <br> following [2] - 15:25, 16:1 <br> follows [1] - 14:10 fool [1]-5:3 <br> FOR [3] - 1:2, 2:2, 2:4 for-profit [4]-1:7, 1:9, 1:10, 1:11 foregoing [1] - 21:4 former [5] - 5:13, 6:14, 6:20, 8:1, 19:24 fourteen [1] - 3:3 | hopefully ${ }_{[1]}$ - 18:10 <br> horizon [1] - 17:23 <br> huge [1] - 15:15 <br> human [2]-7:16, <br> 18:20 <br> humiliation [1] - 9:15 <br> hundred [2]-6:12, <br> 12:10 <br> hurt [1] - 10:2 <br> hurts [1] - 10:13 <br> hypothetically [1] - <br> 12:10 |
| :---: | :---: | :---: | :---: | :---: |
| D |  |  |  | I |
|  | $\qquad$ <br> 14:14 <br> draw [1] - 7:22 <br> drive ${ }_{[1]}-14: 12$ <br> drop [1] - 18:19 <br> Duck [2] - 6:13, 15:13 <br> Duty $[1]-15: 14$ <br> duty ${ }_{[1]}$ - 15:16 |  | free ${ }_{22]}-10: 22$ <br> future [3]-9:2, 9:6, <br> 13:16 |  |



| provided ${ }_{[1]}-7: 10$ | respons | 2: | , 17:1 | ng [1] - 16:4 |
| :---: | :---: | :---: | :---: | :---: |
| provides [1] - 14:8 | :10 | 12, 16:2 | atement ${ }_{[1]}-17: 13$ | testified $[4]-5: 8$, |
| prudent [1] - 9:11 | result [2]-11:19, | sense [1] - 13:1 | statements [3] - 4:3, | 13:19, 19:8, 19:25 |
| public [4]-4:4, 4:19, | 3:20 | separate [1] - 19:10 | :25, 19:12 | testify [1] - 9:20 |
| 6:1, 19:19 | retaliation [8]-3:12, | series [1] - 12: | STATES [2] - 1:1, 1:23 | THE [7]-1:1, 1:2, |
| publish [2]-12:6 | 3:15, 3:18, 6:3, 6:7, | serious [1]-15: | States [2]-2:8, 15 | 1:22, 2:2, 2:4, 18:24, |
| 16:20 | 7:4, 8:6 | Seven [1]-16:1 | [1]-16:6 | 19:4 |
| published [1] - 4:2 | returning [1] - 14: | Seven-Year [1] - 16:12 | stop [6]-12:7, 13:7, | they've [1] - 12:13 |
| publishing [1]-5:24 | review [1] - 14:6 | shortcut [1] - 10:18 | 13:17, 16:17, 17:8, | thinks [1] - 11:4 |
| pull [1] - 12:9 | rich [1] - 10:14 | shoulder [1] - 16:5 | 19:11 | Third [1] - 2:8 |
| punch [1]-8:1 | RMR [2] - 2:7, 21:12 | show [3] - 8:13, 16:6, | story [1]-6:13 | three [3]-4:11, 6:23, |
| purpose ${ }_{[1]}$ - 7:1 | Road [1] - 2:6 | 18:8 | street [3]-4:16, 11:5, | 17:2 |
| put [8]-7:9, 8:10, | Room [1]-2:8 | shows [2]-13:2 | 19:25 | throughout ${ }_{[1]}$ - 4:24 |
| 9:22, 10:24, 10:25 | ro |  | stuff $[9]$ - 4:22, 8:1 | tie [1] - 3 |
| 11:1, 15:17, 19:18 | ROTE [2]-1:11, 2:5 | $\boldsymbol{s i g n}[1]-15: 15$ | 10:11, 11:3, 11:5, | Tim@ |
| R | $4: 11,4: 15,4: 19,$ | 21:6, 21:7 | 17:3 | ${ }^{[1]}$ - 4:1 |
| ```raise [1] - 16:21 rattle [1] - 14:1 rattled [1] - 11:21 reached [1] - 14:22 real [7] - 8:7, 9:25, 11:20, 18:8, 18:12, 18:16, 18:21 reality [2]-10:20, 10:21 really [6] - 5:19, 6:23, 10:12, 11:15, 11:20, 12:8 reason [3]-11:17, 12:20, 16:3 reasonable [4]-6:2, 6:5, 9:10, 9:12 reasonably \({ }_{[1]}\) - 9:11 rebranding \([1]-15: 12\) rebuttal \({ }_{[1]}-19: 4\) received [1] - 15:20 record [1] - 21:4 recovered \({ }_{[1]}\) - 14:12 red [1] - 19:20 redact \([1]\) - 19:7 refers [1]-19:15 reformatting \({ }_{[1]}\) - 14:13 refresh [1] - 16:5 related \({ }_{[2]}-4: 3,5: 25\) relationship [1]-20:1 remain [2]-13:1, 13:3 remained \({ }_{[1]}\) - 17:12 REPORTER[1] - 2:7 Reporter [1] - 21:13 represented [2]-4:19, 5:13 represents [1] - 19:19 Republic [1]-12:3 reputation [1] - 9:16 resources [2]-12:14, 13:5 respect [1] - 7:20``` | 2, 5:8, 5:13, | signed [3]-4:11, 7:9, $21: 7$ | $\begin{gathered} \text { subjected }[4]-4: 1, \\ 5: 22,6: 8,6: 9 \end{gathered}$ | Timonthy ${ }_{[1]}-2: 5$ |
|  | 9, 7:22, 8:16 | signing [1] - 21:3 | subjective [2]-8:25, | title [1]-11 |
|  | 21, 11:8, 11:24 | silly ${ }_{[1]}-15: 17$ |  | titled [1]-21:5 |
|  | 25, 13:19, 14:3, | simultaneously ${ }_{[1]}$ | submissions [1] - | today [8]-3:5, 4:8, |
|  | 5, 14:18, 15:12, | 2:1 | 13:11 | 10:9, 13:1, |
|  | 6:7, 16:18, | sit ${ }_{[2]}-12: 22,18: 1$ | sue [1] - 6:5 | 13:15, 13:17, 20:6 |
|  | 11, 18:25, 19:6 | site [3] - 10:22, 10:23, | sued [1]-19:2 | together [2] - 12:9, |
|  | 19:14, 19:15, | 4:1 | suffering [2] - 9:1 | 20:3 |
|  | 9:19, 20:1 | Sitting [2]-6:13 | 13:4 | tomorrow [1] - 11:4 |
|  | Rote's [3] - 12:16 | $15: 13$ | suggesting [1] - 18:1 | torment [2]-9:19, |
|  | $[1]-1:$ | sitting [1] - 12:21 | ions [1] - | 15:18 |
|  | RoteEnterprises. | 20:2 | support [1] - 7:12 | toward [1]-11:18 |
|  | com [1]-4:17 | six [2] - 3:24, 13:16 | supported [1] - 7:1 | transcribed [1] - 19:2 |
|  | run [1]-8:12 | slides [1]-3:14 | supporting [1] - 6:3 | TRANSCRIPT ${ }_{[1]}$ - |
|  | running [1] - 11:25 | small [2]-11:10 | suspected [1] - 15:23 | 1:2 |
|  | S |  | sustain [2]-9:1, 9:6 | $\begin{aligned} & \text { transcript }[2]-21: 4 \\ & 21: 6 \end{aligned}$ |
|  |  | society [1] - 15:16 | 9:5 | ${ }_{[1]}-15: 5$ |
|  | San [1] - 18:17 | someone $[4]-7: 12$ |  |  |
|  | $\begin{aligned} & \text { Sandra [2] - 15:21 } \\ & 16: 11 \end{aligned}$ | $11: 5,16: 14,16: 1$ | T | $\text { true }[3]-9: 7,12: 18,$ |
|  | saw [5] - 9:19, 12:20 | 10:17, $10: 1$ | 10, | - 19:2 |
|  | 22, 15:25, 17:11 | somewhat [1] - 14:20 | tags [1] - 16: | trying [1] - 15:11 |
|  | cary [1] - 12:8 | sort [1] - 4: | taint [1] - 17:6 | turmoil [1]-13:17 |
|  | school [2]-9:10, | sought ${ }_{[1]}-8: 15$ | takedowns [1] - 18:19 | rned [1] - 18:4 |
|  | 5:22 | space [1]-8:13 | talks [1]-14:18 | Twittering ${ }_{[1]}$ - 10:8 |
|  | scope [1] - 7:20 | $\text { speaking [1] - } 5 \text { : }$ | teach [1]-9:10 | two [5] - 3:11, 6:12, |
|  | een [1] - 7:17 | specific [2]-10:23 | technology [1] - 18:17 | 19:10, 19:25, 20:2 |
|  | $\begin{aligned} & \text { screenwriter }{ }_{[1]} \\ & 12: 18 \end{aligned}$ | 16:6 | telemarketing [2] - |  |
|  | se $[1]-2: 5$ | specifically ${ }_{[1]}-11: 18$ | 11:25, 12:1 <br> telephone ${ }_{[1]}-4: 14$ | U |
|  | second [4]-6:7, $6: 18$, | spend [1]-10:16 | TELESERVICES ${ }_{[1]}$ - | ultimately [1] - 8:23 |
|  | 7:19, 19:15 | $\text { spent }[1]-12: 25$ | 1:7 | unequivocally ${ }_{[1]}$ - |
|  | $\begin{aligned} & \text { seconds }[1]-17: 2 \\ & \text { see }[9]-3: 11,11: 2 \end{aligned}$ | $\begin{aligned} & \text { spreadsheet }[2] \\ & 8: 12,9: 2 \end{aligned}$ | $\begin{aligned} & \text { terms }[1]-8: 5 \\ & \text { terrible }[4]-8: 1,13: 7, \end{aligned}$ | $\begin{aligned} & \text { 19:11 } \\ & \text { unfit }_{[1]}-11: 6 \end{aligned}$ |
|  | 2, 14:4, 16:9 | squishy $[1]-8$ : | 18:16, 19:9 | United [2]-2:8, 15:7 |
|  | 11, 16:15, 16:16, | stalked [1] - 10: | terrifying [1] - 13:9 | UNITED [2]-1:1, 1:23 |
|  | 19:16 <br> seeking [1] - 8:18 | stand ${ }_{[1]}$ - 15:5 | $\text { terror }{ }_{[1]}-9: 18$ | Unix [1] - 10:19 unpaid [2]-13:1, $13 \cdot 3$ |
|  | seeking [1] - 8:18 <br> sees [3]-13:5, 15:2 | standard [1]-8:21 | $\begin{aligned} & \text { terrorize }[2]-12: 22 \text {, } \\ & \text { 19:20 } \end{aligned}$ | unpaid [2] - 13:1, 13:3 <br> unrestrained [2] - 5:6, |
|  |  | standing [1] - 17:14 | terrorized [1] - 11:9 | unrestrained [2]-5:6 6:19 |


| $\begin{aligned} & \text { up }[10]-5: 15,8: 18 \text {, } \\ & 10: 1,10: 17,10: 18 \text {, } \\ & 10: 19,11: 22,19: 6, \\ & 19: 18,19: 22 \\ & \text { useful }[1]-7: 7 \\ & \text { uses }[1]-6: 18 \\ & \text { usual }[1]-9: 16 \end{aligned}$ | Y |
| :---: | :---: |
|  | ```Year[1]-16:12 years[10] - 3:3, 3:24, 6:6, 13:4, 13:16, 14:17, 17:11, 18:6 yesterday [2]-11:24, 20:5 young[1] - 10:14``` |
| V |  |
| $\begin{aligned} & \text { value }[1]-18: 6 \\ & \text { video }[1]-14: 15 \\ & \text { view }[1]-11: 21 \\ & \text { vile }[1]-8: 1 \\ & \text { vitriol }[2]-13: 10, \\ & 13: 14 \\ & \text { Vogle }[1]-2: 2 \\ & \text { voice }[1]-7: 16 \\ & \text { vs }[1]-1: 5 \end{aligned}$ | Z |
|  | $\begin{aligned} & \text { zero [3] - 8:3, 20:1, } \\ & \text { 20:6 } \\ & \text { Zweizig [44] - } 3: 3, \\ & 3: 16,4: 1,4: 3,4: 22, \\ & 5: 22,5: 25,6: 8,6: 15, \\ & 7: 4,8: 9,8: 15,9: 1, \\ & 9: 19,9: 25,10: 17, \\ & \text { 11:4, 11:19, 12:4, } \\ & \text { 12:13, 12:19, 13:1, } \\ & \text { 13:5, 13:24, 14:3, } \\ & \text { 14:8, 15:2, 15:17, } \\ & \text { 15:25, 16:2, 16:4, } \\ & \text { 16:6, 16:11, 16:14, } \\ & \text { 16:25, 17:25, 18:6, } \\ & \text { 18:14, 19:8, 19:12, } \\ & \text { 19:20, 19:23, 19:24, } \\ & \text { 19:25 } \\ & \text { ZWEIZIG } 11]-1: 3 \\ & \text { Zwizig's }[9]-5: 18, \\ & 6: 20,10: 25,12: 24, \\ & \text { 14:1, 17:14, 17:19, } \\ & \text { 19:10, 19:13 } \end{aligned}$ |
| W |  |
| ```wakes [1] - 11:22 walk [1]-8:22 walked \([1]\) - 15:15 WALKER \({ }_{[1]}\) - 21:12 Walker [2] - 2:7, 21:11 Ware [3]-15:21, 16:11, 16:15 Ware' [1]-16:15 watching [1] - 16:1 website [10] - 4:20, 7:9, 7:11, 12:2, 14:19, 15:3, 15:12, 15:17, 15:19, 19:7 West \([3]\) - 2:6, 4:14, 4:16 whistle [1] - 3:20 whistleblower [2] - 3:18, 6:3 whole [4]-5:14, 10:15, 17:19, 20:5 willing \([2]-12: 14\), 13:6 word [1] - 6:18 WordPress [2] - 10:22 words [6] - 7:6, 7:14, 9:14, 9:17, 9:18, 15:3 worker [2] - 6:2, 6:5 world [7]-5:17, 5:21, 9:24, 10:9, 11:2, 11:21, 12:6 write [4]-7:24, 16:20, 16:25, 18:15 writing [1] - 7:13 written [1]-18:11``` |  |

