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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

TIMOTHY ROTE,

Plaintiff,

vs.

OREGON JUDICIAL DEPARTMENT,  
OREGON STATE BAR PROFESSIONAL  
LIABILITY FUND, THE HON. ANN  
LININGER, THE HON. ALISON  
EMERSON, THE HON. JOSEPHINE  
MOONEY, THE HON. JACQUELINE  
KAMINS, THE HON. KATHIE STEELE,  
CAROL BERNICK AND MEGAN  
LIVERMORE (in their official capacities as  
CEO of the OSBPLF), MICHAEL WISE,  
JEFFREY EDELSON, DESCHUTES  
COUNTY SHERIFF'S DEPARTMENT,  
MATTHEW YIUM, NATHAN STEELE,  
WARD GREENE, ANTHONY  
ALBERTAZZI and JOHN DOES (1-5), *et al.*,

Defendants.

Case No.: 3:22-CV-00985

PLAINTIFF'S CONSOLIDATED RESPONSE  
IN OPPOSITION TO ALBERTAZZI  
MOTIONS TO DISMISS

HEARING REQUESTED

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## I. INTRODUCTION

Included herein is Plaintiff's Consolidated Response in Opposition to Anthony Albertazzi's ("Albertazzi") Motions to Dismiss dated September 15, 2022 and September 6, 2022.

Plaintiff alleges that there is substantial and objective evidence of the Oregon Court's abuse of procedural and substantive due process as outlined herein, for example by awarding attorney fees far in excess of what is reasonable and/or lawful and using those unlawful fee awards to target and harass Plaintiff and other disfavored citizens.

Plaintiff alleges further that he has been targeted by the Clackamas and Deschutes Circuit Courts and the Oregon Court of Appeals, *inter alia* for exposing and opposing violations of due process and for identifying the named defendants as actors within the legal community umbrella who support the decriminalization of child porn.

On August 5, 2020, Albertazzi replaced Ward Greene as attorney of record representing child predator Max Zweizig ("Zweizig") in Clackamas case 19cv01547 and Deschutes case 19cv00824 (**Doc #18-5**). Albertazzi was sued by Rote in Clackamas case 18cv45257 under Oregon's racketeering statutes and those claims against Albertazzi were dismissed by Michael Wise ("Wise"). Nathan Steele ("NSteele"), a personal friend of Albertazzi's and Alison Emerson's ("Emerson"), was hired by the Oregon State Bar Professional Liability Fund ("PLF") to represent Albertazzi in Clackamas case 18cv45257.

According to the Mayo Clinic of the US, studies and case reports indicate that 30% to 80% of individuals who viewed child pornography and 76% of individuals who were arrested for Internet child pornography had molested a child; however, they state that it is difficult to know how many people progress from computerized child pornography to physical acts against

children and how many would have progressed to physical acts without the computer being involved. See Ryan C. W. Hall; Richard C. W. Hall (April 2007). "A Profile of Pedophilia: Definition, Characteristics of Offenders, Recidivism, Treatment Outcomes, and Forensic Issues".

On September 15, 2022, Defendant Albertazzi filed a Motion with Deschutes County Court to have Plaintiff Rote imprisoned for opposing Max Zweizig's effort to unlawfully take Rote's property and for otherwise *engaging* in litigation against Zweizig. Attached to that Motion was a declaration by Max Zweizig, wherein Zweizig denied being a pedophile but did not deny downloading, possessing and distributing child pornography (**Exhibit 1**). His Declaration then taken together with Zweizig's testimony in trial 3:15-cv-2415, his efforts therein to suppress the forensic reports showing Zweizig's child pornography activity, his tantamount admissions to distributing child pornography in his deposition of December 21, 2020 in case 19cv01547 and his effort to then suppress that deposition (claiming that he would not receive a fair jury if his child porn admissions were to become public), the history of these collective acts paint now a very clear picture of Zweizig's criminal conduct that can no longer be ignored.

We have now a very clear picture of the institutional support Zweizig received by and from the Oregon Judicial Department and the named defendants in this case. That institutional support of the distribution of child porn required that defendants target Plaintiff Rote and work in concert to deny Rote his constitutionally guaranteed procedural and substantive due process rights.

Plaintiff alleges that Albertazzi was personally involved in the deprivation of the plaintiff's constitutional rights and that the defendants' actions were the proximate cause of the plaintiff's federally protected rights.

Plaintiff respectfully submits that Defendant's Motion lacks merit and must therefore be denied.

## **II. RELEVANT FACTS**

Plaintiff alleges in his first amended complaint that the defendant Albertazzi colluded with Defendants Nathan Steele, Alison Emerson, Michael Wise, Kathy Steele, the PLF and the Oregon Judicial Department to (1) violate procedural and substantive due process; (2) abuse the anti-SLAPP fee award provisions to retaliate against Plaintiff for publishing concerns and critiques of the judicial actors for supporting the distribution of child pornography; and (3) provide protection to those criminal players like Max Zweizig who download, possess and disseminate child pornography. Plaintiff alleges that these acts of retaliation are violations of 42 USC §1983, §1985 and other Constitutional mandates that at a minimum require procedural and substantive due process.

### **A. The Record of Violations in Deschutes County**

Defendant Albertazzi has on multiple occasions sought highly prejudicial support from the Deschutes County Court and in particular defendant and **Judge Alison Emerson**. The old adage that "be careful of what you ask for because you might just get it" applies here. Albertazzi was successful but created a record of abuse that implicates his role in violating Plaintiff's constitutional rights.

Just after Plaintiff filed his Amended Complaint on September 4, 2022, Defendant Albertazzi and Zweizig were denied an opportunity to sheriff sale the stock of Northwest Direct Homes, Inc. ("NWDH") on September 8, 2022, in case 19cv00824, because of Rote's challenge to that writ. Plaintiff Rote is the defendant in that case and challenged the sale of the stock since he is not the owner of that stock. The Timothy Rote Irrevocable Trust is the owner of the stock of NWDH. See **Exhibit 13**.

In response, and in what may be considered a hissy fit, on September 15, 2022 Albertazzi then filed in case 19cv00824 a Motion for Contempt against Rote asking that Rote be imprisoned and for remedial sanctions of deeming the Trust and Rote CPA, P.C. as alter ego's of Timothy Rote. Albertazzi and Zweizig are asking the Court to help them avoid the necessary fraudulent transfer action under by ORS 95.230-95.240 and common law actions for piercing the veil and alter ego, which would require years of litigation and a likely trial before an independent jury. Zweizig lost two previous and similar actions in Federal case 3:14-cv-0406 and Clackamas case 19cv01547; so now they are asking for a favor from Deschutes County Court.

Historically Judge Alison Emerson has come to Albertazzi's aid. Albertazzi's Motion for Contempt is a nothing less than a solicitation for procedural and substantive abuse of Rote's Fourteenth Amendment Rights and a particularly brazen move that confirms Albertazzi's and Zweizig's success in pursuing prior abuses, which will be explored later in this brief. See **Exhibit 1, pgs 3-12.**

Albertazzi and Zweizig are in fact asking the Deschutes Court to now put Rote in jail for Rote successfully opposing Zweizig in case 3:14-cv-0406 and Clackamas case 19cv01547 and for refusing to provide any documents of Tanya Rote's Sunriver property or her Insurance Agency. See **Exhibit 1.** Rote has opposed the Motion and also seeks a contempt filing against Albertazzi and Zweizig for perjury by omitting from their statements and declaration that all of their allegations are academic since Rote had offered the stock of NWDH four times since March of 2019 and as late as July 25, 2022 and each time Zweizig had rejected those offers. See **Exhibit 10.**

On July 9, 2021 Albertazzi filed a praecipe to sell the stock of NWDH and was granted that order by Alison Emerson. See **Exhibit 11, pg 1-2.** Rote objected on multiple grounds but

principally on the grounds that the stock was owned by Rote's Irrevocable Trust (**pgs 3-18**). Judge Emerson held a hearing on January 20, 2022, took testimony from Rote on the ownership and in spite of there being no competing evidence permitted the sale of the stock to proceed...and it did proceed. Nonetheless the Notice from the Sheriff's office was defective in naming the wrong company (Northwest Homes instead of Northwest Direct Homes, Inc.) and Rote filed a Motion to Set Aside the sale of the stock of NWDH of February 3, 2022, that Motion filed on February 13, 2022. That Motion was granted on the notice deficiency only, the order signed on June 23, 2022. See **Exhibit 11, page 82**. Rote also filed an Appeal to the Oregon Court of Appeals on that January 30, 2022 order and judgment by Emerson allowing that sale to go through. See **Exhibit 11, Pgs 60-80, filed on July 25, 2022**. Albertazzi did not file a responsive brief and the Oregon Court of Appeals has not yet decided if the presumption of evidence supports Rote and that the original order by Emerson permitting the sale is unlawful.

Albertazzi/Zweizig then again sought to sale the stock of NWDH and as before Rote challenged the sale on grounds that the stock is not owned by Timothy Rote, but rather by the Rote Irrevocable Trust, providing this time a K-1 that was not available during the January 20, 2022 hearing. The sheriff sale of the stock of Northwest Direct Homes, Inc. is now on hold pending a hearing scheduled for October, 20, 2022. See **Exhibit 13**.

In the meantime, Plaintiff has alleged that Emerson is a personal friend of Nathan Steele and Albertazzi and should have recused herself from this 19cv00824 case. Rote alleges that a news article of December 20, 2019 on Emerson's campaign cites public support by Nathan Steele. See **Exhibit 12, page 6**. That information was apparently acquired from Emerson's website, <http://emerson4judge.com>, a site which has become inactive since the filing of this lawsuit. See **Exhibit 12, page 1**.



On November 4, 2021, Albertazzi secured from **Emerson** ex parte an order in case 19cv00824 requiring Rote to produce information and documents from (1) R 3.20, Northwest Holding LLC (a defendant in case 19cv01547, where to MSJ had already been granted); (2) R 3.21, 3.22, 3.25 and 3.26 for TR1, LLC, a company owned by Tanya Rote (defendant in 19cv01547) to operate the Sunriver rental business; and (3) R 3.23, 3.24, 3.25 and 3.26 for Tanya Rote Insurance Inc.(where subpoenas for similar information had been quashed by the Court in case 19cv01547). **See Exhibit 1, pgs 8-10.** This is the third time Rote has responded to and objected to requests by Zweizig seeking to use interrogatories and discovery requests to collaterally attack the summary judgment dismissal of Zweizig's claims.

It is abundantly clear that the order is overly broad seeking information that was either produced or foreclosed from other lawsuits and information about the confidential work of Rote CPA, P.C. And in particular the order is seeking information on the source of funds allowing Plaintiff to pay filing fees and to continue to engage in litigation. **See R 3.5, page 8.** The Motion for Contempt seeks to take more than 25% of the wages Rote earns from Rote CPA, P.C....it seeks to take everything and deny Rote the opportunity to generate income, to take bank accounts and exempt funds such as social security. This is the measure of what they believe **Emerson** will give them and it implicates bias.

The order solicited by Albertazzi/ Zweizig represents an extraordinary transgression, sought ex parte and signed by Emerson, and is also an act intended to compromise Rote's ability to defend his Fourteenth Amendment Rights. Rote's objection to these requests, when appropriate, forms part of the basis for the Albertazzi/Zweizig Motion for Contempt. The balance of their requests forms from inaccurate statements, the most significant of which is failing to disclose to the Court that the stock valued at approximately \$1,250,000 was offered

and rejected by the Albertazzi/Zweizig crime family. The collective acts of perjury by Albertazzi and Zweizig implicate bias and solicitation of Fourteenth Amendment violations. And these acts of perjury also implicate a consciousness of Zweizig's current and past criminal conduct, acts that presume the Court acknowledges Zweizig's child predation in the form of child pornography violations and supports that criminal conduct.

Ward Greene filed the 19cv00824 action in Deschutes County even though Rote has no property there and has never lived there. On information and belief Greene did so because Deschutes County is considered the most favorably disposed Circuit to child pornography and child trafficking.

**Exhibit 5** reflects some of the issues Deschutes County is having with respect to child trafficking. A press release by the Bend Police Department on September 8, 2022 reported a successful sting and arrest of 20 individuals during a four-month child trafficking operation, naming those arrested individual. **See pages 1-3**. One week later KBND news published a report that a bend music teacher was arrested for possessing explicit images of children. **See page 4**.

While it is clear that the Bend Police department takes child trafficking and child porn seriously, Albertazzi and Zweizig public compromises to the integrity of the Court portend an issue prosecuting these criminals. Plaintiff offers a few examples criminal indictments filed in other districts against defendants Josh Duggar and Johnny Gonzalez, defendants who downloaded, possessed and disseminated child pornography just as as Zweizig has done.

**B. The Record of Violations in Clackamas County**

Plaintiff alleges in his complaint that there have been numerous violations as cited in his Complaint and Amended Complaint. Plaintiff alleges that Steele and Albertazzi knowingly and fraudulently filed an unlawful fee petition seeking an attorney fee award of far more than was lawful under ORS 31.152 (3) and ORS 20.075 (2) (a).

The relevant facts as to the excessive and unlawful fee petition by Steele and Albertazzi in Clackamas case 18cv45257 is outlined in detail in **Doc #20-6**, wherein Plaintiff identifies the excessive fee petition as misleading and conflating block-billed time for the anti-SLAPP action (recoverable) and Rule 21 Motion to Dismiss (non-recoverable). Those specific fee entries on the anti-SLAPP Motion and Rule 21 Motion to Dismiss are identified at pages **16-18 of Doc #20-6**.

Plaintiff identifies that 48 hours are unrelated to the anti-SLAPP or excessive, an amount of fees of **\$10,580 (Doc #20-6, page 6)**. Albertazzi's fee petition overall was for **86.6 hours** and **\$19,357.50** in fees (**Doc #20-6, page 3**). The billing statements support time of \$21,540 (**Doc #38- 3**) and the difference between what the statements support and the amount sought is offset to the anti-SLAPP for purposes of this analysis. When removing the time and fees for the fee petition and for the other time and fees unrelated to the anti-SLAPP, Plaintiff concludes that that amount of fees associated with the anti-SLAPP is not greater than **\$6,820** (\$19,357.5-\$10,850-\$1,687.50). That \$6,820 compares reasonably to Christiansen's anti-SLAPP fee petition of \$6,325 in case 3:15-cv-2401. See **Doc #20-6, page 2 and Doc #38-1**.

The above analysis of time and fee associated with and not reasonable connected to the anti-SLAPP is un-refuted by defendant Steele, who prepared the fee petition and under declaration but attested falsely to the amounts associated with the anti-SLAPP. It is un-refuted that Steele conflated the anti-SLAPP fee petition with the Rule 21 Motion to Dismiss with the intent of misleading in collusion with the Court, namely defendant and pro tem Judge Michael Wise. It is un-refuted that the PLF called on Steele to file that knowing false petition for attorney fees. The anti-SLAPP and Motion to Dismiss are provided at **Doc #20-3**.

As further evidence of the excessive and unlawful fee petition, Plaintiff provides the fee petition from the PLF defendants in Clackamas case 18cv45257. See **Doc #20-9**. Further,

Plaintiff outlines in that opposition to the PLF defendants' fee petition that some **28.7 hours** and **\$7,175 of fees** are associated with the anti-SLAPP. See **Doc 20-9, page 10, lines 10-21**. This is particularly instructive because the anti-SLAPP brought by the PLF Group was only for Nena Cook, was a separate filing and action that did not conflate the anti-SLAPP with the Motion to Dismiss the PLF, Bernick and Stendahl. The rates of defendant Matthew Yium @ \$250 an hour are comparable but otherwise slightly higher than Nathan Steele's @\$225 an hour. Thus it is unrefuted that the time reasonably associated anti-SLAPP Motions proceeding for Albertazzi (Steele representing) and Cook (Yium representing) on the upper end is **28.7 hours** and **\$7,175**. Just as with Steele, however, Yium and the PLF group are seeking an excessive fee award, some \$60,000, although the billing statements support only \$50,000, only a \$7,175 portion of which is associated with the anti-SLAPP. See **Doc #20-9 and #38-2**.

In both cases described above, neither the PLF Group nor the Steele-Albertazzi group actually prepared a summary of time by effort or category, pushing that burden to Plaintiff Rote. In both cases, Yium (for the PLF) and Steele (for Albtertazzi) filed only billing statements with the Court and left for the Court an effort to deduce how much was reasonable and how much was not. Most pro se litigants would not have been sophisticated enough to accumulate and report to the Court the excesses. In both case, Plaintiff opposition included a detailed analysis categorizing the fee entries from each billing statement, summarizing those categories and then linking that data to an Exhibit 1 and Exhibit 1.1 filed in opposition to those fee petitions.

Plaintiff filed his revised **Doc #38-1** herein as the summary of time and fees by category of effort for the PLF Group, Steele-Albertazzi and Greene. Plaintiff previously filed herein as **Doc #38-2** the detailed entries from the defendants' PLF billing statements by category and billing date, which previously was filed in Clackamas County as Plaintiff Exhibit 1.1. Repeating

the same concept then Plaintiff filed **Doc #38-3** which is the same detailed accounting spreadsheet for the Steele-Albertazzi team and **Doc #38-4** which is the same spreadsheet categorizing the time and billing entries for the Greene-Zweizig group. All of those detailed entries when summarized carry to Plaintiff **Doc #38-1**.

What Plaintiff has gleaned from the effort to categorize and summarize the Steele fee petition is that he spent **24** hours talking to his client and the other defendants, **18** hours reviewing the cases in which Plaintiff was a party going back almost 20 years, **6.6** hours reviewing the PLF defendants' filings and **7.5** hours generating a two page declaration in support of his fee petition and redacting the names of the PLF manager(s) approving those invoices. **Doc #38-3** is as follows:

18cv45257		Anti-SLAPP							
C. Steele for Albertazzi (Source Doc #20-6)			See Ex 3						
8	Prepare Anti-SLAPP and MTD		See Ex 3	\$225		16.9	\$	3,802.50	
6	Research		See Ex 3	\$225		1.1	\$	247.50	
9	Review Response		See Ex 3	\$225		4.1	\$	922.50	
10	Reply and Hearing		See Ex 3	\$225		10.1	\$	2,272.50	
7	Other		See Ex 3	\$225		0	\$	-	
1	Correspondence to/from Others		See Ex 3	\$225		8.4	\$	1,890.00	
2	Correspondence to/from Client		See Ex 3	\$225		14.2	\$	3,195.00	
3	Correspondence to/from Matthew Yuim		See Ex 3	\$225		1.6	\$	360.00	
4	Review Other Cases by Plaintiff		See Ex 3	\$225		17.9	\$	4,027.50	
5	Review Other Defendant and Hearing		See Ex 3	\$225		6.6	\$	1,485.00	
11 and 12	Objection to order		See Ex 3	\$225		8.2	\$	1,845.00	
13	Fee Petition		See Ex 3	\$225		7.5	\$	1,687.50	
	Rate variance					0	\$	(195.00)	
	Total					<b>96.6</b>	<b>\$</b>	<b>21,540.00</b>	

Like Steele for Albertazzi, Ward Greene also filed a knowingly fraudulent fee petition for Zweizig. Greene's fee petition is provided herein as **Doc #18-1**. The detailed allocation of those fees to categories is as indicated provided herein as **Doc #38-4**. Unlike with Yium and Steele, the PLF was not reimbursing Williams Kastner. Nonetheless, out of the \$20,970 sought by Greene, \$2,000 was for post judgment collection, \$8,685 was for collections activity and unrelated to the anti-SLAPP, \$1,775 was for summary judgment actions which the Rote's won and \$1,900 was

for defense of the third party counter claims brought against them (in which James Callahan and the PLF represented Basuari and Kastner). Only **\$6,610** of the \$20,970 awarded was for the anti-SLAPP or reasonably connected to the anti-SLAPP. See **Doc #38-1, page 4**. Judge Lininger's order is on the record in this case as **Doc #18-2**. The Plaintiff Appellate Brief in that case outlining the unlawful fee award in 19cv01547 is **Doc #18-10**. The Opinion claiming the Rote appeal of the unlawful fee award was objectively unreasonable is in the record as **Doc #18-19**.

### **C. The Record of Violations by the Oregon Court of Appeals**

The Oregon Court of Appeals reviewed and affirmed without opinion the dismissal of the Rote's counterclaims for interference with contract and slander of title, Appeal A173748. See **Doc #18-8**. The Rote's Petitioned the Supreme Court for Review, outlining in substantial part that virtually all other states in the County require a Bond or permit counterclaims for slander of title and interference with contract to protect the defendants in a fraudulent transfer lawsuit by a Plaintiff pursuing a money judgment—distinguishing a money judgment from one based on title or lien. The Supreme Court of Oregon denied Review. This is in spite of the fact that neither Ward Greene nor Zweizig made an appearance in that lawsuit. See **Exhibit 16**.

Perhaps the most glaring and clear evidence that the Oregon Court of Appeals is targeting Plaintiff Rote and deny Plaintiff substantive due process is the order issued by Kamins and Mooney awarding attorney fees to Helen Tomkins for representing Zweizig in the appeal of attorney fees, A174364. Plaintiff opposed the attorney fee petition by Tomkins because it attempted to collect fees for the A174364 appeal and A175781 appeal (which she lost). See **Doc #18-12**. In Appeal A174364, Plaintiff Rote filed a detailed Opening Brief in that appeal showing that court, in meticulous detail, the 37 entries from Ward Greene's fee petition having nothing to do and not reasonably connected with the anti-SLAPP. See **Doc #18-10**. Although that appeal was affirmed without opinion, as all the other appeal have been (**Doc #18-9**), Kamins and

Mooney decided to announce that in spite of those identified 37 entries, that Court made a public statement that the appeal was objectively unreasonable (**Doc #18-19**). It is not possible to reach that finding in the absence of retaliatory animus. Plaintiff opposition to that fee petition is reflected in **Doc #38-1 and #38-4**. Ann Lininger issued the award and in that order claimed the Rote's were filing counterclaims to harass Zweizig. See **Doc #18-2, pg 2, line 7-14**. Plaintiff filed this complaint after the Supreme Court denied review, making this claim ripe. See **Exhibit 15**. Plaintiff reiterates that ultimately the Rote's prevailed on Summary Judgment on all claims with a finding that Zweizig provided not credible evidence to overcome a 2012 transfer to a holding company or Tanya Rote's ownership of the subject Sunriver property (**Doc #18-11**). The Motion for Summary Judgment transcript is provided herein as **Doc #20-10**.

**D. The Evidence of Collusion**

Plaintiff previously references the above **Docs #18-1, 18-2, 18-10, 18-19, 38-1 to 38-4, 20-1, 20-3, 20-4, 20-5, 20-6, 20-7, 20-8, and 20-9** in a prior filing response to Nathan Steele's first Motion to Dismiss. Plaintiff incorporates all of those allegations against Albertazzi and further submits Plaintiff **Exhibits 1-16**, filed herein, as support.

Plaintiff also previously submitted in this analysis his **Doc #38-5**, which is a letter to Judge Wise. The Plaintiff shows by **#38-5** that he did not raise issues associated with Ann Lininger or Kathie Steele in that letter to Wise. Judge Wise raised those issues unilaterally in the hearing in September 2021 (**Doc #20-1, page 7**), implicating collusion and interference with the other judicial actors and attorney defendants. Plaintiff alleges Wise' decision to conduct a hearing on his own disqualification violates Oregon law, ORS 14.250, which sent a message to the defendants, a message they well understood to mean aggressive and unlawful billing would be invited by Wise. The attorney defendants were in possession of the letter sent to Wise (**#38-5**).

A judge does not have authority to rule on substantive validity of motion to disqualify. See *Phelps and Nelson*, 122 Or App 410, 857 P2d 900 (1993), Sup Ct review denied.

Steele attestation as to the accuracy and reasonableness is knowingly false, claiming “Previously provided as Doc #38-1 are true and accurate copies of billing statements for the reasonably-related attorney fees, costs and disbursements incurred in the defense of the above-captioned matter. The amount of the attorney fees totals \$19,357.50, and the amount of the costs and disbursements totals \$1,777.76.” That attestation by Steele that the fees were reasonably connected to the anti-SLAPP was knowingly false for the reasons outlined in the argument section of this brief and there is no record in the case the supports a different finding.

Judge Wise, even while disqualified, made no findings on the record in any hearing, in any published order or judgment that would have allowed an award of attorney fees and costs for anything but the mandatory fee award under ORS 31.152 (3), the anti-SLAPP provisions. There was no necessary finding by the Court that the un-served third amended complaint claims against Albertazzi for Oregon RICO were objectively unreasonable (a necessary finding for attorney fees) or that Albertazzi was absolutely immune (which would not have provided a fee opportunity). **See Doc #20-4.**

Plaintiff alleged in his Third Amended Complaint in case 18cv45257 that Albertazzi engaged in racketeering. The Third Amended Complaint described in detail Albertazzi’s predicate acts, which included that both Zweizig and Albertazzi:

“participated in the enterprise through a pattern of racketeering activity by committing or attempting to commit acts of bribery (ORS 162.015 & 162.025), perjury (ORS 162.065), unsworn falsification (ORS 162.085), obstructing judicial administration (ORS 162.235, to include witness tampering, spoliation, false



evidence and perverting the course of justice) and Coercion (ORS 163.275), committing most of these act within a five year period of time measured from the date the complaint was filed. Less than two months ago the enterprise through defendants Zweizig and attorney Albertazzi also engaged in an effort to extort money, by attempting to collect on a debt not owed by plaintiff, also predicate act (ORS 260.575).”

The allegations against Albertazzi for Oregon RICO have not been refuted. See **Plaintiff Doc #38-6**.

Judge Kathie Steele while disqualified to the 18cv45257 case signed the limited judgment dismissing Albertazzi. See **Doc #20-4**.

Judge Wise signed the order and judgment awarding attorney fees while still disqualified and while his pro se status had terminated. See **Doc #20-7**. The limited judgment referenced a hearing in which Rote was not in attendance.

**E. The Allegations against Albertazzi Accepted as True**

1. Albertazzi cannot deny that his recent Motion for Contempt filed on September 15, 2022 misleads the Deschutes Court on a critical facts—namely that Albertazzi/Zweizig were offered the stock of NWDH four times, a stock valued in excess of Zweizig’s judgment, rejecting those offers four times and used the sheriff sale procedure to engage in tax and collection fraud. **Exhibit 1, pages 3-12, Exhibit 6 and Exhibit 10.**

2. Albertazzi cannot deny that Zweizig in his declaration in support of the Motion for Contempt dated September 15, 2022 made statements denying he was a pedophile but not denying he has and does, download, possess and disseminate child porn. **Exhibit 1, pages 1-2.** This is a material, tantamount to an admission of prior perjury and plaintiff is entitled to a reasonable inference that the declaration was crafted with the assistance of Albertazzi.

3. Albertazzi cannot deny that he and Zweizig sought to suppress Zweizig's deposition in case 19cv01547 wherein Albertazzi alleged that Zweizig would be denied a fair trial in front of a jury if Zweizig's testimony and admissions of child predation were not suppressed from the public. See **Doc #38-9 #20-10, pages 2-9**.

4. Albertazzi cannot deny that Zweizig has admitted to child predation not less than acquiring, possessing and distributing child pornography and Albertazzi has attempted to suppress those admissions to benefit his collection activity and to seek favor with the Court. Albertazzi was provided notice of Steve Williams forensic reports (**Doc #38-10**), was present at the deposition of Zweizig of December 21, 2020 (**Doc #18-4**), and sought to suppress that deposition (**Doc #38-9**), and argued for that suppression (**Doc #20-10, pages 2-9**).

5. Albertazzi cannot deny that Zweizig claims to have received no evidence that the Rote Irrevocable Trust owns the stock of NWDH, again lying to the Court about the (1) testimony of Rote (**Exhibit 11, page 53-59**); (2) Appellate Court Brief (**Exhibit 11, pages 60-80**) and references to the record in case 19cv00824; (3) email evidence inquiring of Albertazzi if Zweizig was going to accept the transfer of Stock in NWDH (**Exhibit 6**); and (4) subsequent Challenge to the sale planned for September 8, 2022, transmitting therein the K-1 and 1099NEC (**Exhibit 13**).

6. Albertazzi cannot deny that based on Zweizig's declaration (**Exhibit 1**), that he and Zweizig are attempting to take Rote's EXEMPT retirement income because Rote has successfully opposed Zweizig in two prior fraudulent transfer cases brought by Zweizig, cases 19cv01547 and 3:14-cv-0406 and stopped the sheriff sale in Deschutes County two times. **Exhibit 1 pages 1-5**.

7. Albertazzi cannot credibly deny that he is attempting to take Rote's income and assets from Rote CPA P.C. and retirement income from social security to limit Rote's opportunity to defend himself in litigation actions brought by Albertazzi/Zweizig. **Exhibit 1, page 8, line 3.**

8. Albertazzi cannot credibly deny that he assisted Zweizig in producing his false declaration in support of the Motion for Contempt filed in case 19cv00824 on September 15, 2022. **Exhibit 1, pages 1-2.**

9. Albertazzi cannot credibly deny that he used the ex parte order secured from Emerson on November 4, 2021 to continue to attempt to engage in discovery on dismissed case 19cv01547 and to continue to interfere in non-debtor Tanya Rote's life. **Exhibit 1, pages 8-12.**

10. Albertazzi cannot credibly deny that he has sought the preferential judicial support of Alison Emerson and expects to continue to garner that favor in his filing of the Motion for Contempt, based in large part in having received favorable treatment and through the relationship Nathan Steele has with Emerson. See **Exhibit 12, page 3-6.**

11. Albertazzi and Nathan Steele do not and cannot deny that Steele's block-billed the anti-SLAPP and Motion to Dismiss time charges in order to seek an unlawful fee award on the successful anti-SLAPP. Steele does not deny that the strategy was encouraged by the PLF and/or Albertazzi. Steele does not deny that there is anything in the record in case 18cv45257 that would allow him to petition for fees unrelated to the anti-SLAPP. See **Doc #38-1, page 2 and #20-6, pages 13-29.**

12. Albertazzi and Steele do not deny knowing that Albertazzi was only entitled to a fee award for attorney fees directly or reasonably connected to the anti-SLAPP portion of the proceeding in case 18cv45257 and pursued an unlawful amount of fee and related Albertazzi

cannot credibly deny that Steele's declaration in seeking unlawful fees was deceptive and intentional. See **Doc #20-6, pages 11-12**.

13. Albertazzi cannot credibly deny that Steele slammed the file at the request of the PLF. Steele does not deny that he slammed the file for unrelated activities including downloading and reading cases over a 10 year prior period, which had nothing to do with the anti-SLAPP. Steele does not deny that he slammed the file for over 55 alleged conversations with Albertazzi, the PLF and Yium. See **Docs #38-1 page 2, #38-3, #20-6**.

14. Albertazzi cannot deny that Steele redacted the name of the PLF manager with whom he engaged in these unconstitutional petitions. Steele does not deny that the PLF manager was Bernick and/or Livermore (**Doc #20-6, page 13-29**).

15. Albertazzi cannot credibly deny that Steele solicited Emerson on behalf of Albertazzi and child predator Zweizig. Steele does not deny having a personal and campaign relationship with Emerson. **Exhibit 12, pages 3-6**.

16. Albertazzi and Steele do not deny that they knew Wise could not act on his own disqualification in case 18cv45257. They do not deny that they knew Wise's term had expired. They do not deny that Kathie Steele was disqualified and could not under Oregon law sign the limited judgments of 1.12.22 and 1.25.22. See **Docs #20-13, #20-4, #38-5, and Exhibit 14**.

17. Albertazzi cannot credibly deny that **Docs #38-1 and #38-3** are an accurate summary of Nathan Steele's time by category of work performed for the anti-SLAPP and Motion to Dismiss Albertazzi in case 18cv45257. Albertazzi and Steele do not deny that he intentionally did not provide that equivalent report or summary similar to Plaintiff's (**Doc #38-1, page 2**) in order to succeed in petitioning for an unlawful fee award.

18. Albertazzi cannot credibly deny that Wise's unprovoked statement in the September 2021 hearing in case 18cv45257, identifying Lininger and Kathie Steele as having recruited Wise to become a pro tem Judge, implicated bias and signaled Wise's willingness to award an excessive and amount of attorney fees that were unrelated to the anti-SLAPP fee proceeding (**Doc #20-1, pages 3-18**).

19. Albertazzi does not deny that the excessive and unlawful fee award by Lininger, petitioned by Ward Greene (**Doc #38-4 and Doc #18-1**) and pursued by his client Zweizig, signaled an unconstitutional attack on Plaintiff which he then sought to exploit for himself, the PLF, Steele and Zweizig (**Docs #18-16, #18-17**).

20. Albertazzi cannot credibly deny that Nathan Steele threatened Plaintiff for filing the Complaint and Amended Complaint in this case.

21. Albertazzi cannot deny that Nathan Steele represented Anthony Albertazzi in an anti-SLAPP Motion to Strike and Alternative Motion to Dismiss Oregon Racketeering Claims against Albertazzi in Clackamas case 18cv45257. See **Compl., pg 9, par 17** and **Doc #20-3**. See **Doc #38-6, pages 13-19**.

22. Steele and Albertazzi do not deny that they intentionally pursued an unlawful fee award for fees Steele charged the PLF for a portion of the litigation not associated or reasonably connected to the anti-SLAPP proceeding, fees that would not otherwise be awarded and used block-billing time to conflate the time spent on the anti-SLAPP versus the Motion to Dismiss, an unreasonable and unlawful amount of \$4,700. Plaintiff alleges that the block-billing is a strategy embraced by the PLF to maximize their fee petition awards (**Docs #20-6, pages 3-6, #38-1 and #38-3**).

23. Steele and Albertazzi do not deny that they conspired with Kathie Steele and Clackamas Court to not inform Plaintiff that the limited judgment dismissing the RICO claims against Albertazzi had been signed on January 12, 2022, interfering with proper Notice of the signed Judgment. The Court sent the Notice to an incorrect address, as did Albertazzi. See **Doc #20-4, page 5.**

24. Steele and Albertazzi do not deny that they conspired with Wise, Kathie Steele, the PLF and Clackamas Court to not inform Plaintiff that the limited judgment awarding fees had been signed on April 18, 2022, interfering with proper Notice of the signed Judgment. The Court sent the Notice to an incorrect address. This abuse of service happened numerous times and intentionally as Plaintiff alleged. One such example is provided as **Exhibit 17, 6-7.**

25. Steele and Albertazzi do not deny that they conspired with Wise, Steele and PLF to file a fee petition on the successful challenge and dismissal of Plaintiff's appeal of the January 12, 2022 limited judgment—a filing deemed late by the Oregon Court of Appeals in spite of showing the Court the Notice was not sent to the correct service address on file. The conspiracy involved filing and serving the fee petition to an address Nathan Steele knew to be invalid, the same former address of the Plaintiff that had repeatedly been used by Clackamas Court. Plaintiff sold his former home on Big Fir Rd. in West Linn in August 2021. Steele and Albertazzi cannot credibly deny that they perpetrated service violations multiple times in an attempt to take advantage of Plaintiff's pro se status. See **Exhibit 17, page 6 and 7.**

26. Albertazzi cannot credibly deny that he and Zweizig filed a false declaration in case 19cv01547 to attempt to liquidate the bond posted to secure the anti-SLAPP fee award on appeal, an award that Greene claimed Williams Kastner abandoned. The false declarations by Albertazzi and Zweizig claimed an appellate judgment was final in case 19cv01547, but attached

an appellate judgment from a different case (19cv14552). This was an intentional act by Albertazzi and Zweizig. See **Docs #18-16, pages 2, 3, 9 and 10. Rote** opposed and is seeking sanctions. See **Doc #18-17**, Plaintiff's Motion in Opposition.

27. Albertazzi does not deny that his anti-SLAPP Motion to Strike argument was entirely based on litigation and/or attorney immunity for Oregon RICO predicate acts alleged against him, including acts for bribery, unlawful collection, subornation of perjury, unsworn falsification, witness tampering, perverting the course of justice, etc. **Doc #20-3**.

#### **F. The Record of Aiding and Abetting Child Pornography**

Plaintiff alleges that the violations of Plaintiff's Fourteenth Amendment rights sought by Albertazzi/Zweizig also implicate criminal conduct of aiding and abetting.

##### ***1. The Inferences That May be Drawn***

As part of that Motion for Contempt reflected in **Exhibit 1**, Zweizig filed a declaration in support and seeks to have Plaintiff Rote imprisoned in Deschutes County jail for Rote's role in (1) successfully defending Tanya Rote's Sunriver property and prevailing in case 19cv01547; (2) pursuing a wrongful use of a civil proceeding action, Clackamas case 22cv17744, for Zweizig bringing the fraudulent transfer action (19cv01547) with no evidence; (3) defending against First and Fourteenth Amendment abuses in case 19cv00824 and other cases, including this one; and (4) exposing Zweizig as a distributor of child pornography and cybercriminal. Make no mistake, Albertazzi and Zweizig are asking the Court to imprison Plaintiff Rote for engaging in civil litigation successfully. See **Exhibit 1, pgs 1-2**.

Zweizig's declaration claims that the allegations that Zweizig is a child predator and pedophile are false (**Exhibit 1, pg 2, ¶4**). Most notably, Zweizig does not deny that he has in the past and does in the present download, possess and disseminate child porn. Federal law prohibits the production, distribution, reception, and possession of an image of child pornography using or

affecting any means or facility of interstate or foreign commerce (18 U.S.C. § 2251; 18 U.S.C. § 2252; 18 U.S.C. § 2252A). This is a particularly noteworthy affirmation and attempt to deceive the Court by an omission that was not doubt commissioned by defendant Albertazzi.

Albertazzi is pursuing a judgment of \$1 Million that Zweizig secured in federal case 3:15-cv-2401. Zweizig filed an ORS 659A.030 lawsuit against Rote alleging therein that Rote had published blogs alleging forensic evidence ignored by the arbitrator in 2010 that objectively and summarily vitiated Zweizig's ORS 659A claims in that case. **Exhibit 2** is the trial transcript in case 3:15-cv-2415 in which Zweizig denies that he committed these federal and Oregon crimes of downloading, possessing and disseminating porn of any kind. See **Exhibit 2, pgs 7, 9, 68, 103, 104, 123 and 172.**

**Exhibit 3** is Zweizig's Motion in Limine in that 3:15-cv-2401 case, wherein he sought successfully to suppress the forensic reports from the jury that affirmed Zweizig's criminal conduct related to child porn and for other criminal conduct including spoliation, perjury, cybercrime and destruction of evidence.

**Exhibit 4** is one of Rote's blog posts, the post with which Zweizig took most offense and which allegedly caused him to file his ORS 659A.030 complaint of case 3:15-cv-2401. The forensic reports used to reach the conclusions by Rote are cited and linked in that blog post. The forensic report by Police officer Steve Williams is attached thereto starting at **page 5**. Williams report and the others provided herein confirm that Zweizig separated his employer issued 120 gig hard drive into multiple partitions or sector such as d:\, d:\paul, d:\shared, d:\winmx, d:\laptop and others which were used to download, store and disseminate child porn, porn, movies and videos. D:\ paul refers to Paul Bower, who had organized a competing company called Superior Results Marketing with Zweizig on September 16, 2001. The group intent was to breach their



respective non-compete agreements and to solicit and steal Rote's clients. See **Exhibit 7, Plaintiff's Declaration at ¶12**. Zweizig and Bower did not succeed and it was a now obvious mistake to allow Zweizig to stay with the company.

The evidence against Zweizig was, as early as 2005, overwhelming on his criminal, cybercriminal and misplaced litigation, which is why Rote and Zweizig's former employer Northwest Direct ("ND") filed a Motion for Summary in that arbitration, arguing that the forensic reports showed there was no credible question of fact on when (October 2, 2003 by email) and why (Zweizig was terminated and the lengths he went to in an effort to extort a raise) Zweizig was terminated. That MSJ was filed by then counsel for NW and Rote, namely Jeff Edelson. See **Exhibit 8**.

The testimony from the arbitration of Jamie Gedye and Zweizig's former forensic expert Justin McAnn was also suppressed from the 3:15-cv-2401 trial. McAnn confirmed the cybercriminal activity and destruction of programming by Zweizig, programming which was removed from other company servers by Zweizig. Once Zweizig removed the programming he then used that leverage to attempt to extort a payoff from his former employer and Rote. See **Exhibit 9**.

Zweizig also admitted in his deposition of December 21, 2020 that his former attorney Ward Greene reviewed the forensic reports provided to him by Rote and resigned no longer wanting to be associated with Zweizig and the raping of children. See **Doc 18-4, pg 10, line 12**. Soon thereafter and also in case 19cv01547 Zweizig/Albertazzi filed a Motion to suppress his deposition from the public space claiming he would not receive a fair trial if this child porn evidence was available to the jury pool. Rote opposed. See **Doc 38-9**. Clackamas Court refused to suppress his deposition testimony. See **Doc #20-10**. The Rote's were granted Summary

Judgment against all of Zweizig's fraudulent transfer claims in case 19cv01547 (**Doc #18-11**). As previously noted, Zweizig appealed and the Oregon Court of Appeals affirmed the Court granting the MSJ (**Doc #18-13**).

Plaintiff argues there is now a stacking of evidence that shows Zweizig no longer denies that he downloads, possesses and disseminates child porn and that he has in multiple cases asked the Court to suppress that evidence so he could lie about it under oath. The evidence that he lied is objectively provable. When the Court suppresses that credible evidence, Zweizig's history is to then lie about the existence of the forensic evidence and even of his own expert's prior testimony, implicating perjury in the 3:15-cv-2401 trial during which he claimed he did not download, possess or disseminate any porn. **See Exhibit 2**. Zweizig's new omission of his declaration in support of Motion for Contempt confirms that Zweizig is a child predator even if that is defined to include downloading, possessing and/or distributing child porn and even though he has not yet been arrested or prosecuted. Reformatting his hard drive on November 12, 2003 was a masterful stroke by him, no doubt then assisted by attorney Sandra Ware.

Zweizig asked the defendants identified herein to help him perpetrate these crimes. The defendants named herein did perpetrate the crimes and violations so identified.

Plaintiff asks this Court for a finding that Zweizig committed perjury in case 3:15-cv-2401, 19cv01547 and has renewed his effort to do so by declaration omissions in case 19cv00824. In this new Motion for Contempt, Zweizig and defendant Albertazzi have again solicited favors that violate due process. Plaintiff is entitled to inference and acknowledgement that the defendants solicited, colluded and received prior favors from the Court that violated Plaintiff's First and Fourteenth Amendment rights.

**2. Record of Disclosure of Child Pornography**

Clackamas County Court was first given Notice of Zweizig's child predator activity in case 19cv01547 on June 24, 2019 with the filing of the Police Officer Steve William's forensic report (August 2005). See **Doc #38-7**. Subsequently Zweizig admitted to perjury and his child predator activity in a deposition dated December 21, 2020 and filed in that case on March 1, 2021. Albertazzi and Zweizig moved to suppress Zweizig's deposition on Date. That Motion to suppress the deposition was denied on March 9, 2021 (**Doc #20-10**).

Clackamas County Court was first given Notice of Zweizig's child predator activity in case 18cv45257 on September 3, 2021 with the filing of the Police Officer Steve William's forensic report (August 2005). See **Doc #38-8**. Subsequently Zweizig admitted to perjury and his child predator activity in a deposition dated December 21, 2020 (**Doc #18-4**) in case 19cv01547 and filed in case 18cv45257 on September 3, 2021. The Court in case 18cv45257 was informed that Albertazzi and Zweizig moved to suppress Zweizig's deposition in case 19cv01547. That Motion to suppress by Albertazzi and Zweizig was denied on March 9, 2021 (**Doc #20-10**).

Deschutes County Court was first given Notice of Zweizig's child predator activity in case 19cv00824 on January 11, 2019 with the filing of the Police Officer Steve William's forensic report (August 2005). See **Doc #38-10**. Subsequently Zweizig admitted to perjury and his child predator activity in a deposition dated December 21, 2020 (**Doc #18-4**). The Court in case 19cv00824 was not informed that Albertazzi and Zweizig moved to suppress Zweizig's deposition in case 19cv01547. That Motion by Albertazzi and Zweizig in case 19cv01547 to suppress his deposition from the public space was denied on March 9, 2021.

Every Judge and attorney identified as defendants in this case were informed of Zweizig's child predator behavior, the forensic reports showing that behavior, proof that other

jurisdictions have imprisoned comparable players for possessing and distributing child porn just as the forensic reports show Zweizig doing. See **Doc #38-7** to **#38-10**. HGTV celebrity Josh Duggar was arrested and convicted of possessing and distributing child porn through a peer to peer sharing program just as Zweizig did. See **Doc #20-11**. Every defendant nonetheless chose to act outside the law to benefit Zweizig. All Plaintiff asked of the defendants was to follow Oregon law...which they refused to do.

### **III. ARGUMENT**

#### **A. Legal Standard**

In *Conley v. Gibson*, 355 U.S. 41 (1957), the Supreme Court stated the interplay between Rule 8 (pleading) and Rule 12(b)(6) as follows: “[T]he accepted rule [is] that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” 355 U.S. at 45-46. In *Bell Atlantic Corporation v. Twombly*, 55 U.S. 544 (2007), the Court noted questions raised regarding the “no set of facts” test and clarified that “once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint,” *id.* at 563. It continued: “Conley, then, described the breadth of opportunity to prove what an adequate complaint claims, not the minimum standard of adequate pleading to govern a complaint’s survival.” *Id.* In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Court further elaborated on the test, including this statement: “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.”” *Id.* at 1949 (citation omitted).

#### **B. Satisfied Elements of the 42 USC §1983 Claims**

“Traditionally, the requirements for relief under [§] 1983 have been articulated as: (1) a violation of rights protected by the Constitution or created by federal statute, (2) proximately

caused (3) by conduct of a ‘person’ (4) acting under color of state law.” *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Plaintiff so alleges against Albertazzi and incorporates the “Relevant Facts” section of this brief.

For points of clarification, Plaintiff alleges that an unlawful fee petition rises to unconstitutionality when an adverse party seeks attorney fees through one or more strategies designed to conflate and conceal fees from recoverable proceedings (such as an anti-SLAPP) with non-recoverable proceedings (such as a Motion to Dismiss). Plaintiff alleges that the PLF does as a rule ask its vendors to conflate those actions in an effort to recoverable unlawful fees. Nathan Steele is a vendor of the PLF and represented Albertazzi.

Whether unlawful and unconstitutional acts are targeted or not targeted offers a degree of credibility on a finding of 42 USC §1983 violations, but does not diminish that the practices of a given court are substantive violations particularly when solicited by one or more of the defendants.

Plaintiff would also note that a defendant who avoided a Federal or Oregon Racketeering action by invoking attorney immunity of privilege, such as on witness tampering, perjury or unlawful collection actions, cannot avoid 42 USC §1983 violations when engaging in the deprivation of rights under the color of state law. And in this case Albertazzi continued his unlawful pursuits including solicitations of the Court to collude in his perjury, subornation of perjury, witness tampering, unlawful collection actions, etc.

***1. Deprivations of Rights under Color of State Law***

a. Plaintiff reiterates the allegations and evidence of First and Fourteenth Amendment Violations under color of state law by the Deschutes Circuit Court raised by Plaintiff in Section II A of this Brief;

b. Plaintiff reiterates the allegations and evidence of First and Fourteenth Amendment Violations under color of state law by the Clackamas Circuit Court raised by Plaintiff in Section II B of this brief; and

c. Plaintiff reiterates the allegations and evidence of First and Fourteenth Amendment Violations under color of state law by the Oregon Court of Appeals raised by Plaintiff in Section II C of this brief; and

d. The specific allegations against Albertazzi of Section II D and E of this brief.

## **2. *Collusion and Acts of Individuals***

Plaintiff reiterates the allegations and evidence of the 27 First and Fourteenth Amendment Violations of sections II A-II C and multiple acts of collusion by individuals in sections II D.

### **C. Addressing Specific Arguments of Albertazzi**

#### **1. *The “Setting in Motion” Theory of Participation***

Plaintiff believes he has adequately pled that defendant Albertazzi was personally involved in the deprivation of plaintiff’s constitutional rights and that the defendant’s actions were with those of the other defendants the proximate cause of the violation of plaintiff’s federal rights.

Plaintiff also ascribes to defendant Albertazzi a setting in motion theory of causation, which is described as follows:

“A person subjects another to the deprivation of a constitutional right, within the meaning of §1983, if that person does an affirmative act, participates in another’s affirmative acts, or omits to perform an act which is legally required to do that causes the deprivation of which complaint is made. Indeed, the requisite causal connection can be established not only by some kind of direct personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury.”

See *Hydrick v Hunter*, 449 F 3d. 978 (9<sup>th</sup> Circuit 2006), *Starr v Bacca*, 652 F 3d. (9<sup>th</sup> Circuit 2011), supported by cases in 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup> and 11<sup>th</sup> Circuits. See *Belanger v Ciavarella*, 3:09-cv-00286, page 20 (July 2012).

**2. Plaintiff Is Not Attempting To Appeal the Anti-SLAPP Awards**

In many respects there must be some maturity of a state case, state actions, violations under the color of state law and the solicitation of those violations to establish causation and to firmly document the setting in motion theory of causation.

The Fourteenth Amendment prohibits a state from depriving any person of life, liberty or process without due process. U.S. Const. Amend XIV, §1. The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. *Marshall v Jericho*, 446 U.S. 238, 242, 100 S. Ct. 1610 (1980).

In spite of repeated warnings to the defendants in this case, they repeatedly seek to have Plaintiff imprisoned, have his family destroyed, have his exempt income taken, and have his businesses destroyed simply because he is peacefully engaging in and opposing litigation brought by Abertazzi and Zweizig. See **Exhibit 1, pages 1 and 3-12**. Albertazzi also for example sought an unlawful fee petition on successful dismissal of a racketeering claim brought against him even when Albertazzi had not yet been served with the Complaint. See **Doc #20 ¶4, Doc #20-3**. The allegations against Albertazzi are numerous and would not have been discovered in the absence of the state sponsored abuses against Plaintiff.

Plaintiff is not attempting to use this action to appeal Albertazzi's unlawful fee petition. To the contrary, there is pending in that Clackamas case 18cv45257 a Motion to Set Aside the Judgment on multiple grounds, some of which are addressed in this case. See **Exhibit 14**. As

such the neither the Rooker-Feldman doctrine nor an affirmative defense of issue preclusion have merit in this case against Albertazzi.

Plaintiff identifies a voluminous pattern of unconstitutional actions by Albertazzi, whether that is seeking to have Rote imprisoned, taking from Rote his exempt social security income to limit his ability to pay for filing fees or counsel or petitions and awards of attorney fees that shows a pattern of violating substantive due process and to target Plaintiff. See Plaintiff **Docs #38-1-4, Doc #20-6, #20-9, #18-1 and Exhibit 1-14.**

Plaintiff asserts that the abuses of the anti-SLAPP fee petitions were solicited by defendants Albertazzi, Steele, Yium and Greene, for the benefit of the PLF Group, Albertazzi and Zweizig. Moreover the pattern of abuse has received favor by Judges Lininger, Wise, Kathie Steele, Kamins, Mooney and Emerson, all without Oregon law support.

The objective evidence of Albertazzi's attempt to abuse the anti-SLAPP fee petition opportunity is his fee petition, which very clearly shows block-billing of the recoverable anti-SLAPP time and the non-recoverable Motion to Dismiss time. Plaintiff believes the Court will accept that this is a transparent attempt to abuse mandatory award provisions of ORS 31.152 (3) and ORS 20.075 (2)(a). ORS 20.075 (1) factors are irrelevant in a mandatory fee petition.

By Steele's own declaration in support of his fee petition, Albertazzi sought \$7,245 for the conflated time to prepare, file, research and defend the combined anti-SLAPP and Motion to Dismiss, where after reviewing those filings one could reasonably conclude that (based on the Motions content of only) only 1/3 of the total brief preparation time is associated with the anti-SLAPP. One could reasonably argue then that the fee petition was specifically designed to circumvent the limitations of Oregon's anti-SLAPP fee award statutes of ORS 3.152 (3) and ORS 20.075 (2). There is nothing in the ORS 20.075 (2) statutes that would allow Steele to



conflate these two separate Motions and seek fees for the Motion to Dismiss portion. See Doc #38-1, categories 6, 8, 9 and 10, and supporting **Doc #38-3**.

But there's more. Albertazzi also sought \$5,445 in time for chit chatting with his client, the PLF and defendant Yium over the short pendency of the anti-SLAPP proceedings, some 40 separate entries. And he used this hyperbolic billing opportunity to download from pacer every case in which Plaintiff has been involved in over the last 20 years, charged \$5,512.50 for that effort as well as some \$400 in pacer fees. Steele was slamming the file and his actions were condoned by the PLF manager who approved his invoices and condoned and supported by pro tem Judge Wise with the full knowledge of its abuse.

Plaintiff asserts that this is a pattern of behavior adopted and first perpetrated by Ward Greene in his fee petition of May 27, 2020, wherein he sought and secured attorney fees on an anti-SLAPP Motion. Greene represented Zweizig at the time. As with Steele the detailed billing entries are put into a spreadsheet by Plaintiff, categorizing each billing entry. **See #38- 4**. That information is then summaries for time and fees by those sale categories. **See Doc #38-1, page 3**. This analysis clearly and objectively proves that Greene sought \$8,685 for collections actions unrelated and not reasonably connected to the anti-SLAPP proceedings. Greene was representing Zweizig at that time and was involved in, filed and prosecuted the fraudulent transfer action on behalf of Zweizig in Clackamas case 19cv01547. Greene used this time to attempt to recover fees from his collection activity (\$8,685), Motion for Summary Judgment (\$1,775) and other unrelated activities (\$1,900). The Rote's objected to this fee petition and outlined their objections in great detail, just as Plaintiff had done with respect to Steele's. Unlike Steele/Albertazzi, Greene did not attest to the fees even being associated with the anti-SLAPP and they were still approved by Judge Lininger.

Plaintiff would also bring to the Court's attention that defendant Yium also filed a fee petition in case 18cv45257 in an attempt to recover an unlawful amount of fees, which showed that his time and fees associated with the anti-SLAPP portion of the proceeding in Nena Cook's anti-SLAPP is \$7,175. **See 38-1, page 2.** Yium was hired by the PLF to represent the PLF group, which included the PLF, Carol Bernick, Nena Cook and Pam Stendahl. Had Yium just sought the fees for the anti-SLAPP he would not be a named defendant in this case; however, he did not. Instead he is seeking \$60,000 in attorney fees. The portion of his fees associated with the Motion to Dismiss the PLF, Bernick and Stendahl was approximately \$12,000, in close alignment with Alberetazzi's excessive fee petition. Yium also seeks \$31,000 in fees for a previous Motion to Dismiss and Appeal to the 9<sup>th</sup> Circuit, wherein Plaintiff Rote prevailed. And he is seeking fees of \$10,000 not even supported by the billing detail (**#38-2**).

Like Steele/Albertazzi, Greene and Yium the fee petitions by all three defendants are designed intentionally to give the judicial defendants the opportunity to abuse substantive due process, to attack and retaliate against Plaintiff for Plaintiff exposing these actors' support of child pornography and other criminal conduct. These acts have been described in great detail and this case is not an appeal or pseudo appeal of defendants' violations. In all cases, Plaintiff brought the fraudulent fee petitions to the attention of the Court by filing a detailed response and objection.

Defendant Albertazzi's argument or jurisdiction and/or affirmative defenses are in error and his Motion to Dismiss should be denied.

**3. *Status as an Individual Under 42 USC §1983***

Defendant misconstrues the law of 42 USC §1983 and §1985 as to the capacity of Albertazzi in acting through his private practice.

A person deprives another of a constitutional right, “within the meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.’” See *Preschooler II v. Clark Cty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)); see also *Lacey v. Maricopa Cty.*, 693 F.3d 896, 915 (9th Cir. 2012) (en banc); *Stevenson v. Koskey*, 877 F.2d 1435, 1438–39 (9th Cir. 1989).

Plaintiff adequately alleged individuals working concert with the state and others, through the acts of the defendants was the proximate cause of Plaintiff’s damages.

Where a private party conspires with state officials to deprive others of constitutional rights, however, the private party is acting under color of state law. See *Tower v. Glover*, 467 U.S. 914, 920 (1984); *Dennis v. Sparks*, 449 U.S. 24, 27–28 (1980); *Crowe v. Cty. of San Diego*, 608 F.3d 406, 440 (9th Cir. 2010); *Franklin v. Fox*, 312 F.3d 423, 441 (9th Cir. 2002); *DeGrassi v. City of Glendora*, 207 F.3d 636, 647 (9th Cir. 2000); *George v. Pacific-CSC Work Furlough*, 91 F.3d 1227, 1231 (9th Cir. 1996) (per curiam); *Kimes v. Stone*, 84 F.3d 1121, 1126 (9th Cir. 1996); *Howerton v. Gabica*, 708 F.2d 380, 383 (9th Cir. 1983).

Albertazzi set in motion and took action specifically designed to deny Plaintiff a right to a fair and impartial tribunal that one would predict if embraced to a violation of due process. Albertazzi brazenly conspired with Judges Alison Emerson, Michael Wise, Kathie Steele and Ann Lininger to target Plaintiff and deny Plaintiff his federal protected constitutional rights.

#### **4. Under the Color of State Law 42 USC §1983**

It is un-refuted that the Oregon State Bar Professional Liability Fund (PLF) is organized under the umbrella of the Oregon Judicial Department in order to skirt jurisdiction of the Oregon

Insurance Commission. It is un-refuted that the PLF enjoys tax exempt status tantamount to a quasi-agency or a municipality of this state.

It is un-refuted that Steele was hired by the PLF to represent Albertazzi. It is un-refuted that the PLF provided a budget of \$20,000 for the anti-SLAPP action, asked Steele to attempt to recover all of his attorney time through deceptive block-billing techniques, to solicit or exploit bias of Judge Wise and to redact the names of the PLF manager who instructed him. It is undisputed that Albertazzi colluded with Steele to accomplish listed violations of due process.

It is un-refuted that the nature of Steele declaration in support of his fee petition and its attached billing statements were designed to solicit abuses of the fee petition opportunity under ORS 31.152 (3) and ORS 20.075 (2) and that those solicitations were directed to Judge Wise, who is also a practicing attorney, specifically seeking an act of abuse simply because Albertazzi is at this time an attorney with a license to practice in Oregon. In the absence of Albertazzi's fee petition, Wise could not have acted unilaterally to use the fee petition to violate Plaintiff's rights of substantive due process.

“To prove a conspiracy between the state and private parties under [§] 1983, the plaintiff must show an agreement or meeting of the minds to violate constitutional rights. To be liable, each participant in the conspiracy need not know the exact details of the plan, but each must at least share the common objective of the conspiracy.” See *United Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540–41 (9th Cir. 1989) (en banc) (citations and internal quotation 18 marks omitted).

Plaintiff has shown that there is a common objective, which is to use the fee petition in an unlawful way to target and punish Plaintiff. This is not an isolated incident. Without being rebuffed in these earlier unconstitutional petitions, Albertazzi then continued to seek ex parte

support of Judge Alison Emerson to secure an unlawful order (**Exhibit 1, page 6-12**) and then to use that abusive order to attempt to have Plaintiff Rote imprisoned (**pages 3-5**) to limit his ability to defend against the unlawful taking of property.

In case 19cv01547 Ann Lininger used the fee petition by Ward Greene to attack the Rote's right to oppose Zweizig's fraudulent transfer claims. The order issued by Lininger is prima facie evidence of the animus Lininger had for the Rote's (**Doc #18-2**), making claims therein that are tantamount to punishing the Rote's for merely opposing child predator Zweizig's fee petition. It is un-refuted that Greene was awarded \$20,970 on fee petition evidence (**Doc #18-1**) that only supported a fee award of approximately \$6,600 (**Exhibit 1, page 3 and Exhibit 4**). It is un-refuted that the Rote's informed Lininger by Motion and hearing testimony before making the unlawful award. It is un-refuted that Greene did not on refute the Rote contemporary filings similar to **Exhibits 1 and 4**. It is un-refuted that on Appeal the Rote's brought excessive and unlawful billing to the attention of the Oregon Court of Appeals (**Doc #18-10**) showing the detailed 37 entries unrelated to the anti-SLAPP. It is un-refuted that the analysis reflected in Exhibit 1 and 4 was not refuted by Helen Tomkins in opposing the Rote's appeal. And it is un-refuted that the Oregon Court of Appeal via Kamins and Mooney indicted the Rote's for opposing the anti-SLAPP award and filing the appeal tainting the appeal as being objectively unreasonable (**Doc #18-19**).

It is un-refuted that Judge Wise without provocation raised Lininger and Kathie Steele in the September hearing in case 18cv45257 (**Doc #20-1**), the hearing in which Wise acted while disqualified and acted with animus to dismiss the racketeering claims against Albertazzi and Cook.

Plaintiff argues that it is objectively unreasonable for the defendants to deny the evidence offered in this case heretofore. This evidence shows absolute and unequivocal attempts to solicit of the Court excessive and unlawful fee awards, solicitations of bias of the Court and acts of bias by the Courts implicating 42 USC §1983 violations.

The defendants collectively acted under the color of state law, using the ORS 31.152 (3) and ORS 20.075 (2) statutes to grant a facially defective fee award as a tool for retaliation. There was a necessary symbiotic relationship between the judges and the attorney defendants to carry out the abuses.

In all cases, Albertazzi, Steele, Yium and Greene sought fee awards far greater than their billing detail supported. 42 US §1983 provides a cause of action against persons acting under color of state law who have violated rights guaranteed by the Constitution. *See Buckley v. City of Redding*, 66 F.3d 188, 190 (9th Cir. 1995); *Demery v. Kupperman*, 735 F.2d 1139, 1146 (9th Cir. 1984).

Where a violation of state law is also a violation of a constitutional right, however, § 1983 does provide a cause of action. See *Lovell*, 90 F.3d at 370; *Draper v. Coombs*, 792 F.2d 915, 921 (9th Cir. 1986); see also *Weilburg v. Shapiro*, 488 F.3d 1202, 1207 (9th Cir. 2007).

Plaintiff alleges that the violation of state law ORS 31.152 (3) and ORS 20.075 (2) also violates Plaintiff's constitutional rights and does not mature until the judicial actors take action implicating constitutional violations.

##### **5. Attorney Immunity under 42 USC §1983**

“Prosecutors enjoy immunity when they take ‘action that only a legal representative of the government could take.’” *Burton v. Infinity Capital Mgmt.*, 862 F.3d 740, 748 (9th Cir. 2017) (quoting *Stapley v. Pestalozzi*, 733 F.3d 804, 812 (9th Cir. 2013)). Note the Supreme Court has

not extended immunity beyond the prosecutorial function. *Burton*, 862 F.3d at 748. For example, “[e]ven court-appointed defense attorneys do not enjoy immunity because, despite being ‘officers’ of the court, ‘attorneys [are not] in the same category as marshals, bailiffs, court clerks or judges.’” *Burton*, 762 F.3d at 748 (quoting *Ferri v. Ackerman*, 444 U.S. 193, 202 n.19 (1979)).

Defense counsel, even if court-appointed and compensated, are not entitled to absolute immunity. See *Tower v. Glover*, 467 U.S. 914, 923 (1984); *Sellars v. Procnier*, 641 F.2d 1295, 1299 n.7 (9th Cir. 1981). See also *Burton v. Infinity Capital Mgmt.*, 862 F.3d 740, 748 (9th Cir. 2017) (explaining that “[e]ven court-appointed defense attorneys do not enjoy immunity because, despite being ‘officers’ of the court, ‘attorneys [are not] in the same category as marshals, bailiffs, court clerks or judges.’” (*Ferri v. Ackerman*, 444 U.S. 193, 202 n.19 (1979))).

The Ninth Circuit has concluded that private individuals are not entitled to qualified immunity in either § 1983 or Bivens actions. See *Clement v. City of Glendale*, 518 F.3d 1090, 1096 (9th Cir. 2008); *Franklin v. Fox*, 312 F.3d 423, 444 (9th Cir. 2002); *Conner v. City of Santa Ana*, 897 F.2d 1487, 1492 n.9 (9th Cir. 1990); *F.E. Trotter, Inc. v. Watkins*, 869 F.2d 1312, 1318 (9th Cir. 1989).

Thus Albertazzi does not enjoy immunity and his Motion to Dismiss must be denied.

#### **6. Burden of Proof under 42 USC §1983**

The plaintiff bears the burden of proving that the right allegedly violated was clearly established at the time of the violation. If the plaintiff meets this burden, then the defendant bears the burden of establishing that the defendant reasonably believed the alleged conduct was lawful. See *Sorrels v. McKee*, 290 F.3d 965, 969 (9th Cir. 2002); *Trevino v. Gates*, 99 F.3d 911, 916–17 (9th Cir. 1996); *Browning v. Vernon*, 44 F.3d 818, 822 (9th Cir. 1995); *Neely v. Feinstein*, 50

F.3d 1502, 1509 (9th Cir. 1995), overruled in part on other grounds by *L.W. v. Grubbs*, 92 F.3d 894 (9th Cir. 1996).

It is not altogether clear that Albertazzi's Motion to have Rote imprisoned is a lawful request, for the reasons outlined in Rote's Cross Motion for Contempt. **See Exhibit 10**. Plaintiff alleges that Albertazzi withheld from the Court key information such as Rote's offers four times to transfer the Stock of NWDH to Zweizig and that those offers were summarily rejected by Zweizig, **pages 2-5**. Or by Albertazzi pursuing discovery via the ex parte order issued by Emerson on November 4, 2021 (19cv00824) that very clearly sought discovery for a case (19cv01547) that had already been dismissed on March 21, 2021, **Exhibit 1, pages 3-10**. But Albertazzi did all of this and more and it demonstrates a proclivity of support for child predator Zweizig.

Plaintiff alleges he has satisfied the burden of proof showing the numerous violations that could only have been accomplished by the intent of the defendants to directly engage in or to collude to violate state laws in retaliation against Plaintiff, which are in turn violations of Plaintiff's First and Fourteenth Amendment Rights.

**D. Damages and Relief under 42 USC §1983**

"A plaintiff who establishes liability for deprivations of constitutional rights actionable under 42 U.S.C. § 1983 is entitled to recover compensatory damages for all injuries suffered as a consequence of those deprivations." *Borunda v. Richmond*, 885 F.2d 1384, 1389 (9th Cir. 1988); see also *Smith v. Wade*, 461 U.S. 30, 52 (1983) ("Compensatory damages ... are mandatory."). The Supreme Court has held that "no compensatory damages [may] be awarded for violation of [a constitutional] right absent proof of actual injury." *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 308 (1986).



Compensatory damages include actual losses, mental anguish and humiliation, impairment of reputation, and out-of-pocket losses. See *Borunda*, 885 F.2d at 1389; *Knudson v. City of Ellensburg*, 832 F.2d 1142, 1149 (9th Cir. 1987); *Chalmers v. City of Los Angeles*, 762 F.2d 753, 760–61 (9th Cir. 1985).

Section 1983 is an exception to the Anti-Injunction Act, 28 U.S.C. § 2283, which establishes that federal courts may not enjoin state-court proceedings unless expressly authorized to do so by Congress. See *Mitchum v. Foster*, 407 U.S. 225, 242–43 (1972); *Goldie’s Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 468 (9th Cir. 1984). This does “not displace the normal principles of equity, comity and federalism that should inform the judgment of federal courts when asked to oversee state law enforcement authorities.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 112 (1983); *Mitchum*, 407 U.S. at 243. In fact, injunctive relief should be used “sparingly, and only ... in clear and plain case[s].” *Rizzo v. Goode*, 423 U.S. 362, 378 (1976) (citation and internal quotation marks omitted).

**E. Application of 42 USC §1985 (3)**

To state a cause of action under § 1985(3), a complaint must allege (1) a conspiracy, (2) to deprive any person or a class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, (3) an act by one of the conspirators in furtherance of the conspiracy, and (4) a personal injury, property damage or a deprivation of any right or privilege of a citizen of the United States.

Plaintiff alleges that he is a class of one, that there is historical precedent for this action and that the defendants in this case conspired to violate Plaintiff’s rights. Plaintiff alleges conspiracy under both §1983 and §1985.

The Courts have also recognized "class of one" claims. If an individual can show that he or she has been "singled out" for irrational or differential treatment by a Federal, state or local

government entity or official, Section 1983 can be used in filing a "class of one claim." This occurred in "*Olech v. Village of Willowbrook*", 528 US 562 (2000). The Olechs sued the Village of Willowbrook in Federal Court (Section 1983) for delaying their access to the village water line in 1995. The Olechs maintained that the Village denied them access due to an earlier lawsuit they had filed against the village over an easement, which they successfully won. They believed that the officials for the Village of Willowbrook intentionally withheld the water line, causing them to have to use an over ground rubber hose to connect to a neighbor's well for water. They also believed that the Village officials intentionally waited until winter to attempt to solve their water problems, knowing that the rubber hose would freeze and leave them without water for the entire winter. The Olechs were in their seventies and showed that these actions caused them suffering and "singled them out" as no other citizens of the Village had been treated in such a manner. See Richter, Nicole, "A Standard for "Class of One" Claims Under the Equal Protection Clause of the Fourteenth Amendment: Protecting Victims of Non-Class based Discrimination From Vindictive State Action", Valparaiso University Law Review, Volume35, Number 1, Fall 2000, pg.197-200.

“The language requiring intent to deprive of equal protection ... means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators’ action.” *Griffin*, 403 U.S. at 102; see also *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1056 (9th Cir. 2002); *Butler v. Elle*, 281 F.3d 1014, 1028 (9th Cir. 2002) (per curiam); *Sever*, 978 F.2d at 1536. Plaintiff alleges that the animus against Plaintiff is reflected in the defendants’ collective violations and conspiracy to engage in those violations. Plaintiff is a class of one.

*Pro se* complaints are construed liberally, and may only be dismissed if it appears beyond doubt the plaintiff can prove no set of facts in support of his claim would entitle him to relief. *Nordstrom*, 762 F.3d at 908; see also *Byrd*, 885 F.3d at 642 (explaining the court has “an obligation where the petitioner is *pro se*, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt.”).

## **F. Child Pornography Violations and Punishment**

Why are the named defendants in this case supporting Zweizig’s child porn distribution business?

### ***1. Federal Definitions***

Child pornography under federal law is defined as any visual depiction of sexually explicit conduct involving a minor (someone under 18 years of age). Visual depictions include photographs, videos, digital or computer generated images indistinguishable from an actual minor, and images created, adapted, or modified, but appear to depict an identifiable, actual minor. Undeveloped film, undeveloped videotape, and electronically stored data that can be converted into a visual image of child pornography are also deemed illegal visual depictions under federal law.

Federal law prohibits the production, distribution, reception, and possession of an image of child pornography using or affecting any means or facility of interstate or foreign commerce (18 U.S.C. § 2251; 18 U.S.C. § 2252; 18 U.S.C. § 2252A). Specifically, Section 2251 makes it illegal to persuade, induce, entice, or coerce a minor to engage in sexually explicit conduct for purposes of producing visual depictions of that conduct. Any individual who attempts or conspires to commit a child pornography offense is also subject to prosecution under federal law.

Federal jurisdiction is implicated if the child pornography offense occurred in interstate or foreign commerce. This includes, for example, using the U.S. Mails or common carriers to

transport child pornography across state or international borders. Federal jurisdiction almost always applies when the Internet is used to commit a child pornography violation. Even if the child pornography image itself did not travel across state or international borders, federal law may be implicated if the materials, such as the computer used to download the image or the CD-ROM used to store the image, originated or previously traveled in interstate or foreign commerce.

In May 2008, the Supreme Court upheld the 2003 federal law Section 2252A(a)(3)(B) of Title 18, United States Code that criminalizes the pandering and solicitation of child pornography, in a 7–2 ruling penned by [Justice Antonin Scalia](#). The court ruling dismissed the United States Court of Appeals for the 11th Circuit's finding the law unconstitutionally vague. Attorney James R. Marsh, founder of the *Children's Law Center* in Washington, D.C., wrote that although the Supreme Court's decision has been criticized by some, he believes it correctly enables legal personnel to fight crime networks where child pornography is made and sold.

## 2. *Oregon Definitions*

A person commits the crime of using a child in a display of sexually explicit conduct “if the person employs, authorizes, permits, compels or induces a child to participate or engage in sexually explicit conduct for any person to observe or to record in a visual recording.” ORS 163.670(1). A child is any person less than 18 years of age or, when a visual recording is at issue, less than 18 years of age at the time of the original recording. ORS 163.665(1). The Oregon Court of Appeals has resisted the credible application of this statute to fight criminal distribution of child pornography. See *State v. Cazee*, s 308 Or App 748 (2021).

ORS 163.684 provides that (1) A person commits the crime of encouraging child sexual abuse in the first degree if the person:

(a)(A) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, displays, finances, attempts to finance or sells a visual recording of sexually explicit conduct

involving a child or knowingly possesses, accesses or views such a visual recording with the intent to develop, duplicate, publish, print, disseminate, exchange, display or sell it; or

(B) Knowingly brings into this state, or causes to be brought or sent into this state, for sale or distribution, a visual recording of sexually explicit conduct involving a child; and

(b) Knows or is aware of and consciously disregards the fact that creation of the visual recording of sexually explicit conduct involved child abuse.

A violation of ORS 163.684 is only a class b felony, without much strength in contrast to the federal statutes, although case law supports a broad interpretation. See for example "Duplicates" includes downloaded videos from peer-to-peer network. *State v. Urbina*, 249 Or App 267, 278 P3d 33 (2012), Sup Ct review denied.

### ***3. Efforts by Albertazzi to Monetize Zweizig's Criminal Conduct***

The body of evidence cited in this brief invokes a finding that Albertazzi is attempting to monetize the perjury and other criminal act of Zweizig that first arose in case 3:15-cv-2401 and proceeded in cases 18cv45257, 19cv01547 and 19cv00824. Albertazzi has sought and received the benefit of judicial intervention that violated Oregon law and targeted Plaintiff to violate Plaintiff's First and Fourteenth Amendment Rights. All of this also benefits Zweizig.

Zweizig's **collective admissions** of **Exhibit 1, Doc #18-4** and his **Motions to suppress** his testimony (**Exhibit 3, Doc #38-9, #20-10**), necessarily lead to a conclusion that Zweizig is a producer and distributor of child pornography and secured a \$1 Million judgment by first moving the Court to suppress the evidence against him (**Exhibit 4**) and then deny before a jury that he downloaded, possessed and distributed porn of any kind (**Exhibit 2**). He does not now deny he did and does download, possess and distribute child porn (**Exhibit 1**). He may have strained the definition of being a child predator as being tantamount to being a pedophile.

#### IV. CONCLUSION

Plaintiff asks for a declaratory judgment restraining the Oregon Judicial Department and the named defendants in this case from aiding and abetting in the distribution of child pornography and monetizing of Zweizig's child porn business which includes the judgment secured in case 3:15-cv-2401 and registered in Deschutes in case 19cv00824.

Plaintiff asks for a judgment freezing the collection action in Deschutes Case 19cv00824.

Plaintiff seeks economic and noneconomic damages in an amount not less than \$10,000,000 against Albertazzi.

For the reasons outlined above, the Court should deny Albertazzi's Motion to Dismiss.

Dated: September 26, 2022

*s/ Timothy C. Rote*

\_\_\_\_\_  
Timothy C. Rote

*Pro Se* Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on September 26, 2022, I filed the foregoing with the Clerk of the Court. Defendants making an appearance, as reflected below, have been served electronically through the Court's ecf system. I also provided a copy by email.

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