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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 and individual  
capacities as CEO of the OSBPLF),  
MICHAEL WISE, JEFFREY EDELSON,  
DESCHUTES COUNTY SHERIFF'S  
DEPARTMENT, MATTHEW YIUM,  
NATHAN STEELE, WARD GREENE,  
ANTHONY ALBERTAZZI, MARTHA  
WALTERS (in her official capacity of Chief  
Judge) and JOHN DOES (2-5), *et al.*,

Defendants.

Case No.: 3:22-CV-00985

PLAINTIFF'S CONSOLIDATED RESPONSE  
IN OPPOSITION TO THE DESCHUTES  
COUNTY SHERIFF'S OFFICE MOTION TO  
DISMISS AMENDED COMPLAINT

HEARING REQUESTED

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## I. INTRODUCTION

Included herein is Plaintiff's Consolidated Response in Opposition to Deschutes County ("Deschutes") Motion to Dismiss Plaintiff's Complaint and First Amended Complaint. Plaintiff references and incorporates with, only limited restatement, the relevant facts section of **Doc #51**.

Plaintiff alleges that he has been targeted by the Clackamas and Deschutes Circuit Courts, the Supreme Court of Oregon and 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 pornography.

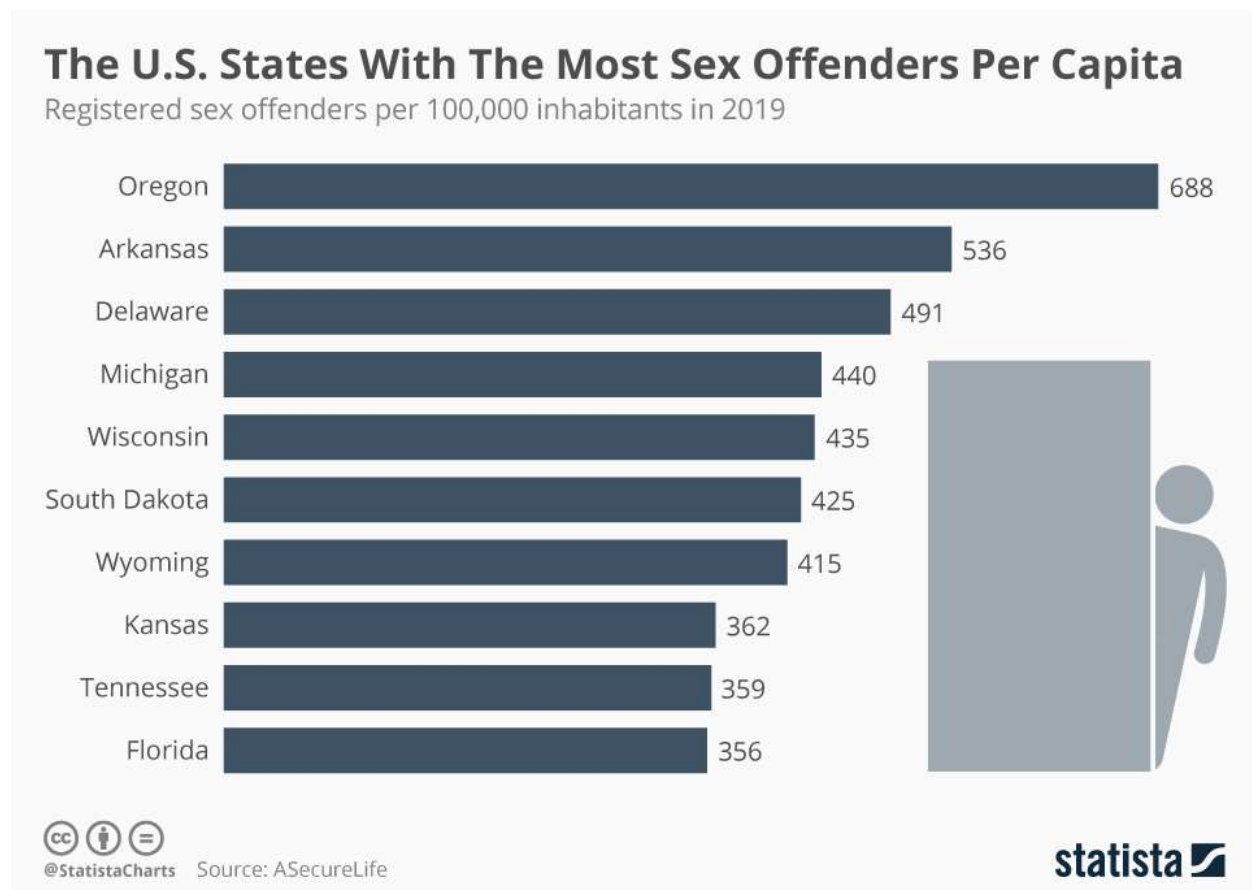
According to the Mayo Clinic of the US, studies and case reports indicate that 30% to 80% of individuals who viewed child pornography and 76% of individuals who were arrested for Internet child pornography had molested a child; however, they state that it is difficult to know how many people progress 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". Oregon ranks first amount the states with the most sex offenders per capita.

The question presented in this Brief is whether the Deschutes County Sheriff's office has a separate duty to resist a Court order when that Court order is shown to be based on a false record of ownership or record of support designed to aid and abet the downloading, possession and distribution of child pornography. If Deschutes does not resist, they are liable an unconstitutional act or series of acts.

Plaintiff alleges that the Deschutes County Sheriff's Department has an independent duty to not engage in the unconstitutional behavior of a decedent Court. If Deschutes County Court

ordered the Sheriff's Department to sell the assets of a black man resident of Bend and the record shows that a substantial reason for the Court's order was the man's race, would Deschutes not have a duty to not proceed to sale the victims assets and to take legal action to reverse the order? Plaintiff alleges that Deschutes would have a duty to intervene.

In this particular set of facts, Plaintiff alleges that there is an adequate amount of data available in the record of Deschutes case 19cv00824 to show that there is institutional support of child predation by the Deschutes County Court and that the Court has targeted Plaintiff with the orders to sell certain assets not owned by Plaintiff...and to do so without substantive due process.



One of the latest examples of the solicitation of abuse by child predator Max Zweizig is his recent Motion for Contempt. 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 otherwise for Rote successfully *engaging* in litigation against Zweizig. Attached to that Motion was a declaration by Max Zweizig, wherein Zweizig denied being a pedophile and child predator but did not deny downloading, possessing and distributing child pornography (**Doc #48-1**). His declaration is an admission that then taken together with Zweizig's testimony in trial 3:15-cv-2415 (**Doc #48-2**), his efforts therein to suppress the forensic reports showing Zweizig's child pornography activity (**Doc #48-3**), his tantamount admissions to distributing child pornography in his deposition of December 21, 2020 in case 19cv01547 (**Doc #18-4**) and his effort to then suppress that deposition (**Docs #38-9, #20-10**, claiming that he would not receive a fair jury if his child porn admissions were to become public), all in all the history of these collective acts paint now a very clear picture of Zweizig's criminal conduct that should no longer be ignored. There is no remaining rock for any of the judicial defendants to hide behind.

The judicial support Zweizig received cannot 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 with the other defendants to deny Rote his constitutionally guaranteed procedural and substantive due process rights.

Plaintiff alleges that the Judges named herein as defendants attempted to use the Sheriff sell process to support financially litigant Zweizig and defendant Albertazzi, the effect and legal result of which is financial support of the possession and distribution of child pornography, and of tax and collection fraud. The Deschutes County Sheriff's Department is inclined to follow the



edicts of the Court and support that action even when there is a record of numerous unlawful actions making the Court's order unconstitutional.

Plaintiff respectfully submits that the Deschutes County Motion to Dismiss lacks merit and must therefore be denied at this time.

## **II. RELEVANT FACTS**

Plaintiff alleges in his First Amended Complaint that Alison Emerson, Nathan Steele and Anthony Albertazzi and other named defendants colluded with Deschutes County to (1) violate procedural and substantive due process; (2) abuse the Sheriff sale process under Oregon law; (3) to aid and abet in the tax and collection fraud; and (4) provide protection and financial rewards to those criminal players like Max Zweizig who download, possess and disseminate child pornography. Plaintiff alleges that these acts 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**

#### **Narrative and Timeline**

Defendant attorneys have on multiple occasions sought highly prejudicial support from the Deschutes County Court and in particular defendant and **Judge Alison Emerson** in cases 19cn01843 and 19cv00824. 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 and the Court's role in violating Plaintiff's constitutional rights.

Defendant Albertazzi sought and secured from Alison Emerson (1) a contempt order and damages of \$8,500 for Rote signing an interrogatory response by declaration instead of by Notary; (2) an ex parte order secured in November 2021 forbidding Rote from selling any of his assets; (3) an ex parte order secured in November 2021 to turn over information on Tanya Rote, her Sunriver property and Insurance agency related to claims that had been dismissed in

Clackamas case 19cv01547; (4) a hearing, ruling and judgment of January 20, 2022 allowing Albertazzi to sheriff sale a property not owned by debtor Rote, when the only evidence on the record was Rote's testimony refuting ownership; (5) assistance from Emerson in soliciting the abuses of other Deschutes Circuit Court Judges; and (6) soliciting a Motion for Contempt against Rote for opposing Zweizig's unlawful use of a Sheriff sale and for opposing Zweizig's collection actions.

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 **48-13**.

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. Even requesting this kind of abuse of procedural due process should be of concern to this Court. Historically Judge Alison Emerson has come to Albertazzi's aid. See **Doc #48-1, 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 **Doc #48-1**. 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 **Doc #48-10**. In the style of Deschutes County, *Rote Cross Motion for Contempt was denied* immediately while child predator's Zweizig's Motion has not yet been denied. A letter requesting clarification was filed with the Court on September 27, 2022 (See **Exhibit 1**). There has been no response.

On July 9, 2021 Albertazzi filed a praecipe to sell the stock of NWDH and was granted that order by **Alison Emerson**. See **Doc 48-11, 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. See **Doc #48-11, pages 52-59**. Emerson also awarded Albertazzi/Zweizig damages (*Id.*, **pages 19-22**) for that hearing. Rote appealed to the Oregon Court of Appeals (*Id.*, **pages 60-80**). Albertazzi did not file a responsive brief, which presumably means he was assured a win—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.

The Sheriff sale of NWDH stock of February 2022 was completed and there were no bidders other than Zweizig for 5% of the value of the property. Notice from the Sheriff's office was nonetheless 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*) on *February 13, 2022*. That Motion was granted on the notice deficiency only, the order signed on *June 23, 2022*. See **48-11, page 82**.

Even before the sale however, Plaintiff notified the Sheriff's civil sale unit of the deficiencies of the sale Notice, both in terms of the name of the company in the Notice and that Plaintiff did not own that stock. The Sheriff's office claimed that they were helpless to make any changes without the express consent to Anthony Albertazzi. Thus, in a factual question such as was raised to the Sheriff's office, where both the wrong name in the notice and the sale of property not owned by a debtor, the Sheriff's office did not resist the efforts by Albertazzi, Zweizig and Emerson to perpetrate this fraud.

The tax fraud component arises from offer four different times of NWDH stock, valued at \$1,250,000, to Albertazzi and Zweizig. The first sheriff sale attempt by Albertazzi, Zweizig and Emerson intended to use that process to avoid taxation of the \$1,250,000 by bidding to take the property for \$50,000. The first element of the collection fraud component of that process was then to not provide Rote with full satisfaction of receipt of \$1,250,000 but rather to only credit the judgment debtor with \$50,000 (instead of the \$1,250,000).

In so far as a 1099 NEC was prepared to be sent to Zweizig, it is unlikely that Zweizig could avoid taxation of \$1,250,000. Nonetheless, the procedures of the Deschutes Sheriff's office permit career criminals like Albertazzi and his client and child predator Zweizig an opportunity

to engage in these unlawful acts and without recourse unless the defendant is reasonably sophisticated...and most citizens are not.

At the same time Rote filed another Motion to Change Venue from Deschutes County to Clackamas County consistent with the other two related cases, namely 19cv01547 and 19cn01843. Ward Greene had first filed case 19cv01547 in Multnomah County and upon Motion the Rote's moved that to Clackamas. The same effort was made for case 19cn01843 and related case 19cv00824, both in Deschutes, in September 2020 (**Doc #48-11, pages 16-20**). Rote has not at any time lived in Deschutes or Multnomah County. Case 19cn01843 was moved. 19cv00824 was not. Rote renewed his Motion to change Venue. The Motion was denied **Doc #48-11, page 82**. Rote then filed a Writ of Mandamus to transfer the case from Deschutes County to Clackamas. The Supreme Court of Oregon denied that Writ. See #52-2.

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 Doc #48-13**.

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 **Doc 48-12, 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 Doc 48-12, 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 #48-1 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 in case 19cv01547 and to continue to harass Tanya Rote. Plaintiff is entitled to an inference that Albertazzi and Emerson knew the November 2021 order secured ex parte was constituted constitutional violations of procedural and substantive due process.

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, 48-1 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. Albertazzi and Zweizig are asking the Deschutes County Court to take bank accounts that hold exempt funds such as social security. This is the measure of what they believe **Emerson** will give them and it implicates bias and prior successful abuses.

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. By their own actions, Deschutes has come to the aid of child predator Max Zweizig multiple times. Greene also filed case 19cn01843, which was transferred to Clackamas Court. Resistance by Albertazzi and Deschutes to transfer the case supports Plaintiff's narrative. The Supreme Court of Oregon has endorsed this violation of Oregon law.

**Doc #48-5** 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. *Id.*, **pages 1-3**. One week later KBND news published a report that a bend music teacher was arrested for possessing explicit images of children. *Id.*, **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 Zweizig has done. For example, Josh Duggar was indicted under (1) 18 USC §2252A(a)(2) and (b)(1) for receipt of child porn; (2) 18 USC §2252A(a)(5)(b) and (b)(2) for possession of child porn. Duggar was ultimately convicted and sentenced to 12 years. **See Doc 48-5, page 6-12.**

### **Violations Accepted as True**

#### ***1. Unlawful Solicitation of Contempt for Rote Prevailing in case 19cv01547***

The Judicial Group cannot deny that Albertazzi's most recent Motion for Contempt filed on September 15, 2022 misleads the Deschutes Court on critical facts—namely (1) 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 (2) Zweizig used the sheriff sale procedure to engage in tax and collection fraud. In spite of those very blatant motivations, the Court denied Rote Cross Motion while allowing child predator Zweizigs to proceed. **See Exhibit 1 and #48-1, pages 3-12, #48-6 and #48-10.** This is objectively provable support for child predation and implicates Deschutes Circuit Court for its support of child predation.

#### ***2. Unlawful Solicitation of the Court to Endorse Perjury***

The Judicial Group 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. **Doc #48-1, 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. The Judges cannot credibly deny that Deschutes County was chosen by Greene, Albertazzi and



Zweizig because the Court favors child predators. Zweizig is not afraid of making this admission of downloading, possessing and disseminating child porn in the Deschutes Circuit Court.

**3. *Unlawful Contempt 19cn01843 during Covid Pandemic***

The Judges cannot credibly deny that Albertazzi 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 **Doc #48-12, page 3-6**. The Judges cannot credibly deny that Deschutes County was chosen by Greene, Albertazzi and Zweizig because the Court favors child predators and expects Deschutes to violate Plaintiff's substantive due process rights.

Albertazzi successfully secured a Motion for Contempt from Deschutes County on December 22, 2020 (**#52-6, page 1**) based on his opinion of deficiencies in an interrogatory response by Rote. The interrogatory responses were filed by Rote to former counsel Ward Greene in August of 2019. Albertazzi took over in August 2020 and claimed to not have received the responses from Greene. The responses were provided to Albertazzi who then filed a Motion for Contempt, claiming among other things that the response was filed by declaration attestation, **page 7**, and for failing to provide documents already in Greene's possession as evidenced in the 19cv01547 case. It took no time at all for Emerson to grant that \$8,500. Even at the time of the judgment (12.22.20), at the height of the Covid Pandemic, attestation by Notary was difficult to accomplish as most notaries were not available and the law in Oregon had not been passed to allow remote notary signatures. See **#52-7**.

**4. *Unlawful Refusal to Transfer Venue of Case 19cv00824***

**Doc #48-11, page 80**, denied Motion to Transfer case 19cv00824 to Clackamas.

Case 19cv00824 was supposed to be transferred to Clackamas when case 19cn01843 was transferred.

Defendants cannot deny that Albertazzi successfully solicited from Deschutes Circuit Court and the Supreme Court of Oregon the opportunity to harass Plaintiff Rote in multiple jurisdictions (in both Clackamas and Deschutes), in violation of Oregon law and in a glaring attack on Rote's *pro se* status. **See Doc #52-2.**

**5. Unlawful Solicitation and Support of Child Predation in Case 19cv00824**

Plaintiff Motion to Transfer case 19cv00824, arguing oversight since both cases 19cn01843 and 19cv00824 should have been transferred. This was a particularly abusive act against a targeted *pro se* litigant. Rote's Writ of Mandamus was denied. **See Doc #52-2.**

Deschutes Circuit Court cannot credibly deny that the Court has been fully informed as early as 2019 that Zweizig is a child predator and has in concurrent actions in Clackamas Court 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 in his deposition of December 21, 2020 of child predation were not suppressed from the public. Deschutes has also been fully informed of that child predation in the forensic reports showing Zweizig's child predation, and the federal indictment platform for similar cases of downloading, possessing and distributing child porn. **See Doc #38-10, #20-10, pages 2-9, #48-4, #48-5, #48-10.** Although Rote won that argument of suppression in Clackamas County, wherein the Court found no legal support for a Motion to Suppress Zweizig's admissions, this ask implicates Zweizig's strong opposition to having case 19cv00824 transferred from Deschutes where **Emerson** could have likely ruled in the case. The Judges cannot credibly deny that Deschutes County was chosen by Greene, Albertazzi and Zweizig because the Court favors child predators and that the defendants named in this case expects Deschutes to violate Plaintiff's substantive due process rights.

**6. *Unlawful Ex parte Order to Engage in Unlawful Discovery***

Judges cannot credibly deny that Albertazzi used the ex parte order unlawfully secured from Judge Emerson on November 4, 2021 to continue to attempt to engage in discovery on dismissed case 19cv01547, to continue to interfere in non-debtor Tanya Rote's life and to cause Plaintiff Rote to continue to suffer for the attacks perpetrated by Zweizig on Rote's family. **Doc #48-1, pages 8-12.** The Judges cannot credibly deny that Deschutes County was chosen by Greene, Albertazzi and Zweizig because the Court favors child predators and expects Deschutes to violate Plaintiff's substantive due process rights.

Zweizig unlawful subpoena action was quashed in case 19cv01547 on February 22, 2021. See **Exhibit 8.** He then has attempted to use ex parte order from Emerson to seek the same and similar documents.

**7. *Unlawful Order of the Sale of Stock of a Non-debtor Twice***

See Doc **#48-11**, challenge to February sale before and after it happened. Plaintiff Rote does not now own the stock. The Stock was sold by Notice using an incorrect name.

See Doc **#48-13**, challenge again as Plaintiff Rote does not own the stock. Based on that successful challenge Albertazzi filed a Motion for Contempt (**#48-1**). Cross Motion for Contempt (**#48-10**) denied (**#52-1**).

**8. *Unlawful Failure to Disclose Ex Parte Communication***

15. The Judges cannot credibly deny that Nathan Steele solicited **Emerson** on behalf of Albertazzi and child predator Zweizig. Nathan Steele does not deny having a personal and campaign relationship with Emerson. **Doc #48-12, pages 3-6.** The Judges cannot credibly deny that Deschutes County was chosen by Greene, Albertazzi and Zweizig because the Court favors child predators and expects Deschutes to violate Plaintiff's substantive due process rights.

**9. *Unlawful Soliciting of Support of False Testimony by Albertazzi***

The Judges cannot deny that Zweizig fasely claims to have received no evidence that the Rote Irrevocable Trust owns the stock of NWDH, again lying to the Deschutes Court about the (1) testimony of Rote (**#48-11, page 53-59**); (2) Appellate Court Brief (*Id.*, **pages 60-80**) and references to the record in case 19cv00824; (3) email evidence inquiring of Albertazzi if Zweizig was going to accept or disclaim the transfer of Stock in NWDH (**#48-6**); and (4) subsequent Challenge to the sale that was planned for September 8, 2022, transmitting therein the K-1 and 1099NEC (**Doc #48-13**). Plaintiff brought to the attention of the Court the recent federal indictments against Duggar and Gonzalez for downloading, possessing and distributing child porn in described activity that closely aligns with the Steve Williams forensic report filed in all actions multiple times (**Doc #48-4**) wherein Williams found that Zweizig engaged in numerous criminal acts including downloading, possessing and disseminating child porn.

The Judges cannot credibly deny that Albertazzi assisted Zweizig in producing his false declaration in support of the Motion for Contempt filed in case 19cv00824 on September 15, 2022. **Doc #48-1, pages 1-2**. The Judges cannot credibly deny that Deschutes County was chosen by Greene, Albertazzi and Zweizig because the Court favors child predators and expects Deschutes to violate Plaintiff's substantive due process rights.

**10. *Unlawful Solicitation of Illegal Collection Actions by Albertazzi***

The Judges cannot deny that based on Zweizig's declaration (**Doc #48-1**), that Albertazzi 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 because Rote stopped the sheriff sale in Deschutes County two times. **Doc #48-1 pages 1-5**.

The Judges cannot credibly deny that Albertazzi 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. **Doc 48-1, page 8, line 3.** Zweizig has every right to garnish 25% of Rote's income notwithstanding the transfer of the stock in NWDH, which would result in a full satisfaction of the judgment. Taking all of the income however is illegal and the solicitation to do so is yet another predicate act of racketeering.

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

The narrative and argument in Plaintiff's Opposition to the Judges Motion to Dismiss (Doc #51) are not relevant to the violations in Deschutes County other than to show a pattern of abuse. The record of violations is not repeated here.

**C. The Record of Violations by the Superior Courts**

This narrative remains only to show that the abuses of the lower Court will not be reversed by the Supreme Court of Oregon and Oregon Court of Appeals, when the abuses of process are shown unequivocally to be violations of constitutional rights and even when those abuses benefit a child predator. Necessarily the enthusiastic support by the Oregon Judicial Department must be repeated.

**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 tile, 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 Doc #48-16.**

Perhaps the most glaring and clear evidence that the Oregon Court of Appeals is targeting Plaintiff Rote and denying 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 the Court would abandon the facts for a retaliatory public statement that the appeal was objectively unreasonable (**Doc #18-19**). Plaintiff never had a chance of substantive due process. It is not possible for Kamins and Mooney to reach their findings based on the evidence in the record...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 Doc #48-15.** 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.**

**Supreme Court of Oregon**

In 9<sup>th</sup> Circuit case #18-36060, the 9<sup>th</sup> Circuit referred a question to the Supreme Court of Oregon on whether there was a \$500,000 cap on noneconomic damages in Zweizig's case 3:15-cv-2401. Rote, defendant and appellee on that question, filed a Motion to Disqualify Justice Nakamoto, Garrett, Balmer and Walters in that case, although particularly emphasizing the disqualification of Lynn Nakamoto and Garrett because of prior and caustic associations with the Markowitz and Perkins Coie firms. See **#52-5, pages 21 to 29**.

In what should be considered a solicitation by Nakamoto and the Supreme Court of Oregon, of Defendant Jeffrey Edelson, Appellant attorneys Joel Christiansen and Shenoa Payne secured from Edelson a highly prejudicial declaration and series of false statements that misled the court on Nakamoto's prior contact with then defendant Rote.

Edelson was fully informed of the child pornography reports and testimony of forensic experts Justin McAnn (Zweizig's expert), Mark Cox and police officer Steve Williams showing the child pornography downloaded, possessed and disseminated by Zweizig, having represented Rote and employer Northwest Direct against Zweizig in ASP 050511-1, **Doc #48-8**.

It is not plausible that Joel Christiansen or Shenoa Payne could have induced Edelson to issue a declaration in support much less commit perjury in his declaration. See Exhibit 5, page 14-17. What is feasible is that Nakamoto reached out to Edelson. And Nakamoto wrote the Opinion of the Supreme Court removing the cap on noneconomic damage awards on employment claims, even though the Oregon Tort Act still retains that cap and evolved from the same initial legislation codified in ORS 31.710.

Rote also sought to disqualify Justice Garrett for a threat he made during his representation of David Wu. That issue arose when Wu refused to pay an invoice for get out the

vote calling during his re-election campaign. Garrett was on that legal team and threatened Rote after the litigation was resolved in Rote's favor.

The Supreme Court denied Rote's Motion to disqualify Nakamoto and Garrett. See **Doc #52-5**.

The Supreme Court has in fact denied every Motion filed by Rote. See Exhibit 2, on Writ of Mandamus to force Deschutes to transfer the case to Clackamas, **See #52- 2**. The OSC also denied Review of 174364, award of unlawful fees (**#48-15**) dismissal of counterclaims for interference with contract and slander of title (**#48-16**).

#### **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 Plaintiff's prior responses. Plaintiff incorporates all of those allegations against the Judicial Defendants and further submits Plaintiff's **Docs #38-1 to #52-8**, 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 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. In fact Wise indicated that he talked to presiding Judge Kathie Steele the day before the hearing.

Plaintiff alleges Wise' decision to conduct a hearing on his own disqualification violates Oregon law, ORS 14.250. That decision sent a message to defendants Nathan Steele, Albertazzi, Yium and PLF Group, a message they well understood to mean aggressive and unlawful billing would be invited by Wise to retaliate on behalf of the judicial group. 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.

Wise also made statements that were proven to be incorrect. Wise claimed “While I’m quite familiar with Judge Steele and Judge Lininger, especially being that those are the ones that asked me to serve as a pro tem judge, I must let you know, Mr. Rote, that for the first time in my 30-year career, I had to hire a lawyer on a matter. And that lawyer hired another lawyer to assist in the case and that lawyer is Matt Kalmanson.” See **Doc #20-1, page 7, lines 3-10**. The truth however is that while Kalmanson was hired by the PLF to represent attorney defendants in case 19cv01547, there was no recent event as Wise described. To put this delicately Wise lied about this record of “first time in my 30 year” statement. Plaintiff contacted Kalmanson, who denied having represented Wise on any matter in the last ten years. Plaintiff could provide that email.

Nathan Steele’s attestation as to the accuracy and reasonableness of his fee petition 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 that 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 somehow 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**. And as pointed out in **Doc #48-1**, Albertazzi filed a false declaration on his own account and constructed the false declaration of Max Zweizig, which is an affirmation of prior predicate acts under the Oregon and Federal racketeering Statutes. The point is Wise showcased that he was willing to violate the law in order to retaliate against Rote, even concealing from the record that Zweizig's appellate attorney Shenoa Payne shared office space with Wise.

Plaintiff alleged in his Third Amended Complaint in case 18cv45257 that Albertazzi, Cook and the PLF group engaged in racketeering. The Third Amended Complaint described in detail those defendants' 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, Cook and PLF Group for Oregon RICO have not been refuted. See **Plaintiff Doc #38-6**. More specifically, and on information and belief, the PLF did

not issue a 1099 to Zweizig and joined Zweizig in his effort to not report \$100,000 in free legal services provided by the PLF. This tax fraud could only be accomplished with the approval of Carol Bernick and Megan Livermore, since the Chief Financial Officer of the PLF would have been required to file 1099 NEC or 1099 Misc. The Treasury Department has been put on notice and it is likely they will pursue their own criminal investigation.

One of the key reasons raised by Plaintiff to ask Wise recuse himself was that he is actively practicing law in Oregon and would not likely be impartial in a case alleging criminal conduct of attorneys who would commit these crimes for their own benefit and for the benefit of his or her clients. Wise understood that, as the transcript so indicates. See **Doc #20-1, pages 1-12**. In spite of Albertazzi's and Cook's effort to constrain Zweizig's testimony in multiple actions, Zweizig did blurt out that Greene resigned no longer wanting to be associated with Zweizig and the raping of children (**Doc #18-4, page 15**). Per Zweizig, Greene specifically responded to an email Rote sent him with a copy of the Steve Williams forensic report. Greene has not refuted that statement in this action.

Judge Kathie Steele while disqualified to the 18cv45257 case signed the limited judgment dismissing Albertazzi (**Doc #20-4**) and PLF (**Doc #20-5**). At the time Steele was a defendant in civil rights case 3:19-cv-01988. Plaintiff argues that this is prima facie evidence that Kathie Steele solicited Wise to violate Plaintiff's rights and does not enjoy judicial immunity for those acts while clearly being disqualified to perform them.

Judge Wise signed the order and judgments awarding attorney fees while still disqualified and while his pro tempore status had terminated. See **Doc #20-7 and #20-13**. The limited judgment referenced a hearing in which Rote was not in attendance.

And last but certainly not least is the solicitation of Nakamoto of Edelson to publish a knowingly false declaration to aid and abet child predation. **See Doc #52-5.**

**E. The Record of Aiding and Abetting Child Pornography**

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

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

As part of that Motion for Contempt reflected in Doc #48-1, 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 Doc #48-1, pgs 1-2.**

Zweizig's declaration claims that the allegations that Zweizig is a child predator and pedophile are false (#48-1, 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. **Doc #48-2** 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 **Doc #48-2, pgs 7, 9, 68, 103, 104, 123 and 172.**

**Doc #48-3** 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.

**Doc #48-4** 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 **Doc #48-7, Plaintiff's Declaration Doc #48 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 **Doc #48-8**.

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 **Doc #48-9**.

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 (Steve Williams 120 gig hard drive report) 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, pages 3-10**. The Rote’s were granted Summary Judgment against all of Zweizig’s fraudulent transfer claims in case 19cv01547 (**Doc #18-11, #20-10**). As previously noted, Zweizig appealed and the Oregon Court of Appeals affirmed the Court granting the MSJ and denied reconsideration (**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 a 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 Doc #48-2 to #48-4.**

Zweizig's new omission of his declaration in support of Motion for Contempt (Doc #48-1, pages 1 and 2) confirms that Zweizig is a child predator when that is defined to include downloading, possessing and/or distributing child porn, even though he has not yet been arrested or prosecuted for those crimes or when he defines child predator to not include criminal allegations of downloading, possessing and disseminating child porn. Reformatting his hard drive on November 12, 2003 was a masterful stroke by him, no doubt then assisted by attorney Sandra Ware. Zweizig admitted to reformatting the 1120 gig hard drive. And again Zweizig then made admissions in his deposition of December 21, 2020 and, like in the federal case, then attempted to suppress that testimony evidence (**Doc #38-9**).

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, in case 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 that the defendants

solicited, colluded and received prior favors from the State Courts 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, pages 3-10**).

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 (**Doc #20-10**).

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**

The factual allegations are voluminous, but do not represent all of the First and Fourteenth Amendment violations perpetrated by the defendants.

“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 Deschutes and incorporates the “Relevant Facts” section of this brief.

For points of clarification, Plaintiff alleges that the unlawful Sheriff sale of stock of NWDH was also perpetrated by Albertazzi, Emerson and child predator Zweizig on Deschutes County and placed them in an untenable position of being held in contempt. The process of the Sheriff sale is however a weak process that provides a defendant a wall of resistance that is in itself unconstitutional. There is adequate evidence that Albertazzi has abused this process more than 20 times in the last 5 years.

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 or 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 the non-judicial defendants continued their equally unlawful pursuits including solicitations of the Court to collude in

perjury, subornation of perjury, witness tampering, unlawful collection actions, and the distribution of child pornography.

***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, Alison Emerson and Deschutes County raised by Plaintiff in Section II A of this Brief;

b. Plaintiff allegations and evidence of First and Fourteenth Amendment Violations under color of state law by the Clackamas Circuit Court, Michael Wise, Ann Lininger and Kathie Steele raised by Plaintiff in Section II B of this brief appear to be irrelevant here;

c. Plaintiff reiterates the allegations and evidence of First and Fourteenth Amendment Violations under color of state law by the Supreme Court of Oregon and Oregon Court of Appeals, Kamins and Mooney raised by Plaintiff in Section II C of this brief because of the history of endorsement of the abuses of the lower courts implicating broad tactical decisions by the lower courts; and

d. Plaintiff reiterates the allegations and evidence of First and Fourteenth Amendment Violations under color of state law against the Judicial Actors for collusion raised by Plaintiff in Sections II A-D of this brief because the history of collusion in several circuits and implicates a pattern of institutional violations.

***2. Collusion and Acts of Defendants***

Plaintiff reiterates the allegations and evidence of the 30 First and Fourteenth Amendment Violations of sections II A-II C as referenced in Doc #51 and the multiple acts of collusion by defendants in sections II D.

### C. Judicial Immunity

With Zweizig's Declaration of September 15, 2022 (**Doc #48-1**) filed in Deschutes County as well as the other evidence in support, it is now axiomatic that Zweizig has and does download, possess and disseminate child pornography in violation of federal and state law. It is also now reasonably certain that **Alison Emerson**, named as defendant in this case, knew or believed Zweizig is a child predator as defined to include Zweizig and his child pornography business. With that relative certainty comes an inference that the Judicial Defendants are using their respective roles to aid and abet in the downloading, possession, distribution and monetization of child pornography.

The question that will always be raised is whether State Judges enjoy absolute immunity to 42 USC §1983 claims? The Supreme Court of the United States opined that they are protected from damages but not injunctive and declaratory relief. See *Supreme Court of Va. v. Consumers Union of United States, Inc.*, 446 US 719 - Supreme Court 1980.

Citing at *Id.* 735, "Adhering to the doctrine of *Bradley v. Fisher*, 13 Wall. 335 (1872), we have held that judges defending against § 1983 actions enjoy absolute immunity from damages liability for acts performed in their judicial capacities. *Pierson v. Ray*, 386 U. S. 547 (1967); *Stump v. Sparkman*, 435 U. S. 349 (1978). However, we have never held that judicial immunity absolutely insulates judges from declaratory or injunctive relief with respect to their judicial acts. The Courts of Appeals appear to be divided on the question whether judicial immunity bars declaratory or injunctive relief we have not addressed the question.

Plaintiff has amended his complaint to add a demand for declaratory and injunctive relief against the Judicial defendants. Plaintiff notes that case *Supreme Court of Va. v. Consumers Union of United States, Inc.* specifically arose and resulted in a finding that the Virginia Court and its chief justice properly were held liable in their enforcement capacities. *Id.*, at 736. Plaintiff

amended his complaint to allege violations by the Oregon Judicial Department and Chief Justice Martha Walters.

Discovery needs to be done on what the contact with the Court involved. Defendants would not be shielded against a §1983 claim or §1985 conspiracy claim on actions and violations outside of their official judicial capacities. Plaintiff argues that Nathan Steele, Emerson and Albertazzi conspired to violate Plaintiff's rights and to engage in tax and collection fraud.

Citing *Stump v. Sparkman*, 435 U. S. 349 (1978), the scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge. A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the "clear absence of all jurisdiction citing therein *Bradley v. Fisher*, 13 Wall at 351.

Defendants Michael Conahan ("Conahan") and Mark Ciavarella ("Ciavarella") abused their positions as judges of the Luzerne County Court of Commons Pleas by accepting compensation in return for favorable judicial determinations. As part of this conspiracy, Conahan and Ciavarella acted with Defendants Robert Powell, Robert Mericle, Mericle Construction, Pennsylvania Child Care ("PACC"), Western Pennsylvania Child Care ("WPACC"), Pinnacle, Beverage, Vision, and perhaps others. The basic outline of the conspiracy was that Conahan and Ciavarella used their influence as judicial officers to select PACC and WPACC as detention facilities, and that they intentionally filled those facilities with juveniles to earn the conspirators excessive profits. In return, approximately \$2.6 million was paid to Conahan and Ciavarella for their influence. See *Humanik v Ciavarella*, 3:09-cv-00286-ARC, #537, page 3. Ultimately the §1983 claims against Ciavarella were dismissed under a judicial immunity theory. Subsequently,

Ciavarella petitioned the Supreme Court to vacate his bribery charge, for which he was found guilty citing *Mcdonnell V. United States*, 792 F. 3d 478, decided June 27, 2016.

Former Judge Ciavarella was convicted in federal court on Feb. 18, 2011 of 12 of 39 charges alleging he took bribes and kickbacks while serving as a judge. He was later sentenced to 28 years in prison. Ciavarella, 71, remains jailed at Federal Correctional Institution-Ashland in eastern Kentucky. His expected release date is June 18, 2035. A federal judge overturned three charges, but later refused to reduce his sentence. That same judge in January rejected Ciavarella's request for compassionate release due to the COVID-19 pandemic.

Former Judge Conahan pleaded guilty and was sentenced to 17 1/2 years in federal prison, but in June he was granted early release from a Florida federal prison due to the COVID-19 pandemic. Conahan, 68, is now under home confinement and reports to a Residential Reentry Management field office in Miami. He's expected to remain under Bureau of Prisons supervision until Aug. 19, 2026. Conahan and his wife now live in a \$1.05 million home in a private gated community known as The Estuary along the waterfront in Delray Beach, Florida.

Attorney Powell, co-owner of the juvenile detention centers, was disbarred and sentenced to 18 months in federal prison after pleading guilty for his role in paying \$770,000 in kickbacks to Ciavarella and Conahan. He was released from prison on April 16, 2013. Powell, 62, and his wife now live in a \$2.38 million home in the private gated Frenchman's Reserve Country Club golf community in Palm Beach Gardens, Florida. Powell entered into a settlement in the §1983 cases brought against him.

Developer Robert Mericle, the developer of the juvenile detention centers, paid \$2.1 million to the judges and was charged with failing to disclose to investigators and a grand jury that he knew the judges were defrauding the government by failing to report the money on their

taxes. Mericle, 58, served one year in federal prison and was released on May 29, 2015. He continues to lead his commercial real estate and construction firm that draws national and worldwide companies to the region. Mericle entered into a settlement in the §1983 cases brought against him.

Kamins, Mooney and Emerson likely have jurisdiction for their judicial acts and would not to that extent be subject to damage under §1983. Should discovery show however that one or more of these judges solicited from others, including any one of the other defendants, violations of the Plaintiff's Fourteenth Amendment right to substantive due process, there should be liability under 42 USC §1985.

Regardless this Court would have jurisdiction and discretion to provide declaratory relief that as applied in case 19cv01547 and 18cv45257, the anti-SLAPP fee awards were used to retaliate against Plaintiff pursuit of his due process rights, are as applied unconstitutional and enjoin the Oregon Judicial Department from awarding anti-SLAPP fees above those supported by the fee petition for fee directly related or reasonable connected to the anti-SLAPP portion of proceedings.

There is nothing in these statutes that would provide qualified immunity to the other non-judicial defendants.

#### **D. Monell Liability**

The Monell doctrine was decided in *Monell v. Department of Social Services of the City of New York* (436 U.S. 658 (1978)), and gives victims of police misconduct a way to seek recovery in civil lawsuits.

“Under Monell, a plaintiff must also show that the policy at issue was the ‘actionable cause’ of the constitutional violation, which requires showing both but for and proximate causation.” *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1146 (9th Cir. 2012) (citing Harper, 533

F.3d at 1026). Regardless of what theory the plaintiff employs to establish municipal liability— policy, custom, or failure to train— the plaintiff must establish an affirmative causal link between the municipal policy or practice and the alleged constitutional violation. See *City of Canton*, 489 U.S. 378, 385, 391-92 (1989); *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 835 (9th Cir. 1996).

In order to prevail on Plaintiff § 1983 claim against defendant Deschutes County alleging liability based on an official policy, practice, or custom, the plaintiff must prove each of the following elements by a preponderance of the evidence:

1. Deschutes County Sheriff acted under color of state law;
2. the two separate acts of selling property owned by the Rote Irrevocable Trust deprived the plaintiff of his particular beneficial rights under the laws of the United States and the United States Constitution as explained in later instructions;
3. Deschutes County Sheriff acted pursuant to an expressly adopted official policy or a widespread or longstanding practice or custom of the defendant Deschutes County; and
4. the defendant Deschutes' County official policy or widespread or longstanding practice or custom caused the deprivation of the plaintiff's rights by the civil unit of the Sheriff's office; that is, the Deschutes County's official policy or widespread or longstanding practice or custom is so closely related to the deprivation of the plaintiff's rights as to be the moving force that caused the ultimate injury.

While Plaintiff takes no joy in this analysis, the unfettered truth is that Deschutes County has embraced a practice of not questioning the party seeking the sale or the Deschutes Circuit Court which ordered the sale even when this constitutional violations are part of a racketeering scheme perpetrated in this case by criminal Albertazzi and Zweizig, Emerson and Nathan Steele.



In furtherance of this argument, Plaintiff put Deschutes County on notice of the unlawful sale in February 2022 and the sale was completed with Albertazzi/Zweizig seeking to engage in tax and collection fraud. But for Northwest Direct Homes (Inc.) being misnamed on the Notice to the Public of the sale as Northwest Homes, the sale would have likely been considered final. As a matter of policy Deschutes allowed Albertazzi and Zweizig to engage in a process intended to perpetrate tax and collection fraud. Even at the time of that sale, the Deschutes Sheriff Department had been put on notice that the stock of Northwest Direct Homes Inc was not owned by Rote. The sale was voided by the Deschutes Circuit, but by no act of resistance by Deschutes County Sheriff Office. **See Doc #48-11.**

The second unlawful sale scheduled for September 8, 2022 was stopped only because Rote received the Notice and challenge documents on the 6<sup>th</sup> of September, filed the challenge electronically the same day and drove to Deschutes and submitted a challenge to the sale in person on September 7<sup>th</sup>. This time the incremental evidence was a federal K-1 tax document showing that the stock of Northwest Direct Homes, Inc. is 100% owned by Rote's Irrevocable Trust. This is the same allegation Rote made in the first challenge and testified to in a hearing on January 20, 2022, testimony solicited by Albertazzi and the only evidence in the record in that hearing. Plaintiff does not know who stopped the unlawful sale. **See Doc #48-13.**

Notwithstanding the above argument, it is abundantly clear that Deschutes County will not act unilaterally to oppose an unconstitutional attack. The only reason the judgment in favor of child predator Zweizig has not been satisfied is (1) The Oregon State Bar Professional Liability Fund has resisted paying the malpractice claim from which that judgment arose, choosing instead to barter with Zweizig for an agreement to not pursue that claim; and (2)

because Albertazzi and Zweizig have disclaimed the transfer of the stock of Northwest Direct Homes Inc to engage in tax and collection fraud.

Deschutes County must be permitted to resist unconstitutional and illegal acts even when those are ordered by a corrupt Court. Finding them liable in this action will make that change necessary.

**E. The Application of the Plausibility Standard**

In *Bell Atlantic v. Twombly*, 550 U.S. 544, 547 (2007) and *Aschcroft v. Iqbal*, 556 U.S. 662, 678 (2009) the Supreme Court held that in order to survive a motion to dismiss for failure to state a claim, a complaint must be plausible. To satisfy this plausibility standard, a complaint must plead sufficient facts to permit a reasonable inference that the defendant is liable for the alleged misconduct.

Plaintiff has alleged sufficient facts to show Judge Alison Emerson awarded \$8,500 to Max Zweizig for Rote failing to secure a notary's signature and instead provided a response by declaration, and issued an order ex parte at Albertazzi's request to engage in discovery on cases already dismissed and affirmed by the Oregon Court of Appeals. At the time Albertazzi solicited Emerson, the Covid Pandemic was in full force. See Doc #52-6. There were very few opportunities to secure a notaries signature in Oregon until that law was passed by the Oregon Senate. See Doc #52-7, Doc #48-1, #18-11, #18-13.

Plaintiff has alleged adequate facts to show that the unconstitutional sale of property held in trust for the benefit of Plaintiff Rote was pursued by the Albertazzi/Zweizig criminal organization that the Sheriff Department did not stop based on a policy of not resisting. See Doc #48-11. There was nothing Rote could do to stop this unconstitutional sale and that issue effects thousands of citizens subjected to the same level of inaction. Plaintiff then showed that it was necessary to file suit in this case to make the department take notice on the unconstitutional sale

scheduled for September 8<sup>th</sup>. On information and belief, the Sheriff's office took no action on the second sale even when receiving the challenge to the sale and credible information that the stock of Northwest Direct Homes, Inc. was not owned by Timothy Rote. See **Doc #48-13**.

The endorsement of the unconstitutional taking of this property by the Deschutes County Circuit Court is best captured in Zweizig's Motion for Contempt which is a response to not being able to engage in the unconstitutional taking of that property. See **Doc #48-1**. Zweizig's declaration in support of that Motion absolutely confirms that Zweizig downloads, possesses and disseminates child porn in violation of federal and Oregon state laws. That declaration taken with **Docs #48-2 to #48-4** further confirms that Zweizig engaged in perjury to secure the very judgment pursued in Deschutes. **Doc #52-2** un-refutably shows Albertazzi and Zweizig effort to stay in Deschutes County in violation of state law (Rote has no nexus to Deschutes) so that these abuses can be accomplished with the Deschutes Circuit and presumably the Deshcutes County Sheriff Department.

Plaintiff has alleged sufficient facts to show that the judicial defendants actions are designed to benefit litigant Max Zweizig and that the defendants are well aware that Zweizig is an active child predator. Plaintiff has alleged specific facts to show that Defendants are all aware that Zweizig's deposition of December 21, 2020 (filed in cases 19cv01547 and 18cv45257) shows he admits to lying to the jury and losing an attorney over his child predation (which he did not deny). See **Doc #18-4**. Plaintiff has alleged specific facts to show that Zweizig moved to suppress his Deposition of December 21, 2020, claiming he would not get a fair trial if his child porn activity was known. See **Doc #20-1**.

Plaintiff showed Deschutes County law enforcement is fighting a prolific volume of child predation and has shown recent federal indictments of similar crimes. See Duggar and Gonzalez in **Doc #48-5, pages 7-16**.

Plaintiff alleges that Zweizig and Albertazzi crafted that declaration of September 15, 2022 to not deny the crimes associated with child porn by claiming to not be a pedophile or child predator. Plaintiff has shown that he has opposed immediately that Motion for Contempt by a Cross Motion showing the false statements made by Albertazzi and Zweizig (**Doc #48-10**) and that Deschutes took immediate action to deny that Cross Motion while allowing Zweizig's Motion to proceed. See **Doc #52-1**. That is by all accounts an endorsement of child predation by Emerson, Bethany Flint, Wells Ashby and the Deschutes Circuit Court.

Plaintiff alleged sufficient facts to show that the Defendants were aware of the forensic reports on Zweizig's child predation and other criminal activity, said forensic report (s) filed in case 19cv00824. See **Doc #20-12**. Plaintiff alleged sufficient facts to show that Josh Duggar has been convicted of possessing and distributing child porn, the same findings and forensic opinion on the record in that case showing the same forensic detail as found on Zweizig's computer. See **Doc #20-11**. Police officer Steve William's forensic report showing the child pornography was first published in case 19cv00824 on January 11, 2019. See **Doc #38-10**.

Plaintiff has alleged sufficient facts to show that there is a pattern of abusive behavior by the defendants implicating US 42 §1983 and §1985 and Constitutional violations of due process.

Plaintiff has alleged that the violations contained herein are endorsed by the Oregon Court of Appeals and Supreme Court of Oregon. See **Doc #18-19, #48-15, #48-16, and #52-2**.

**F. Addressing Specific Arguments of the Defendants**

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

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

Plaintiff also ascribes to all defendants 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). See *Starr v Bacca*, 652 F 3d. (9<sup>th</sup> Circuit 2011), supported by cases in the 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 Entitled to an Impartial and Disinterested Tribunal***

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 **Doc #48-1, 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 identifies a voluminous pattern of unconstitutional actions by defendants, 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 Docs #48-1-18**...and others.

Plaintiff asserts that the abuses of process were solicited by the judicial defendants and/or the institutional support for child porn is so well known that no additional schooling of prejudicial behavior need be encouraged. Moreover the pattern of abuse of favor by Judges Lininger, Wise, Kathie Steele, Kamins, Mooney and Emerson, have been objectively proven and all of those decisions were made without Oregon law support and/or by ignoring evidence prejudicial the abusers findings—such as Ann Lininger finding that the Rote’s counterclaims for

slander of title and interference with contract were filed to harass Zweizig. See **Doc #18-2, page 2, line 15-20**. That so emboldened Zweizig and Albertazzi that they repeated the language used by Ward Greene when presenting that draft order to Lininger, repeating it in Zweizig's Motion to have Rote imprisoned in Deschutes County (**Doc #48-1, pages 1-2**).

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.

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

Defendants misconstrue the law of 42 USC §1983 and §1985 as to the capacity of Judge or Michael Wise in acting through his private practice. Presuming that some of the judicial acts are not immune, the defendant judges would have engaged in the violations herein outlines as an individual. In this particular case, Plaintiff may need to amend his complaint to allege specific violations by the Deschutes County Sheriff (in his official capacity) and one or more individuals in the civil unit in their individual capacities that carried out the violations alleged herein.

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).

The defendants, individually and collectively, set in motion and took action in concert with state officials specifically designed to deny Plaintiff a right to a fair and impartial tribunal that one would predict if embraced to be one or more violations of due process.

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

It is un-refuted that the actions taken by the Sheriff's department to unlawfully sell the stock of Northwest Direct Homes, Inc. was accomplished through ORS 18.924 and that the Deschutes Sheriff Department carries out Notice of Sale under Writ of Execution. Plaintiff made specific challenges to the writ that were patently ignored. See **Doc #48-11, pages 7-19**. Plaintiff renewed that challenge after the sale of the stock was completed by the Sheriff's Department in February. Plaintiff succeeded in vacating that Judgment when the Sheriff department would not do so. See **Doc 48-11, 80**. Order issued, **Doc #48-11 page 81-82**.



Moreover, Plaintiff alleges a conspiracy to violate his rights and in particular between Emerson, Albertazzi, Steele and Deschutes County. “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 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, in this case under ORS 18.924 and other related statutes under Oregon law governing the sale of property via writ of execution.

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).

#### **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).

#### **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).

Deschutes Sheriff Department took no action to intervene and to stop an unlawful sale of the stock of Northwest Direct Homes, Inc.

It is not altogether clear that Albertazzi's Motion to have Rote imprisoned (**Doc #48-1**) is a lawful request, for the reasons outlined in Rote's Cross Motion for Contempt. **See Doc #48-10**. Measured however against Albertazzi's success at soliciting bias and contempt findings from the Deschutes Court, it is clear that Albertazzi and Zweizig feel they have a cart blanche relationship with that Court regardless of the facts or how outlandish the act. Plaintiff alleges that Albertazzi withheld from the Deschutes Court key information such as Rote's offer 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 (**#48-1, pages 3-10**) in **Clackamas**, and quashed subpoena (**Doc #52-8**) post discovery also in Clackamas. But Albertazzi did all of this and more and it demonstrates a proclivity of support for child predator Zweizig and a history to success in securing from the defendant judges violations of the Plaintiff's federal rights.

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.

**G. 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).

#### **H. 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.”).

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

Why are the named defendants in this case supporting Zweizig's child porn distribution business? After some investigation, Plaintiff alleges collusion among the defendants to groom and exploit children. There is substantial evidence that executives at the Oregon Health Authority and Oregon Children's Theater are aware of the grooming and molestation of children at the hands of one or more of the defendants named herein and that evidence had been turned over to the FBI. Support of Zweizig's use of the Oregon Court's to monetize and collect and award he secured by perjury, denying that he downloaded and disseminated child porn, now testimony that has been reversed, does nothing less than solidify those concerns of a vast network of child predators at the highest ranks of the state judiciary.

### ***I. 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. Caze*, 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 the Oregon Judiciary 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 **#48-1, Doc #18-4** and his **Motions to suppress** his testimony (**#48-3, 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 (**#48-4**) and then deny before a jury that he downloaded, possessed and distributed porn of any kind (**#48-2**). He does not now deny he did and does download, possess and distribute child porn (**#48-1**). He may have strained the definition of being a child predator as being limited to being a pedophile.

Martha Walters (John Doe 1) was appointed to the Supreme Court of Oregon by Ted Kulongoski. As Chief Judge, Walters assigned the Zweizig cases to Nakamoto, Kamins and Mooney. Walters pledged support for the decriminalization of possessing and distributing child pornography and is a child predator.

Lynn Nakamoto (John Doe 2) worked at the Markowitz firm through 2011 and until her appointment to the Oregon Court of Appeals by Ted Kulongoski. Governor Kate Brown appointed Nakamoto to the Supreme Court. Nakamoto retired soon after writing the Supreme Court Opinion supporting Zweizig. Nakamoto pledged support for the decriminalization of possessing and distributing child pornography and is a child predator.

Jacqueline Kamins worked at the Markowitz firm until her appointment to the Oregon Court of Appeals on January 17, 2020 by Kate Brown. Kamins pledged support for the decriminalization of possessing and distributing child pornography and is a child predator.

Kathie Steele was appointed presiding Judge of Clackamas Circuit by Martha Walters and remained Presiding Judge through 2021. Steele assigned Ann Lininger to the Zweizig cases

until Lininger recused herself. Steele pledged support for the decriminalization of possessing and distributing child pornography and is a child predator.

Josephine Mooney was appointed to the Oregon Court of Appeals by Kate Brown on May 17, 2019. Mooney pledged support for the decriminalization of possessing and distributing child pornography and is a child predator.

Ann Lininger was appointed to the Clackamas County Circuit in July 2017 by Kate Brown. Lininger pledged support for the decriminalization of possessing and distributing child pornography and is a child predator.

Alison Emerson was appointed to the Deschutes County Circuit in February 2020 by Kate Brown. Emerson pledged support for the decriminalization of possessing and distributing child pornography and is a child predator. Emerson's husband is a corporal in the Bend Police Department.

Bethany Flint (John Doe 3) was appointed to the Deschutes County Circuit in February 2016 and has been assigned the Zweizig Motion practice multiple times by presiding Judge Wells Ashby.

Wells Ashby (John Doe 4) was appointed presiding of Deschutes County Circuit Judge by Martha Walters in 2019 and remains presiding Judge today.

Deschutes County Sheriff should not have joined the outlined unconstitutional conduct, which symbolically is holding children down while the judicial defendants join Albertazzi and Zweizig in raping those children.

#### IV. CONCLUSION

Plaintiff asks for a declaratory judgment restraining the Deschutes County Sheriff 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 declaratory judgment freezing the collection action in Deschutes Case 19cv00824.

Plaintiff seeks economic and noneconomic damages in an amount not less than \$2,000,000, against the Deschutes County Sheriff Department.

For the reasons outlined above, the Court should at a minimum deny the Deschutes Motion to Dismiss until post discovery, when summary judgment on just the judicial acts will be more clearly formed. At the moment there is a conflation of immune and non-immune activities that Deschutes joined in, supported or failed to resist that constitute violations under §1983 and §1985.

Dated: October 3, 2022

s/ Timothy C. Rote

Timothy C. Rote  
Pro Se Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on October 3, 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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Dated: October 3, 2022

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