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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 EDELSON MOTION TO DISMISS AMENDED COMPLAINT HEARING REQUESTED

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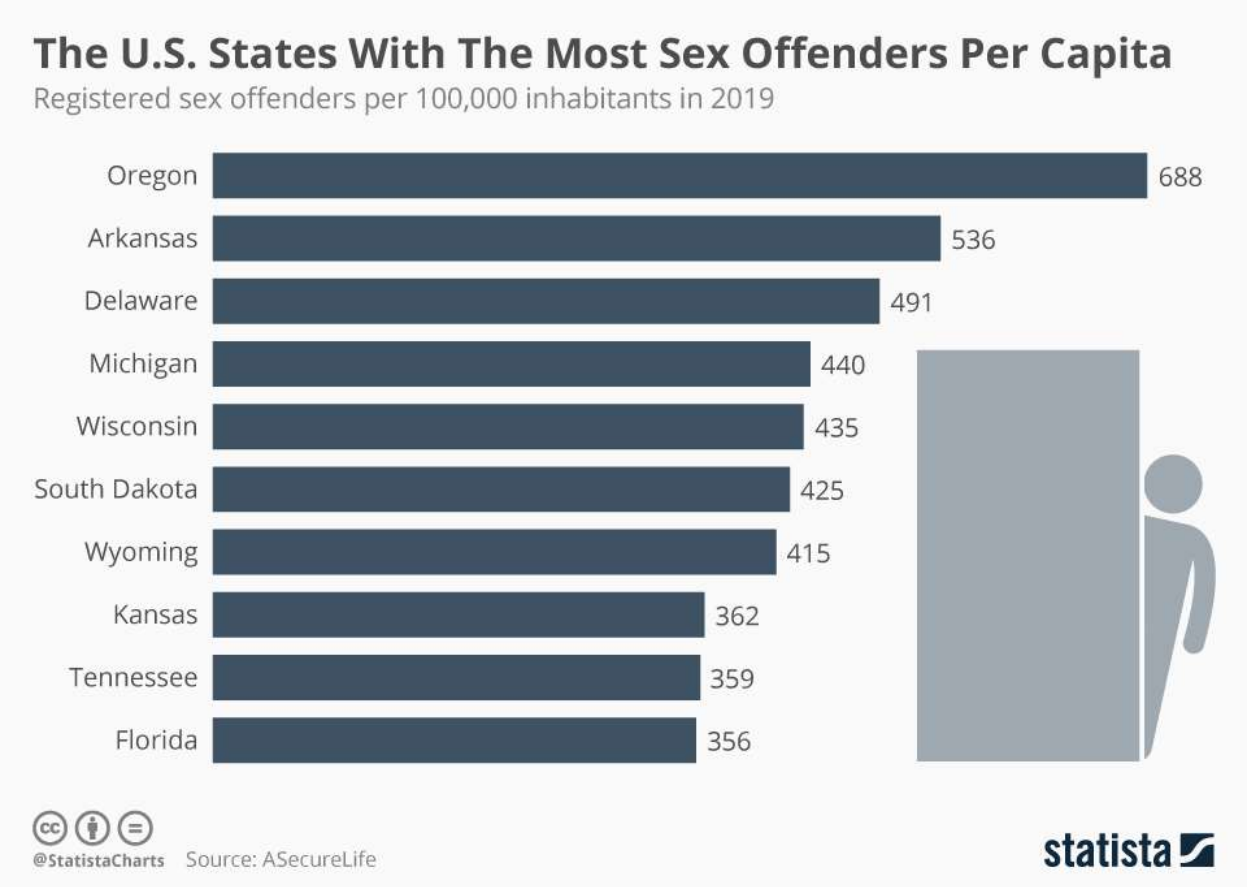
I. INTRODUCTION

Included herein is Plaintiff's Consolidated Response in Opposition to Jeff Edelson's ("Edelson") Motions to Dismiss Plaintiff's Complaint and First Amended Complaint.

The citizens of Oregon would likely be surprised by the Oregon Judicial Department's institutional support for child predators that download, possess and disseminate child porn. All but two of the Judicial Defendants named in this case were appointed to their respective positions on the bench by Governor Kate Brown. New appointees to the Oregon Court of Appeals typically come from one of two law firms in Oregon—the Markowitz firm and Perkins Coie. The Markowitz firm, where Edelson is a shareholder, represents the state of Oregon in a number of matters in a financial relationship that is estimated to be $25 Million a year to the Markowitz firm.

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



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, his efforts therein to suppress the forensic reports showing Zweizig's child pornography activity, his tantamount admissions to distributing child pornography in his deposition of December 21, 2020 in case 19cv01547 and his effort to then suppress that deposition (claiming that he would not receive a fair jury if his

child porn admissions were to become public), 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.

Edelson played a role in inciting bias from the Supreme Court of Oregon and it is fair to assume that he did so at the request of Justice Lynn Nakamoto in August through October 2020. Nakamoto wrote the Opinion lifting the cap on noneconomic damages for employment claims under ORS 659A.030, knowing that (1) Zweizig is a child predator; (2) Zweizig was a cybercriminal who launched an attack that dis-employed a 150 workers; (3) Zweizig had not been an employee of Rote or Northwest Direct for 15 years at the time of his judgment; (4) Zweizig was bound to a mandatory arbitration agreement that under Oregon Law precluded a jury award; and (5) Nakamoto had a conflict on that 9th Circuit referral case #18-36060 having worked on an arbitration case involving Zweizig when Markowitz represented Rote.

Plaintiff surmises that Nakamoto found that particular issue of removing the cap on employment claims as being important to the LGB community, of which Nakamoto is a highly visible member. That presupposes that Nakamoto believed Zweizig and others like him could be engaged in criminal conduct on their assigned office computer, such as collecting and disseminating child porn, and still use the employment statutes one day to make it risky to terminate such an employee for that conduct. There is no other plausible reason why Nakamoto

was so invested in that Supreme Court Opinion other than perhaps to attempt to decriminalize her own conduct. Others on the Supreme Court could certainly write and be involved in that case and question referred by the 9th Circuit.

Plaintiff respectfully submits that Edelson's Motion to Dismiss lacks merit and must therefore be denied at this time.

II. RELEVANT FACTS

Plaintiff alleges in his First Amended Complaint that Jeff Edelson, Martha Walters and the Oregon Judicial Department colluded to (1) violate procedural and substantive due process; (2) tactically engender bias that has infected the lower Courts against Plaintiff; (3) invite perjury and subornation of perjury to the proceedings of the superior Court; and (4) provide protection to those criminal players like Max Zweizig who download, possess and disseminate child pornography. Plaintiff alleges that these acts of retaliation are violations of 42 USC §1983, §1985 and other Constitutional mandates that at a minimum require procedural and substantive due process.

A. The Record of Violations in Deschutes County

The narrative and argument in Plaintiff's Opposition to the Judges Motion to Dismiss (**Doc #51**) are not relevant to the violations of the Superior Courts other than to show a pattern of abuse that likely evolved from the Supreme Court actions in 9th Circuit case #18-36060, wherein Edelson played a part. The record of violations is cited as to its significance but is not repeated herein.

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 of the Superior Courts other than to show a pattern of abuse that likely evolved from the Supreme Court actions in 9th Circuit case #18-36060, wherein

Edelson played a part. The record of violations is cited as to its significance but is not repeated herein.

C. The Record of Violations by the Superior Courts

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 Mooned 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 #**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

1. Motion to Disqualify Lynn Nakamoto

In 9th Circuit case #18-36060, the Court 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 Chris 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, Appellant attorneys representing Max Zweizig (Joel Christiansen and Shenoa Payne) secured from Defendant Edelson a highly prejudicial declaration and series of false statement that misled the court on Nakamoto's prior contact with then defendant Rote. See **#52-5, pages 14-17**. Consistent with these high prejudicial statements, Edelson did not admit that he represented Rote against Zweizig in a broad statement about representing Rote on a number of cases, *Id.*, **pages 14-16, ¶ 2**.

As the Motion for Summary Judgment filed in ASP case 050511-1 shows, Edelson represented Rote in that case against Zweizig. See **Doc #48-8, page 8**. The date of that Motion is June 4, 2009, a time when Lynn Nakamoto was with the firm and was the managing shareholder. In spite of the overwhelming evidence presented in that Motion for Summary Judgment, arbitrator Bill Crow did not grant that Motion. A short time thereafter, Edelson was removed from the arbitration action and that project was moved to another attorney outside that firm. A short time thereafter Edelson met ex parte with arbitrator Crow who was infuriated that Edleson was removed from the case. Crow was a shareholder of the Schwabe firm at that time. Both Markowitz and Schwabe occupied the PacWest Tower in downtown Portland. Both Crow and Edelson were also listed as arbitrators for the Arbitration Service of Portland and knew each other socially.

Once Crow refused to grant the Motion for Summary Judgment of Zweizig's claims, Lynn Nakamoto was consulted on appellate process if any available at the time Crow refused to grant Summary Judgment. Understand that Zweizig had been pursuing his case for six years without a shred of evidence.

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. See **Doc #48-8**. The forensic reports are referenced in Plaintiff Chapter 4 blog post on Zweizig's criminal conduct. See **Doc #48-4.** Edelson took this action to prejudice the Court against Rote, having apparently concluded that Nakamoto was going to write the Opinion for the Court. Rote, apparently, was the only one who did not know that at the time.

There is no evidence in the record of 9th Circuit case 18-36060 that Joel Christiansen or Shenoa Payne induced Edelson to issue a declaration in support much less commit perjury in his declaration. See **Doc #52-5, page 14-17**. There is no evidence in the record of that case that Edelson unilaterally discovered the challenge to Lynn Nakamoto and then acted to refute those allegations of conflict with a separately filed statement as a friend of the Court. The more plausible narrative is that Nakamoto reached out to Edelson because writing that Opinion had some enormous value to her personally.

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.

2. Motion to Disqualify Chris Garrett

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. The Court specifically denied Writ of Mandamus to force Deschutes to transfer the case to Clackamas, **See Doc #52-2**. The OSC also denied Review of 174364, for the award of unlawful fees (**#48-15),** and also for 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 #**48-1 to #48-18**, 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 the supports a different finding.

Judge Wise, even while disqualified, made no findings on the record in any hearing, in any published order or judgment that would have allowed an award of attorney fees and costs for anything but the mandatory fee award under ORS 31.152 (3), the anti-SLAPP provisions. There was no necessary finding by the Court that the ***un-served third amended*** complaint claims against Albertazzi for Oregon RICO were 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 by Nakamoto of Edelson to publish a knowingly false declaration to allow Nakamoto to write an Opinion of the Supreme Court to invalidate a cap on noneconomic damages, the effect of which was to provide cover to employees who use their respective office computers to distribute child porn…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. *Zweizig secured that judgment with the assistance of* Lynn Nakamoto.

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 the Judicial defendants and incorporates the "Relevant Facts" section of this brief.

For points of clarification, Plaintiff alleges that an unlawful fee petition rises to unconstitutionality when an adverse party seeks attorney fees through one or more strategies designed to conflate and conceal fees from recoverable proceedings (such as an anti-SLAPP) with non-recoverable proceedings (such as a Motion to Dismiss). Plaintiff alleges that the PLF does as a rule ask its vendors to conflate those actions in an effort to recoverable unlawful fees. Every fee petition identified in this case, Doc's **#38-2 to #38-4** used block-billing to conflate recoverable and non-recoverable fees. In every case a summary by category of fees was not filed by the defendants. And in all cases the defendant attorneys sought three (3) to eight (8) times more than allowed by law. Plaintiff is entitled to an inference that these were intentional acts to aid and abet the unconstitutional acts of all the defendants.

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

Among other allegations, Plaintiff alleges violations of rights under the color of state law. Plaintiff moved for disqualification of Lynn Nakamoto under ORS 14.275, which provides that a party appearing before the Supreme Court may move to disqualify a judge of the Supreme Court for one or more of the grounds specified in ORS 14.210, or upon the ground that the judge's participation in the cause would violate the Oregon Code of Judicial Conduct.

Defendant made numerous inaccurate and patently false statements in his declaration of August 18, 2020 in order to secure the opportunity for Lynn Nakamoto to take part in the case and write the opinion that was favorable to Zweizig and increased his judgment by $500,000. **See Doc 52-5, pages 14-17**.

We need not look beyond paragraph 2 of that declaration to implicate a violation of substantive due process under the color of state law. Edelson went to great lengths to omit that he and his firm worked on the Zweizig arbitration from 2004-2009, representing Rote. That was a glaring omission that had but one purpose and that was to violate Rote substantive due process rights to an independent tribunal.

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).

a. Plaintiff reiterates the allegations and evidence of First and Fourteenth Amendment Violations under color of state law by the Deschutes Circuit Court and Alison Emerson raised by Plaintiff in Section II A of **Doc #51**;

b. Plaintiff reiterates the 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 **Doc #51**; and

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 and **Doc #51**; and

d. Plaintiff reiterates the allegations and evidence of First and Fourteenth Amendment Violations under color of state law against the defendants for collusion raised by Plaintiff in Sections II A-D of this brief.

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 outlined in **Doc #51** and multiple acts of collusion by defendants as described in section II D.

To reiterate, Plaintiff alleges that Edelson colluded with Martha Walters, the Supreme Court of Oregon, Justice Lynn Nakamoto and others. Edelson's declaration makes no statement on who asked for the declaration and it is implausible that Shenoa Payne or Joel Christiansen would do so. **See Doc #52-5**. Plaintiff is entitled to an inference that the declaration was solicited by Nakamoto and the Supreme Court of Oregon. Taken at face value the declaration was intended to violate Plaintiff's protected rights to an independent tribunal.

C. Judicial Immunity

With Zweizig's Declaration of September 15, 2022 (**Doc #48-1**) 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 the Judges named as defendants in this case knew or believed Zweizig is a child predator as defined to include Zweizig and his child porn 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.

That allegation of support of child predators extends to the Supreme Court of Oregon and Lynn Nakamoto and her efforts to use her position as a Justice of the Supreme Court to attack Plaintiff for opposing child pornography. Edelson joined Nakamoto, a former shareholder and managing shareholder of that Markowitz firm, in avoiding a conflict that would have and should have removed Nakamoto from being involved and writing a referral opinion in 9th Circuit case #18-36060.

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 amended his complaint to add a demand for declaratory and injunctive relief against the 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.

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*.

As outlined in Section II C, Lynn Nakamoto is no longer an associate justice of the Supreme Court of Oregon. What remains un-refuted is that defendant Edelson issued a highly prejudicial declaration that provided coverage for Nakamoto to avoid a conflict that would have necessitated her recusal in 9th Circuit case 18-36060.

Nakamoto's solicitation of the declaration by Edelson is not protected. Neither would Edelson, Christiansen or Payne (John doe 5) be protected from damages under 42 USC §1983 and §1985.

Perhaps it is appropriate at this time to revisit to disposition of 42 USC §1938 case against judges Ciaverella and Conahan. Plaintiff does so below.

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 Ciaverella 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 Ciaverella*, 3:09-cv-00286-ARC, #537, page 3. Ultimately the §1983 claims against Ciaverella were dismissed under a judicial immunity theory. Subsequently, Ciaverella 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.

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

D. The Application of the Plausibility Standard

In *Bell Atlantic v. Twombly,* 550 U.S. 544, 547 (2007) and *Aschroft 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 that judicial activism by the named defendants often results in 42 USC §1983 violations. There should be no doubt that the allegations are plausible facially. Plaintiff repeats the allegations below.

Plaintiff has alleged specific facts to show that the fee petition by Greene/Zweizig contained 37 entries that had nothing to do with the anti-SLAPP proceedings and should not under Oregon law have been awarded, citing ORS 31.152 (3) and ORS 20.075 (2) (a). See **Doc 18-1 and 18-10**.

Plaintiff has alleged specific facts to show that the abuses of Ann Lininger were solicited by then presiding Judge Kathie Steele (2020). See Plaintiff Declaration **Doc #20**. This allegation is un-refuted.

Plaintiff alleged specific facts to show that Michael Wise invoked Judge Steele and Lininger in a September 20, 2021 hearing without provocation implicating a facial admission that Wise had engaged with Lininger and Steele and was going to retaliate against Plaintiff for his Civil Rights actions. See **Doc #20-1, pages 6-8**.

Plaintiff alleged specific facts to show that Wise held a hearing on his own disqualification rendering his orders and judgments void or voidable under Oregon law. **Doc #20-1, page 4-10**.

Plaintiff alleged specific facts to show that Wise granted a Motion to Dismiss and anti-SLAPP in favor of Albertazzi knowing full well that Albertazzi had not been served the Third Amended Complaint. **See Doc #20-1**.

Plaintiff alleged specific facts to show that Wise awarded attorney fees to Albertazzi of twice the amount supported in the attorney fee petition and applying ORS 31.152 (3) and ORS 20.075 (2). See **Doc #20-6**.

Plaintiff alleged specific facts to show that in a rehearing in June 2022, in front of Wise on the April 18, 2022 Judgments signed by Wise, that Wise invoked ORCP 68 after Mooney and Kamins did the same in the order issued by them in Appeal case 174364. See **Plaintiff's Declaration Doc #20, #20-7 and #18-19**.

Plaintiff alleged specific facts to show that Wise signed the order and limited judgment on the award of attorney fees to Albertazzi when Wise was not an appointed pro tem Judge and that Wise knew he was not an appointed pro tem Judge. See **Doc #20-7, #20-8 and #20-13**.

Plaintiff alleged specific facts to show that Judges Mooney and Kamins opined in an order dated May 19, 2022, that the Rote's appeal of Ward Greene's fee petition was objectively unreasonable in spite of the Rote's objectively proving that 37 out of 63 entries were unrelated to the anti-SLAPP proceedings. See **Docs #18-19, #18-10 and #18-1**.

Plaintiff alleged specific facts to show that Judge Steele acted outside of any plausible jurisdiction to sign the January 12th and 25th 2022 limited judgments secured by Michael Wise and signed by Steele when she was not the presiding Judge of Clackamas County and was a defendant in 3:19-cv-01988. **See Doc #20-4 and #20-5**.

Plaintiff alleged specific facts to show that the Oregon State Bar Professional Liability Fund Group filed a fee petition seeking $60,000 on an anti-SLAPP fee petition, wherein the billing statements only supported a $7,175 fee. See **Doc #20-9**. Plaintiff has shown that the anti-SLAPP fee petition awards should have been in the $7,000 range and not the plus $20,000 in damages awarded punitively. See **Docs #18-1, #18-10 and Doc #20-6 and #20-9**. Plaintiff will address the PLF in greater depth in his Response to the PLF Group.

Plaintiff has alleged sufficient facts to show Judge Alison Emerson awarded $8,500 to Max Zweizig for Plaintiff 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 **Exhibit 6**. There were very few opportunities to secure a notaries signature in Oregon until that law was past by the Oregon Senate. **See #52-7**, **Doc #48-1, #18-11, #18-13**.

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 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 Zweizig published a recent declaration testifying to not being a pedophile, but did not deny the specifically alleged criminal activity of downloading, possessing and disseminating child porn. Doc **#48-1, pages 1-2, #48-2, #48-3, #48-4** and indictments of similar crimes, Duggar and Gonzalez in **Doc #48-5**. 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 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 cases 19cv01547 and 18cv45257. See excerpt of such a report by Steve Williams, #**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**.

Plaintiff has alleged sufficient facts to show that the anti-SLAPP fee petition is tool in the Oregon Judicial Departments arsenal and to show a pattern of abusive behavior 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 Exhibit 2**.

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

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.**

2. 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.

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. Edelson's declaration clearly was intended to vitiate Plaintiff's protected rights. He was not a party to the litigation with Zweizig and did not represent Zweizig.

3. Under the Color of State Law 42 USC §1983

"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 Edelson to deny the evidence offered in this case heretofore. This evidence shows absolute and unequivocal attempt to solicit bias of the Supreme Court, most likely by Nakamoto and most certainly out of retaliation for suing the Markowitz firm and Edeson for malpractice. These acts implicate 42 USC §1983 violations.

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).

4. 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. Procunier*, 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).

5. 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).

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.

F. 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).

G. 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.").

H. 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.

More than any defendant, Edelson and Nakamoto were fully aware of the decadent and illegal behavior by Zweizig, of the evidence showing that he downloaded, possessed and disseminated child porn from a 120 gig hard drive. Edelson in fact hired the forensic experts in the arbitration case against Zweizig.

1. Federal Definitions

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

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

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

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

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

2. Oregon Definitions

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

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

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

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

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

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

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

3. Efforts by 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.

Plaintiff has no proof that Edelson is a child predator, but his declaration of August 18, 2020 nonetheless contemplates that he knows the declaration will be used by the Supreme Court to deny disqualification of Nakamoto. And he knew at that time that Zweizig was a child predator. He knew that because the forensic reports include the opinions of three experts who opined that the child porn was deposited during a period of time in which the computer and hard drives were in Zweizig's possession, that no one had accessed the 120 gig hard drive (where Zweizig deposited the child porn) after Zweizig reformatted that hard drive and returned it to Rote.

Edelson knew the consequences of his support.

IV. CONCLUSION

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

Plaintiff asks for a 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 defendant Edelson.

For the reasons outlined above, the Court should deny Edelson's 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 Edelson joined in, supported or refused to resist.

Dated: October 4, 2022

s/ *Timothy C. Rote*
Timothy C. Rote
Pro Se Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 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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