

No. 23-35292

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Timothy Rote,

Defendant-Appellant,

v.

Max Zweizig, et. al.

Plaintiffs-Appellees

On Appeal from the United States District Court
for the Portland District of Oregon
No. 3:15-cv-2401-HZ
Hon. Marco Hernandez

**APPELLANT'S EXCERPT OF RECORD
VOLUME I of III**

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No. 23-35292

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MAX ZWEIZIG,

No. 3:15-cv-02401-HZ

Plaintiff,

ORDER

v.

TIMOTHY C. ROTE, et. al.,

Defendants.

HERNÁNDEZ, District Judge:

Defendant Timothy Rote moves to vacate the Amended Judgment in this case under Federal Rule of Civil Procedure 60(d)(3). Def. Mot., ECF 365. Defendant argues that new evidence gleaned from state court actions between the parties demonstrate that Plaintiff perjured himself in the 2018 trial in this case. *Id.* at 1. The Court denies Defendant's motion.

Federal Rule of Civil Procedure 60(b) provides that the court may relieve a party from a final judgment for six reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Courts also have “inherent equity power to vacate judgments obtained by fraud.” *U.S. v. Estate of Stonehill*, 660 F.3d 415, 443 (9th Cir. 2001). Courts “exercise the power to vacate judgments for fraud on the court with restraint and discretion, and only when the fraud is established by clear and convincing evidence.” *Id.* at 443–44 (internal citations and quotations omitted).

“Fraud on the court” should . . . embrace only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetuated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.”

Id. at 444 (quoting *In re Intermagnetics Am., Inc.*, 926 F.2d 912, 916 (9th Cir. 1991)).

First, Defendant’s Rule 60 motion is untimely. In order to bring a motion under Rule 60(b)(3), the motion must be made “within a year after entry of the judgment.” Fed. R. Civ. P. 60(b)(c)(1). The Amended Judgment was filed on September 20, 2021. Am. J., ECF 361. Defendant filed his original motion over a year later, on November 15, 2022.

Second, Defendant has not demonstrated that Plaintiff engaged in fraud. The Court has reviewed Defendant’s exhibits and argument and finds no evidence that Plaintiff committed perjury or that Plaintiff’s counsel engaged in a scheme to defraud the Court by moving to exclude certain pieces of evidence. Moreover, the alleged perjury is not relevant to the

underlying case, which sought to answer one narrow question: whether Defendant's blogging activities constituted whistleblower retaliation against Plaintiff for participating in an underlying arbitration. Defendant's motion is denied.

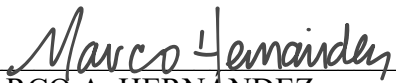
CONCLUSION

The Court DENIES Defendant's Amended Motion to Vacate Judgment [365].

Defendant's Motion to Vacate Judgment [363] is DENIED as moot.

IT IS SO ORDERED.

DATED: March 17, 2023.



MARCO A. HERNÁNDEZ
United States District Judge



Timothy Rote <timothy.rote@gmail.com>

Activity in Case 3:15-cv-02401-HZ Zweizig v. Northwest Direct Teleservices, Inc. et al Order

1 message

info@ord.uscourts.gov <info@ord.uscourts.gov>
To: nobody@ord.uscourts.gov

Thu, Feb 4, 2021 at 1:22 PM

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U.S. District Court
District of Oregon

Notice of Electronic Filing

The following transaction was entered on 2/4/2021 at 1:22 PM PST and filed on 2/4/2021

Case Name: Zweizig v. Northwest Direct Teleservices, Inc. et al

Case Number: 3:15-cv-02401-HZ

Filer:

WARNING: CASE CLOSED on 11/20/2018

Document Number: 353(No document attached)

Docket Text:

ORDER by Judge Michael W. Mosman: The documents submitted for filing on 1/29/21 by Defendant Timothy Rote (Motion to Vacate Judgment and Declaration in Support) have been reviewed for compliance with the pretrial order entered in 3:19-cv-1988 MO. The submitted documents are deemed frivolous and repetitive, and the Clerks Office is order to return the rejected filings to Mr. Rote. (eo) (Copy of order and submitted documents deposited in outgoing mail on 2/4/21.)

3:15-cv-02401-HZ Notice has been electronically mailed to:

Jared Hager jared.hager@usdoj.gov, CaseView.ECF@usdoj.gov, keith.ramsey@usdoj.gov

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Timothy C. Rote timothy.rote@gmail.com

3:15-cv-02401-HZ Notice will not be electronically mailed to:

Northwest Direct Marketing of Oregon, Inc.

Northwest Direct Marketing, Inc.

Northwest Direct Marketing, Inc.

Northwest Direct Teleservices, Inc.

Northwest Direct of Iowa, Inc.

Rote Enterprises, LLC

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Pro Se Defendant

Honorable Marco Hernandez

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MAX ZWEIZIG,

Plaintiff,

vs.

TIMOTHY C. ROTE, *et al.*,

Defendants.

Case No.: 3:15-CV-2401-HZ

DEFENDANT'S AMENDED MOTION TO
VACATE JUDGMENT FOR FRAUD UPON
THE COURT ON NEW EVIDENCIARY
ADMISSIONS BY PLAINTIFF DATED
DECEMEBER 21, 2020 AND SEPTEMBER
15, 2022

MOTION

Defendant respectfully offers his Motion to Vacate the Judgment and Dismiss the Plaintiff's the Judgment for Fraud upon the Court under FRCP 60 (d) (3), based suborned perjury during the January 2018 Trial, wherein Zweizig denied downloading, possessing and distributing child pornography, porn, music and videos. The new evidence offered through this Motion is Zweizig's deposition and admissions dated December 21, 2020 (**Exhibit 1**) in Clackamas case 19cv01547, Plaintiff's Motion to suppress that deposition and a declaration filed by Zweizig in Deschutes case 19cv00824 on September 15, 2022 (**Exhibit 2**). The declaration by Zweizig

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specifically denies being a pedophile but does not deny that he downloads, possesses and distributes child pornography using a peer to peer program registered to him.

INTRODUCTION

Defendant acknowledges that some people who download, possess and distribute child porn do not believe they are criminals or child predators because they have not as yet molested a child. The reasonable interpretation of the evidence provided in this Motion shows that not only did Zweizig engage in perjury in this case and during the trial in January 2018, but that he has become increasingly candid in his depositions and declarations in multiple state districts that provide credible evidence that the perjury in this case was suborned by counsel representing Zweizig in this and several other cases.

One of the latest examples of the solicitation of abuse by child predator Max Zweizig is his recent Motion for Contempt in Deschutes case 19cv00824. On September 15, 2022, Plaintiff Zweizig 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 (**Exhibit 2, page 2**). 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 this Court hide behind.

To take no action to vacate the judgment is tantamount to supporting 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.

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. Oregon has similar laws.

FACTS

Defendant references his prior Motions to Vacate for Fraud Upon the Court as laying the ground work for the pervasive perjury by Zweizig suborned by opposing counsel and offers herein new evidence of the plaintiff's collusion with counsel to perpetrate Fraud Upon The Court. That fraud is perjury, the subornation of that perjury by opposing counsel and the history

of these behaviors which Zweizig celebrates in his deposition of December 21, 2020 and declaration of September 15, 2022.

The Ninth Circuit itself acknowledged that “a long trail of [even] small misrepresentations—none of which constitutes fraud on the court in isolation—could ... paint a picture” of fraud on the court. *Sierra Pacific Industries, Inc., et al.*, No. 15-15799 (July 13, 2017). The evidence is a long trail of more than small misrepresentation and criminal conduct stemming back to September 2002.

A. The Body of New Evidence

(1) Zweizig’s Declaration in 19cv00824 of September 15, 2022.

Zweizig’s declaration claims that the allegations that Zweizig is a child predator and pedophile are false (**Exhibit 2, 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 by omission and an attempt to deceive the Court that was no doubt commissioned and suborned by his attorney Anthony Albertazzi.

Zweizig is pursuing a judgment of \$1 Million that he secured in this federal case (3:15-cv-2401). Zweizig filed an ORS 659A.030 lawsuit against Rote alleging therein that Rote had published blogs alleging forensic evidence ignored by the arbitrator in 2010 that objectively and summarily vitiated Zweizig’s ORS 659A claims in that case. **Exhibit 3** are excerpts of the trial transcript in case 3:15-cv-2415 in which Zweizig denies that he committed these federal and

Oregon crimes of downloading, possessing and disseminating porn of any kind. See **Exhibit 3, pages 7, 9, 68, 103, 104, 123 and 172.**

In order for Zweizig to lie to the jury, to do so credibly, it was necessary for him to try to exclude the forensic reports from the trial and he accomplished that. **Exhibit 4** is Zweizig's Motion in Limine in the 3:15-cv-2401 case, wherein he sought successfully to suppress the forensic reports from the jury, reports and testimony that affirmed Zweizig's criminal conduct related to child porn and for other criminal conduct including spoliation, perjury, cybercrime and destruction of evidence.

Exhibit 5 is one of Rote's blog posts (Chapter 4) and in evidence in this case, the post with which Zweizig took most offense and which allegedly caused him to file his ORS 659A.030 complaint in this case. The forensic reports used by Defendant Rote to reach his conclusions are cited and linked in that blog post and attached to this exhibit. The forensic report by Police officer Steve Williams is also 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 sectors 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. Much of this evidence arose in arbitration between the parties and it is un-refuted that Zweizig's forensic expert testified against him, confirming Zweizig's use of his computer to download, possess and distribute child pornography using a peer to peer program called bit torrent. The registration certificate was in Zweizig's name. This is un-refuted.

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For purposes of housekeeping, if you will, Zweizig used a computer having 120 gig hard drive issued to him and used that computer from his home. In May 2003 he claimed the hard drive failed and from that point on used a new 60 gig hard drive to conduct his employer related business. Zweizig was then head of the IT department for Northwest Direct. On his day of employment (November 13, 2003), Zweizig returned the computer with the 60 gig hard drive and a reformatted 120 gig hard drive (which had been removed from his computer). This is unrefuted. Subsequent review of those hard drives by forensic experts revealed child porn, porn, music and videos on the 120 gig hard drive.

Police officer and forensic expert Steve Williams provided a report identifying the child porn, porn and other material on the 120 gig hard drive. See **Exhibit 5, pages 6-31**.

Forensic expert Mark Cox also opined that the programming which Zweizig claimed did not exist did in fact exist but were destroyed by Zweizig when he reformatted the hard drive, **pages 40-42**.

Forensic expert Mark Cox also opined that from May 2003 to November 12, 2003 the hard drive was used primarily to store videos of Max Zweizig. He also opined that there was no evidence of use of the hard drive after Zweizig reformatted the hard drive of November 12, 2003, **page 47**.

Forensic expert Mark Cox also opined that contrary to Zweizig's testimony, the 120 gig hard drive had not failed in May 2003 and continued to be used up until the time it was reformatted, **page 51**.

(2) Zweizig's Deposition Transcript in 19cv01547 of December 21, 2020.

Exhibit 1 is Zweizig's deposition transcript in Clackamas County case 19cv01547, wherein he admits to a number of facts material and relevant in this case. For purposes of clarity,

case 19cv01547 is a fraudulent transfer case brought by Zweizig against defendants Tanya Rote and Timothy Rote on property Tanya acquired in 2003 to 2012, the latest of which was more than six years before the judgment in this case. Zweizig believes he is protected by the court.

Although the Zweizig deposition admissions will be addressed in the argument section of this brief, the sections of the deposition defendant will address by reference follow:

1. Zweizig alleged emotion distress because he was deposed on the 19cv01547 case, a case he brought (**Exhibit 1, page 4**);
2. Zweizig refused to acknowledge the only two documents his attorneys claimed to have used to justify the 19cv01547 litigation (**pages 6-8**);
3. Zweizig critiqued the opinion and order of this court in 3:14-cv-0406 (**page 9**);
4. Zweizig acknowledged that Ward Greene resigned from representing him in case 19cv01547 (**page 10**) upon Rote asking Greene to measure the impact to child molestation if Greene was successful in securing money for Zweizig (**page 47**);
5. Zweizig acknowledged that he got away with a \$1 Million jury award instead of \$150,000 because defendant Rote was not good at defending himself, which defendant argues is a reference to the suppressed forensic reports showing child porn (**page 10**);
6. Zweizig did not deny that he downloaded child porn and lied to the jury (**page 10**);
7. Zweizig claimed he is in danger for attending the deposition in New Jersey (**pages 22-23**);
8. Zweizig refused to acknowledge or provide documents in discovery, documents referenced to him by former counsel (**pages 26-29**); and

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9. Zweizig refused to disclose why then the Oregon State Bar PLF represented him in Clackamas case 19cv14552 (**page 33-34**) and subsequently in several other case, wherein Zweizig admits to not soliciting representation.

This evidence is offered in part for its specific support of allegations in this Motion and as the latest history of a litigant who is following a script with the intent of conning the litigation process.

(3) Zweizig's Motion to Suppress his deposition of December 21, 2020

Zweizig 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 Exhibit 1, pg 10, line 12.**

Soon thereafter and also in case 19cv01547 Zweizig 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. Defendant Rote opposed that Motion. **See Exhibit 6.** Clackamas Court refused to suppress his deposition testimony. **See Exhibit 6, pages 18-20.** The Court denied Plaintiff Zweizig Motion for a Pretrial Order (**Exhibit 11, pages 3-10**). The Rote's were during that same hearing granted Summary Judgment against all of Zweizig's fraudulent transfer claims in case 19cv01547. **See Exhibit 11, page 92.** As previously noted, Zweizig appealed and the Oregon Court of Appeals affirmed the Court granting the MSJ and denied reconsideration.

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 forensic evidence, Zweizig's history is to then lie about the existence of the forensic evidence and even of his own expert's prior testimony, implicating perjury in the 3:15-cv-2401 trial during which he claimed he did not download, possess or disseminate any porn. See **Exhibit 3, pgs 7, 9, 68, 103, 104, 123 and 172.**

(4) Defendant's Email to Ward Greene

Exhibit 1, page 48 is one of several emails defendant sent to former Zweizig counsel Ward Greene in case 19cv01547. The new evidence includes an admission by Zweizig that former counsel Williams Kastner quit representation over not wanting to be associated with Zweizig's present and past activity of distributing child pornography. Zweizig maintained that the publishing of the forensic reports to Greene affected his right to counsel in civil case 19cv01547. See **Exhibit 1, page 15.** As has been done with all attorneys who represent Zweizig, defendant Rote asks a pertinent question, which is if "you as counsel are successful in garnering property for Zweizig, how many more children will be molested." In all cases, the forensic reports filed in this case were provided to opposing counsel. A growing number of attorneys have refused to represent Zweizig, acknowledging the likely outcome of increases molestation and production of child pornography.

Also provided herein is an early Motion by Ward Greene in case 19cv01547 (**Exhibit 6, page 20**) asking the court to try to force defendant Rote to stop raising these child trafficking issues as Greene was having trouble staffing the litigation, a portion of the Motion provided as follows:

"Absent injunctive relief, Plaintiff will suffer immediate and irreparable injury, loss, or damage in the form of interference with Plaintiff's legal rights to prosecute this matter in accordance with Oregon law."

Defendant Rote in that case filed an anti-SLAPP to strike that Motion. Greene resigned and that Motion was been withdrawn.

B. The Body of Corroborating Evidence

(1) The Forensic Reports

Defendant **Exhibit 5, pages 6-51**, are the forensic reports that were suppressed in this case.

Exhibit 5, page 6-32 (Doc #120-18 filed in this case on June 22, 2017) was the first forensic report. In 2005, the first of many forensic reports was issued forensic experts showing Zweizig fabricated the crash of the 120 gig hard drive and reformatted it on November 12, 2003, just before returning it to NDT.

Exhibit 5, page 50 (Doc #120-17) addressed whether the 120 gig hard drive was used by Zweizig after Zweizig claimed he had reformatted it, for any known purpose, expert Cox concluding that it was used to store videos up until November 12, 2003 when Zweizig reformatted that hard drive.

Exhibit 5, page 46 (Doc #116-5) addressed again whether the 120 gig hard drove was used by Zweizig during a period of time in which Zweizig claimed the hard drive had been reformatted and placed in his safe. Expert Cox opined that the hard drive was in continuous use through November 12, 2003 by Zweizig and that the hard drive had not been used or accessed after that time. By May of 2003, Zweizig had refused to provide the programming and processing software generated by him during his employment, property that was owned by his employer NDT. On a visit to see Zweizig in New Jersey, Zweizig was making a presentation to Rote and feigned the crash of the 120 gig hard drive, a computer hard drive used exclusively by Zweizig from August 2001 to November 2003. Zweizig testified that the 120 gig hard drive had

crashed and he reformatted it immediately thereafter. This and other forensic reports refute Zweizig's testimony.

Exhibit 5, page 40 (Doc #120-2) is a report from expert Cox opining that the Foxpro program files deleted by Zweizig when he reformatted the hard drive on November 12, 2003 could not be recovered. This report also corroborates the existence of programs Zweizig claimed did not exist.

(2) Other Corroborating Evidence

Exhibit 7 is an array of information starting with recent news articles on arrests, indictments and convictions of local child porn criminals and includes the filed indictments federal indictments of TV personality Josh Duggar. In December 2021, Duggar was convicted on downloading, possessing and distributing child pornography using a peer to peer program registered to his name, bit torrent. Like Zweizig, he separated his office computer into two sectors. On the one sector he maintained business records. On the other however, he maintained his child porn and share that child porn with others. Zweizig did exactly the same thing.

Exhibit 9 is testimony from Jaime Gedye that he could find no programming files created by Zweizig or anyone else, on the Eugene servers, when he traveled to the Eugene location of NDT. Gedye had to recreate the programming and during that time NDT was shut down. Zweizig's behavior and performance deteriorated after the May 2003 feigned crash of the 120 gig hard drive, to the point that he was more than five months late in completing processing and returning data files to key clients. That came to an apex when Zweizig's failures were brought to Rote's attention. Zweizig refused to complete the processing unless given a raise. He was rebuffed in that raise, completed the processing and was immediately terminated on October 2, 2003 but with 45 days of notice, Rote wanting to secure the processing programs. Zweizig did

not provide the programming and NDT shutdown for 10 days right after Zweizig's last day. Ultimately the programming files were found on the 120 gig hard drive by the forensic experts.

Steve Williams was hired in 2005 to determine if Zweizig's hard drive contained programming that Zweizig had deleted. In 2003 Zweizig removed his employer owned programming from each and every server owned and used by his employer and then attempted to extort a raise. Zweizig was terminated but refused to turn over his programming. As a result his employer shut down for 10 days while the programming was being recreated. Williams found those programs on Zweizig's computer; however, since Zweizig reformatted the hard drive there was no opportunity to reverse the reformatting and scrambling of the programming. Unexpectedly, Williams also found the child porn, porn, movies and music that Zweizig had pirated and was making available to whomever he gave his site to.

Exhibit 10 is Plaintiff Response in Opposition to the State Judges Motion to Dismiss Rote Civil Rights Claims in this federal court, case 3:22-cv-0985. Zweizig has enjoyed a tremendous amount of support, bending over backwards to aid Zweizig, really to a point of objectively unreasonable rulings on anti-SLAPP's, Motions to Dismiss, RICO all of which violated Rote's right of due process. Defendant provides this Motion only as an example of what evolved from Zweizig's perjury in this case and his attorney's conscious subornation of perjury in this case.

Exhibit 11 is the transcript of a hearing in case 19cv01547, wherein the Clackamas Court denied Zweizig's Motion to suppress his deposition and then granted the Rote's Motion for Summary Judgment against Zweizig's fraudulent transfer claims, in his attempt to steal Tanya Rote's Sunriver home. Zweizig was offered alternative property of a higher value but chose instead to attack Defendant's family.

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LEGAL STANDARD

A judgment may be set aside under Rule 60(d)(3) if the movant provides clear and convincing evidence of “fraud on the court.” Fed. R. Civ. P. 60(3); see also *United States v. MacDonald*, No. 87-5038, 1998 U.S. App. LEXIS 22073, at *6 (4th Cir. Sept. 8, 1998) (“It is settled that the clear and convincing standard applies in . . . cases alleging fraud upon the court.”) (citing cases). Fraud on the court, as the Fourth Circuit recently emphasized, is “not your ‘garden-variety fraud.’” *Fox*, 739 F.3d at 135 (quoting *George P. Reintjes Co. v. Riley Stoker Corp.*, 71 F.3d 44, 48 (1st Cir. 1995)). The doctrine instead involves “corruption of the judicial process itself,” *Cleveland Demolition Co. v. Azcon Scrap Corp.*, 827 F.2d 984, 986 (4th Cir. 1986), and “should be invoked only when parties attempt ‘the more egregious forms of subversion of the legal process.’”

“Almost all of the principles that govern a claim of fraud on the court are derivable from the Hazel-Atlas case.” Wright & Miller, *Federal Practice and Procedure* §2870 (3d ed.).

Rule 60(d)(3) was added in 1948. The framers’ intention may best be indicated in the Advisory’s Committee’s discussion of the rule:

The amendment . . . mak[es] fraud an express ground for relief by motion; and under the saving clause, fraud may be urged as a ground for relief by independent action insofar as established doctrine permits. And the rule expressly does not limit the power of the court . . . to give relief under the savings clause. As an illustration of the situation, see *Hazel-Atlas Glass Co. v. Hartford Empire Co.* [322 U.S. 238 (1944)].

The court may take action with Motion of a Party.

ARGUMENT

Defendant's argument emphasizes that the scheme of misconduct was by design directed at the court, intended to mislead the court on law and fact, that it was perpetrated by plaintiff, plaintiff counsel Joel Christiansen and Sandra Ware (Zweizig's girlfriend) to exploit the litigation because they felt defendant Rote was incompetent to defend himself (**Exhibit 1, page 10**), "...You walked into a courtroom with \$150,000 against you and walked out losing a million. You're not good at it, sir. You should probably stop."

Fraud Upon the Court appears to be evaluated under a four part test described as (1) the offending party and his duty; (2) the conduct; (3) the victim; and (4) the relief.

Defendant's argument is that the most plausible inference drawn from Zweizig's statements in **Exhibit 1** is that the plaintiff's successful Motion in Limine, resulting in the suppression of the forensic reports, paved the way for Zweizig's false testimony at trial that he did not download and disseminate child porn, porn, movies or music, did not destroy programming owned by Northwest Direct ("NDT"), did not steal 500,000 identity records from NDT's clients and did not destroy that evidence. The forensic reports and testimony of defendant refute his allegations.

Defendant further argues that Christiansen (counsel) and Ware (NJ Counsel) suborned that perjury and that his attorneys representing in state court continue to suborn that perjury. That subornation appears to be a necessary element of this Motion.

Had Zweizig not lied about his child porn activity, this Motion would not likely be viable. Had the forensic reports not been suppressed, this action would not likely be viable. When combined with Christiansen's closing arguments misrepresenting almost all of the blog

and other evidence, the record of suborning Zweizig's perjury is abundantly clear and convincing.

Exhibit 1 provides clear and convincing evidence that Zweizig no longer denies that he lied to the jury about his child porn and that a number of attorneys also believe the forensic evidence in the record in this case and more specifically that Zweizig is a child predator.

Zweizig's attorney in case sought to suppress that December 21, 2020 deposition (**Exhibit 6, page 18-20**) as well as Defendant's continued public publishing of concerns at the abuses perpetrated by Zweizig on Rote, on the Court and on the public. Defendant is entitled to an inference that Zweizig believed that his child porn activities would make it hard to find a jury that would wasn't to support his effort to steal Tanya Rote's Sunriver property.

Williams Kastner filed an earlier version of the same Motion, in fact intimating on the record of having difficulty finding staff who wanted to work on the Zweizig account (**Exhibit 6, 19-21**).

Defendant is entitled to an inference in this case that the forensic reports if provided to a jury would not have resulted in a judgment in this case, absent Zweizig's perjury denying he downloaded porn of any kind.

Defendant is entitled to an inference that Zweizig's declaration of September 15, 2022 is a statement that Plaintiff omits strategically a reference to child porn, claiming that he is not a pedophile or child predator (**Exhibit 2, page 2, line 4**). The issue on which ZWEIZIG LIED to the jury was on the question of whether he downloaded, possessed and distributed child porn, porn, music and videos. Denying that he is not pedophile is not tantamount to denying his crimes on child porn or copyright violations. He does not now deny that he downloads, disseminates and distributes child porn. One could reasonably draw a conclusion in this declaration that his

attorney, Anthony Albertazzi, helped craft the declaration to suborn the perjury from this case. The attorneys who represented Zweizig in this case, namely Joel Christiansen and Shenoa Payne did suborn Zweizig's perjury all the way to the 9th Circuit.

Defendant has already provided to the court more than 20 counts of criminal conduct during the course of Zweizig employment with NDT, his perjury in the arbitration, 10 counts of perjury in this action before and during trial, and the subornation of that perjury by opposing counsel in this and all other cases preceding it. Some of that evidence will be repeated in this Motion.

A. The Framework of Analysis

In *Kupferman v. Consolidated Research & Manufacturing Corp*, 459 F.2d 1072 (1972) the court stated that [w]hile an attorney “should represent his client with singular loyalty that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court.” And when he departs from that standard in the conduct of a case he perpetrates a fraud upon the court. In other words, “[s]ince attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court.”

“Almost all of the principles that govern a claim of fraud on the court are derivable from the Hazel-Atlas case.” 11 Wright & Miller, Federal Practice and Procedure §2870 (3d ed.). In that case, Hazel-Atlas—alleging fraud on the court—commenced an action in 1941 to set aside a 1932 judgment for infringing Hartford's patent for a glass-making machine. *Hazel-Atlas*, 322 U.S. at 239. In support of Hartford's application for that patent, “certain officials and attorneys of Hartford determined to have published in a trade journal an article signed by an ostensibly disinterested expert” (William Clarke), championing Hartford's machine as “a remarkable

advance in the art of fashioning glass.” *Id.* Hartford received the patent in 1928 and sued Hazel-Atlas for infringement. *Id.* at 240-41.

As is particularly relevant here, “[a]t the time of the trial in the District Court in 1929,” Hazel’s attorneys “received information that both Clarke and one of Hartford’s lawyers” had “previously admitted that the Hartford lawyer was the true author of the spurious publication.” *Id.* at 241. Hazel-Atlas did not, however, raise the issue before the district court, which ruled in favor of Hazel-Atlas. Hartford appealed to the Third Circuit and, urging reversal, invoked the fraudulent publication signed by Clarke. *Id.* The Third Circuit, relying on that article, reversed and ordered the district court to enter an order of patent validity and infringement. *Id.* Even then, Hazel did not alert the Third Circuit to the evidence of fraud of which it had learned; instead, it entered into a settlement agreement with Hartford regarding damages. *Id.* at 243.

In 1939, the United States brought an antitrust action against Hartford, which exposed and confirmed the full story of Hartford’s involvement in the fraudulent publication. *Id.* Now armed with the complete set of established facts, Hazel-Atlas filed a petition in the Third Circuit to set aside that court’s judgment and the district court’s subsequent order. *Id.* at 239. The Third Circuit denied relief, holding, among other things, that “the fraud was not newly discovered.” *Id.* at 243.

This Court reversed. The Court acknowledged that “[f]ederal courts ... long ago established the general rule that they would not alter or set aside their judgments.” *Id.* at 244. But “[f]rom the beginning there has existed ... a rule of equity to the effect that under certain circumstances, one of which is after-discovered fraud, relief will be granted against judgments regardless of the term of their entry.” *Id.* This rule “was firmly established in English practice ...

to fulfill a universally recognized need for correcting injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the term rule.” *Id.*

Applying these principles, the Court concluded that the judgment against Hazel-Atlas could not stand, as the record offered troubling evidence of a “planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Appeals.” *Id.* at 245. That “Hazel did not exercise the 24 highest degree of diligence” in bringing the fraud to the court’s attention made no difference, for Hartford inflicted injury not just against a “single litigant” but rather committed a “wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society.” *Id.* at 246; cf. *id.* at 264 (Roberts, J., dissenting) (noting that “Hazel’s counsel knew the facts with regard to the Clarke article and knew the names of witnesses who could prove those facts” even before the settlement, but “[a]fter due deliberation, it was decided not to offer proof on the subject”). At bottom, the Court reasoned, “it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants.” 322 U.S. at 246; see also *United States v. Beggerly*, 524 U.S. 38, 47 (1998) (citing Hazel-Atlas and concluding courts must intervene “to prevent a grave miscarriage of justice”).

B. The Application of Hazel-Atlas In This Case

(1) The Offending Party and His Duty

The offending party in this action is plaintiff counsel Joel Christiansen, and New Jersey attorney Sandra Ware who engaged in conduct as outlined below that suborned the perjury of Max Zweizig in this case. Citing *Kupferman v. Consolidated Research & Manufacturing Corp*, 459 F.2d 1072 (1972) and others it is well established that both Christiansen and Ware have a duty of “loyalty to the court, as an officer thereof, demands integrity and honest dealing with the

court.” And when he departs from that standard in the conduct of a case he perpetrates a fraud upon the court. In other words, “[s]ince attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court.”

(2) The Conduct

Christiansen successfully (1) refused to provide discovery from plaintiff and opposed a Motion to Extend time of Discovery (Doc #111); (2) Quashed a subpoena to Sandra Ware and Schwabe Williamson on Crow’s file (Doc #126); and (3) suppressed the forensic reports through a Motion in Limine (Doc #150).

Christiansen’s refusal to provide discovery was intended to exploit a *pro se* litigant so as to suborn Zweizig’s denial of the forensic evidence referenced and linked in the blog and for Zweizig downloading and disseminating child pornography. This was a particularly unique circumstance where Rote was denied discovery from Zweizig and an opportunity to depose Sandra Ware and Zweizig.

Christiansen’s successful motion to Quash the subpoena of Crows records in the arbitration had the effect of suborning Zweizig’s denial during trial of the forensic evidence submitted in the arbitration, linked and identified in the blog showing Zweizig engaged in criminal conduct not the least of which was downloading and disseminating child porn. Most important encouraged Christiansen’s misrepresentation of the findings of the arbitrator on the forensic reports which he then exploited in his Motion in Limine.

Christiansen’s successful motion to Quash the subpoena of the deposition of Sandra Ware had the effect of suborning Zweizig’s denial during trial of the forensic evidence submitted in the arbitration, linked and identified in the blog showing Zweizig engaged in criminal conduct not

the least of which was downloading and disseminating child porn. Ware would have been able to corroborate that activity.

Christiansen's successful Motion in Limine had the effect of misleading the court into believing that the accuracy of the forensic reports had been litigated in the arbitration and reduced to a finding in Zweizig's favor, which was a gross misrepresentation he refused to correct and had the effect of suborning Zweizig's denial during trial of even the existence of the forensic evidence submitted in the arbitration, linked and identified in the blog showing Zweizig engaged in criminal conduct not the least of which was downloading and disseminating child porn.

Thus, for example, if an adversary misrepresents certain relevant information, fails to disclose such information, requests admissions that he knows to be false, lies during a deposition, or engages in any other deceitful form of discovery, he has clearly violated Rule 26 and has potentially engaged in fraud, misrepresentation, or other misconduct prohibited by ethical rules and state and federal rules of civil procedure.

If a party is responsible for undermining the integrity of the judicial process because it chose to recklessly present misleading or false evidence to the court and the court's judgment was influenced by the conduct at issue, the judgment should be set aside as a fraud on the court.

Defendant believes that the long term behavior of the plaintiff must also inform the court of the plaintiff's intent in this case since it is a repeating pattern of abuse. The scheme today is the same scheme that has been deployed by Zweizig and his legal team for seventeen years.

As most schemes do, the Zweizig-Christiansen scheme in this case unravels when Zweizig boldly claims that he was denied representation because Ward Greene did not want to be associated with Zweizig child porn history. Although that was an admission set up by an

email defendant Rote sent to Williams Kastner (**Exhibit 1, page 47**), the Motion to restrict statements to attorneys with copies of **Exhibit 5 (Motion, Exhibit 6)** showing the child porn, is an admission of common knowledge that all the attorneys representing Zweizig possess--that Zweizig admitted to the porn and other criminal acts outlined in **Exhibit 5**. And if he admitted to the porn, he committed perjury to the jury in this case when he denied it. Christiansen would only suborn that perjury if it was not going to backfire. He did as described take steps to suborn perjury and until now it has not backfired.

Exhibit 1 is as identified a deposition transcript in Clackamas County case 19cv01547 and shows numerous evasive acts important in Zweizig post-judgment litigation, acts that are a repeat of those in this case which implicates a scripted plan or scheme. **Exhibit 1** shows that Zweizig refused to provide documents referenced as coming from him by the declaration of his attorney Taryn Basauri; initially refused to acknowledge Joel Christiansen as his attorney in this case; refused to acknowledge the only two documents provides in discovery in that case; refused to explain why he and Ware were represented by the PLF free of charge in Clackamas case 19cv14552; admitted his attorney quit over the child porn; did not deny that he downloaded and disseminated child porn as the forensic reports so indicate and ;admitted that Rote's pro se status in this case was exploited.

Exhibit 2 is Zweizig's declaration in Deschutes case 19cv00824 and is a statement by Zweizig that he is not a pedophile, but nonetheless serves as an admission that Zweizig downloads, possesses and disseminates child porn. **Exhibits 3-11** corroborate Defendant Rote's position in this case.

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(3) The Victim

Defendant is not the only victim. While Defendant has previously argued that plaintiff's testimony was replete with lies and therefore perjury, that Christiansen suborned that perjury directly in the suppression of evidence and indirectly in his closing arguments, Exhibit 1 and 2 reflect recent and brazen admissions by Zweizig that he lied to the jury in this case.

Exhibit 1, page 10, "...You walked into a courtroom with \$150,000 against you and walked out losing a million. You're not good at it, sir. You should probably stop."

There is little room to conclude that Zweizig acknowledged abuses of the litigation process by him and his team that defendant could not overcome.

The plaintiff's Motion in Limine in this case (**Exhibit 4**) intentionally misled the court into believing that the interpretation of the forensic reports had already been adjudicated in the arbitration in favor of Zweizig. There was nothing further from the truth as the Arbitrator's Opinion and Order (which was on the record) showed. The arbitrator did not refute that Zweizig downloaded and disseminated child porn or destroyed programming owned by NDT causing a shut down. The suppression of that forensic evidence not only vitiating the defendant's defense, but its absence was likely critical in the plaintiff's case because they alleged defendant's allegations in the blog by reference to those forensic reports were not truthful.

Defendant asks this court to also recognize the maxim the Supreme Court expressed in *Hazel-Atlas*: the fraud-on-the-court rule should be characterized by flexibility and an ability to meet new situations demanding equitable intervention.

Because of the equitable and flexible nature of the rule, this defendant contends that courts have ample leeway and discretion to consider the victim's status—i.e., those parties

unable to recognize or combat the fraudulent activity—in determining whether to set aside a judgment for fraud on the court.

Defendant will also contend that if Ward Greene believed that the forensic reports showed definitively that Zweizig had been engaged in multiple criminal acts, that both Christiansen and Sandra Ware believed the same and designed their discovery actions and Motion in Limine to exploit the defendant and deceive the court. Plaintiff made his claims that Ward Greene resigned no longer wanting to represent Zweizig and the raping of children, to which Zweizig ascribes an attempt to deny him a right counsel. **See Exhibit 1**. This attack is not just an attack on the defendant but on the litigation process itself.

Plaintiff should have provided in discovery specific blog posts and the forensic reports referenced he claimed were dishonest, as in a challenge to the report itself. A number of these forensic reports were in fact already on the record in the federal confirmation of the arbitration award in 2011 and in the arbitration and there was no allegation that the forensic reports provided in **Exhibit 5** were not in the record in multiple cases. Because discovery was not provided, plaintiff took a position even challenging the existence of the forensic reports, which implicates an attack directed to the litigation process itself.

The totality of the evidence provided herein shows a pattern by plaintiff of discovery abuses back to 2003, designed to not be responsive, to cover up and or destroy evidence such as digital email files, programming, identity records, child porn, movies, etc. **Exhibit 1** shows the same pattern of abuse today, where Zweizig produced only two documents to support his narrative in Clackamas County case 19cv01547. He attacks Tanya Rote in that case with no evidence to support the action and tied up a property for more than two years using an unlawful *lis penden and lien*. The Rote's prevailed in that case.

In spite of having no evidence to prosecute his claims against the Rote's, which included an effort to take Tanya Rote's Sunriver property, Zweizig was nonetheless unrepentant in his belief that he could convince a jury even with no evidence (**Exhibit 11, page 55**) as follows:

“I would just drop this whole thing if I didn't feel that this was, not only something in my best interest, but in the best interest of, you know, not setting some sort of limit on what a rich person can do to a person. This has been tough and I think I have a very good case for this or I wouldn't bring it.” The truth is that Zweizig and by and large his attorneys are willing to lie, cheat and steal at every corner of litigation.

And his attorneys designed and suborned all of it. This is not advocacy. This is criminality. This is discovery abuse and perjury. This is a scheme and plan that suborns that perjury, a plan scripted and used by Zweizig and Ware since September 16, 2001.

(4) Remedy

Interestingly, although Rule 60(d)(3) is the only rule that even mentions the fraud-on-the-court doctrine, other Federal Rules of Civil Procedure, including Rules 11, 16, 26, 37, and 41, have been cited in applying the doctrine. For example, courts have dismissed, defaulted, and sanctioned litigants for fraud on the court, and have found the necessary authority outside of Rule 60(d)(3)—often citing the inherent power given to all courts to fashion appropriate remedies and sanctions for conduct which abuses the judicial process. See, e.g., *Brockton Sav. Bank v. Peat, Marwick, Mitchell & Co.*, 771 F.2d 5, 11–12 (1st Cir. 1985); *Wyle v. R.J. Reynolds Indus., Inc.*, 709 F.2d 585, 589 (9th Cir. 1983); and *Eppes v. Snowden*, 656 F. Supp. 1267, 1279 (E.D. Ky. 1986).

Some courts have premised dismissal or default of a litigant who committed fraud on the court entirely on Rule 11. *Combs v. Rockwell Int'l Corp.*, 927 F.2d 486, 488 (9th Cir.

1991). Other courts have relied on Rule 41(b) for authority to dismiss a plaintiff who has committed fraud on the court. *C.B.H. Res., Inc. v. Mars Forging Co.*, 98 F.R.D. 564, 569 (W.D. Pa. 1983) (dismissing under Fed. R. Civ. P. 41(b) where party's fraudulent scheme, including use of a bogus subpoena, was "totally at odds with the . . . notions of fairness central to our system of litigation").

There is no statute of limitation under Rule 60 (d) (3). Rule 60(d) (3), serves one purpose: to "set aside a judgment for fraud on the court." That is the remedy defendant seeks.

Based on the indiscretion at issue, defendant presumes the court may set aside the judgment and additionally take any of the following actions: (1) require a trial on the merits unblemished by the misconduct, (2) sanction the offending party by an offsetting award, (3) dismiss a particular cause of action, or (4) dismiss the entire proceeding with prejudice.

CONCLUSION

Based on the above facts and arguments, defendant asks the court to vacate the judgment of \$1 Million plus related attorney fee awards, those awards in favor of child predator Max Zweizig.

Dated: November 15, 2022

s/ Timothy C. Rote

Timothy C. Rote

Pro Se Defendant

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2022, I filed the foregoing with the Clerk of the Court by hard copy, which defendant believes will send notification of such filing to the following:

Joel Christiansen
812 NW 17th Ave,
Portland, OR 97209
joel@employeeelawyer.io

and I hereby certify that I have mailed by United States Postal Service and email the document to the following non-CM/ECF participants:

Joel Christiansen
812 NW 17th Ave,
Portland, OR 97209
joel@employeeelawyer.io
Counsel for Zweizig

s/ Timothy C. Rote
Timothy C. Rote
Pro Se Defendant
E-Mail: Timothy.Rote@gmail.com

Timothy C. Rote
7427 SW Coho Ct. #200
Tualatin, OR 97062
T: (503) 272-6264
E: timothy.rote@gmail.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MAX ZWEIZIG,

Case No. 3:15-cv-02401-HZ

Plaintiff,

**DECLARATION OF TIMOTHY
ROTE IN SUPPORT OF MOTION TO
VACATE THE JUDGMENT FOR
FRAUD UPON THE COURT**

v.

TIMOTHY C. ROTE, a citizen of the state of Oregon, **NORTHWEST DIRECT TELESERVICES, INC.**, an Oregon for-profit corporation, **NORTHWEST DIRECT MARKETING OF OREGON, INC.**, an Oregon for-profit corporation, **NORTHWEST DIRECT MARKETING, INC.**, an Oregon for-profit corporation, **NORTHWEST DIRECT OF IOWA, INC.**, an Iowa for-profit corporation, **ROTE ENTERPRISES, LLC**, an Oregon limited liability company, **NORTHWEST DIRECT MARKETING, INC.**, aka Northwest Direct Marketing (Delaware), Inc., a Delaware Corporation, and **DOES 1 through 5**,

Defendants.

I, Timothy Rote, do hereby declare:

1. I represent myself in the above-captioned case. I make this declaration on personal knowledge and am competent to testify to the matters stated herein.

2. Attached hereto as Exhibit 1 is a true and correct copy of Max Zweizig's deposition transcript dated December 21, 2020 taken in case 19cv01547, a fraudulent transfer action filed against Tanya Rote on a Sunriver property interest she acquired in 2012. The deposition is material because it shows Zweizig's concern over losing an attorney who evaluated the forensic reports sent to Ward Greene, raising awareness that assisting in monetizing Zweizig's perjury will result in the molestation of numerous additional children. Zweizig does not at any point claim he did not and does not download, possess and distribute child porn. No denial of this criminal conduct.

3. Attached hereto as **Exhibit 2** is a true and correct copy of Max Zweizig's declaration in Deschutes case 19cv00824, wherein he denies being a pedophile but does not deny downloading, possessing and distributing child pornography. He asks that court to place Rote in prison for prevailing in case 19cv01547.

4. Attached hereto as **Exhibit 3** is a true and correct copy of the trial transcript in this case, which I cite to with some frequency identifying the testimony by Zweizig denying that he downloaded child porn and porn. This brazen denial of the child porn is I believe a suborned perjury strategy that was available to Zweizig when the forensic reports were suppressed from the trial.

5. Attached hereto as **Exhibit 4** is a true and correct copy of Zweizig's Motion in Limine to suppress the forensic reports I references in my blog post. The Court granted that Motion in Limine.

6. Attached hereto as **Exhibit 5** a true and correct copy of my blog post on the record in this case, that was presented at trial. Missing from the trial however are each of the written opinions by forensic experts who opined that Zweizig downloaded, possessed and distributed child pornography from a 120 gig hard drive during the time he possessed that hard drive and did so by using a software program registered to Zweizig. Those forensic reports are provided here.

7. Expert and Police Officer Steve Williams found the programming, some

1900 files. This is un-refuted. He also found a peer to peer program used to upload files and download files and that the program was registered to Zweizig. As Williams explained to me that peer to peer program typically works to violate copyright laws and is used by disseminators of child porn by permitting a perp to download a file if he/she first uploads a file. That's what was going on with the 120 gig hard drive Zweizig returned on his last day, a hard drive he claimed had crashed in May of 2003 and had been reformatted by him in May 2003. Exhibit 8 and subsequent reports show that the hard drive never crashed; rather it was reformatted on November 12, 2003 just before Zweizig turned it over and it contained videos of child porn, porn, movies, and music. Williams also found personal identity records stolen from NDT's clients. This evidence is un-refuted. Zweizig's forensic expert Justin McAnn also confirmed the findings of Exhibit 8. Subsequent forensic reports confirm that the hard drive was not accessed or used by anyone after Zweizig returned the hard drive.

8. Attached hereto as **Exhibit 6** is a true and correct copy of my Response in opposition to Zweizig's pre-trial petition to suppress his deposition of December 21, 2020 and to force me to stop blogging on the case and other matters of public concern. Zweizig's pre-trial Motion is also provided herein as was a Motion filed a year earlier by Ward Greene. The hearing on that Motion was in March 2021 and was denied. The transcript of which is provided as **Exhibit 11**. At this stage of the litigation this Motion by Zweizig was tantamount to a Motion in Limine.

9. Attached hereto as **Exhibit 7** is a true and correct copy of local newspaper articles of arrests and convictions of criminals downloading and possessing child porn. I have also added the indictment of TV personality Josh Duggar, who like Zweizig separated his business computer into two or more sectors. On the one sector Duggar and Zweizig maintained regular business records. On the second and subsequent sectors, both Duggar and Zweizig maintained their stash of child porn and allowed others from the dark web to see their child porn and acquire from other child porn using a peer to peer program of bit torrent and other similar programs. Duggar was convicted of holding the same amount of child porn as Zweizig and was convicted to 12 years in federal prison.

10. Attached hereto as **Exhibit 8** is a true and correct copy of a forensic report on the 60 gig hard drive, also in Zweizig's possession at the time of his termination in
Page | 3

2003.

11. Attached hereto as **Exhibit 9** is a true and correct copy of Jamie Gedye's testimony during the arbitration hearings between NDT and Zweizig in 2010. Gedye testified that he flew to Eugene to recreate programming necessary for NDT to continue to process data and produce reports. He testified that he found none of the programming Zweizig claimed was on the Eugene servers. Zweizig first claimed there were no programs. Later he recanted that testimony and claimed there were programs and they were on the Eugene Servers.

12. Attached hereto as **Exhibit 10** is a true and correct copy of a Response I filed in case 3:22-cv-0985. The reason I believe this is relevant is that Zweizig has enjoyed voluminous support from Clackamas and Deschutes County in his cases there at certain times, and at times those decisions implicated civil rights abuses. I believe that vacating the judgment in this case will mitigate the damages perpetrated on me, my wife, my children and grandchildren over the last 5 years. I will not willingly turn over \$1 million to a child predator like Zweizig.

13. Attached hereto as **Exhibit 11** is a true and correct copy of the transcript of a hearing in Clackamas County addressing and granting my and my wife's Motion for Summary Judgment. The first 10 pages address Zweizig's pre-trial petition for what is essentially a gag order, asking the Court to suppress his deposition and my continued blogging, arguing that he would not receive a fair trial before a jury if the truth of child porn activities became public knowledge. The Court denied Zweizig's Motion. Throughout the remainder of this hearing Zweizig and his attorney tried very hard to convince the Court to allow them to proceed to a trial without a shred of evidence supporting his fraudulent transfer claim. The Court granted my summary judgment Motion, affirmed on Appeal.

14. The evidence I provided herein is sufficient for the Court to find that Zweizig engaged in perjury during the trial of January 2018. He denied downloading, possessing and distributing child porn some 6 times. Subsequently, however, he has not denied this child porn activity and as the record now shows went to some length to suppress his deposition of December 21, 2020. He did not deny the allegations of his criminal conduct with respect to child porn, which is the relevant inquiry. Moreover and

only two months ago he again claimed that he is not a pedophile, nor a child predator. He did not deny that he did and does download, possess and disseminate child porn. This is I think the final nail in the coffin of his criminal conduct before this Court and others and vacating the judgment is called for and legally justified.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

Dated: November 14, 2022

/s/ Timothy C. Rote
Timothy C. Rote,
Defendant *Pro Se*

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DECLARATION OF TIMOTHY C. ROTE and Exhibits on:

Joel Christiansen, OSB #080561
VOGELE & CHRISTIANSEN
812 NW 17th Avenue
Portland, OR 97209
T: (503) 841-6722
Email: joel@employeelawyer.io

By the first class mail and email on November 15, 2022.

/s/ Timothy C. Rote

Timothy C. Rote,
Defendant *Pro Se*

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

MAX ZWEIZIG,)
)
 Plaintiff,)
)
 vs.) NO. 19CV01547
)
 TANYA ROTE and TIMOTHY ROTE,)
 husband and wife; and NORTHWEST)
 HOLDING, LLC, an Oregon limited)
 liability company,)
)
 Defendants.)
 _____)

DEPOSITION OF MAX ZWEIZIG

Appearing Remotely From

Cherry Hill, New Jersey

Taken on behalf of the Defendant

Monday, December 21, 2020

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BE IT REMEMBERED THAT, pursuant to Oregon Rules of Civil Procedure, the deposition of MAX ZWEIZIG was taken remotely by LaRisa Y. Giacomini, a Certified Shorthand Reporter for Oregon, California, Idaho, and a Registered Professional Reporter, that pursuant to Oregon Revised Statute 44.320 said reporter is empowered to administer oaths to witnesses, that the above-named witness was placed under oath on Monday, December 21, 2020, commencing at the hour of 10:04 a.m.

APPEARING REMOTELY

For Plaintiff: ALBERTAZZI LAW FIRM
By: Anthony Albertazzi
296 SW Columbia
Suite B
Bend, Oregon 97702

For Defendant: Timothy Rote
Pro Se

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EXAMINATION BY:	PAGE
MR. ROTE	4

EXHIBITS FOR IDENTIFICATION:	PAGE
1 3:14-cv-00406-HZ Findings of Fact & Conclusions of Law	9
2 Declaration of Michael Montag	16
3 Agreement for the Operation & Transfer of Real Property, Sunriver, Oregon	17
4 Asset Contribution Agreement	20
5 2014 Schedule K-1 for Northwest Holding Company	21
7 VRBO marketing page	23
8 Declaration of Taryn Basauri	23
9 Declaration of Taryn Basauri	26
10 Vacation rental agreement form, 5 pages	29
11 Seller's Counter Offer on Sunriver property	31
12 Plaintiff's Response to Defendant's First Request for Production	35
13 Copy of Twitter post	35

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1 REPORTED REMOTELY FROM DESCHUTES COUNTY

2 Monday, December 21, 2020, 10:04 a.m.

3
4 **MAX ZWEIZIG,**

5 called as a witness herein in behalf of the Defendant,
6 having been first duly sworn on oath by the Certified
7 Shorthand Reporter, was examined and testified as follows:

8
9 **EXAMINATION**

10 **BY MR. ROTE:**

11 Q. Can you state your full name for the record,
12 please?

13 A. Maximilian Douglas Zweizig. And I want --
14 now, that we're on the record, I would like to make sure
15 that I have on the record this deposition is being done
16 under a little bit of duress.

17 The things that you're doing out there on the
18 internet is not very fair to me being -- sitting in this
19 position under this kind of pressure from you, answering
20 questions from you, especially directly from you. So I
21 want to make sure that was on the record. That's all.

22 Q. Have you ever been arrested and/or convicted
23 of a felony or misdemeanor?

24 A. No, sir.

25 Q. what did you do to prepare for this deposition

1 today?

2 A. I drove over here.

3 Q. Have you discussed this lawsuit with anyone
4 else, signed any statements or affidavits relating to this
5 lawsuit or posted anything about this lawsuit on the
6 internet?

7 MR. ALBERTAZZI: I would object to the extent
8 that seeks any communication with me or any other
9 attorney, otherwise you can answer.

10 A. No.

11 BY MR. ROTE:

12 Q. Your answer? What's your answer?

13 A. No.

14 Q. No. Have you read any witness statement or
15 seen any other evidence before this deposition?

16 A. I don't think so.

17 Q. Do you have a history of drug or alcohol
18 abuse?

19 A. No, I do not.

20 Q. Are you under the effect of any medication
21 that may influence your ability to answer the questions
22 presented to you in this deposition?

23 A. Presented to who?

24 Q. Presented to you.

25 A. No, sir.

1 Q. would you like to review the transcript of
2 this deposition and make any changes before it's entered
3 into the record?

4 A. I would like to reserve that right. Yes.

5 MR. ROTE: We would as well, Mr. Albertazzi.

6 MR. ALBERTAZZI: So noted.

7 MR. ROTE: Okay.

8 MR. ALBERTAZZI: I haven't ordered a
9 transcript yet. If I do, I'll let you know.

10 BY MR. ROTE:

11 Q. Your responses to discovery were paper thin.
12 Have you provided every document that you have
13 in your possession on the claims of this lawsuit?

14 A. To the best of my knowledge, yes.

15 Q. When did you discover the quitclaim deed?

16 MR. ALBERTAZZI: Mr. Rote, would you mind
17 clarifying which quitclaim deed you're talking about?

18 MR. ROTE: April 24th, 2017, I believe is the
19 date. The document was in your -- was in a
20 deposition you took of us. Plaintiff's document
21 00001.

22 THE WITNESS: What are we referencing now?

23 BY MR. ROTE:

24 Q. The quitclaim deed, when did you discover the
25 quitclaim deed?

1 A. I'm not going to answer any questions that go
2 against attorney/client privilege.

3 Q. Did you discover it independently or was it
4 provided to you by your attorney?

5 A. I'm not going to answer that question because
6 it may violate attorney/client privilege.

7 Q. Your attorney's not made an objection on this
8 question. It's not about attorney/client privilege.

9 Did you independently discover the quitclaim
10 deed?

11 A. As I sit here today, I don't remember.

12 Q. When did you discover the warranty deed
13 between Northwest Holding and Tanya Rote?

14 A. Do you have a piece of paper to show me or can
15 you point to an exhibit?

16 Q. It's actually your exhibit. Your exhibit,
17 page number three.

18 MR. ALBERTAZZI: I'm -- are you talking about,
19 Mr. Rote, our deposition exhibits from when we took
20 yours and Mrs. Rote's deposition last week?

21 MR. ROTE: Yes. That's correct. And it also
22 is the only two documents that were provided so far
23 in discovery. The quitclaim deed and the warranty
24 deed are the only two documents that you have
25 provided in discovery.

1 BY MR. ROTE:

2 Q. Are you familiar with the warranty deed, Max?

3 A. **I'm not sure which document you're referring**
4 **to.**

5 Q. You only provided two documents in response to
6 discovery. It was one of two.

7 A. **I've never heard the term "warranty deed". So**
8 **I don't know what you're talking about.**

9 Q. You have not looked at the data you provided,
10 the documents you provided in discovery?

11 A. **I'm sorry. Can you repeat the question?**

12 Q. I said you have not looked at the documents
13 you have provided in discovery?

14 A. **I'm sure I have looked at them. As I sit here**
15 **today, I don't remember is my answer.**

16 Q. You don't remember looking at the warranty
17 deed? That's your answer?

18 A. **No. My answer is to your question when did I**
19 **discover that.**

20 Q. You don't remember that?

21 A. **I believe I answered that.**

22 Q. Was it -- to jog your memory, was it before
23 counsel -- before you hired counsel or after?

24 A. **As I sit here today, I don't remember.**

25 Q. I want to refer to Exhibit 1 that we provided,

1 Defendant's Exhibit 1, opinion and order.

2 (Exhibit 1 identified.)

3 Q. Do you recall engaging in fraudulent transfer
4 litigation from 2014 to 2018?

5 A. I do recall that case. Yes, sir.

6 Q. And you recall the opinion by Judge Hernandez
7 in favor of me and the other defendants?

8 A. Yes, sir. That is an interesting opinion. I
9 don't agree with it, of course. That wasn't my case. I
10 also find it extremely interesting that -- had you not done
11 anything you did -- somehow you got away with that.

12 You know, somehow you flim-flammed and got
13 away with that -- at that case. And had you not done any
14 of the things that you did with your blog, you wouldn't owe
15 me half a million dollars today. Only because of your
16 actions did you not walk away from this whole thing. That
17 was really stupid, sir.

18 THE REPORTER: I'm sorry. Hold on. Hold on.

19 Your voice cut out. I didn't hear you.

20 BY MR. ROTE:

21 Q. Are you going to answer my questions or are
22 you going to use this as a platform to make your
23 statements?

24 A. Sir, I'm answering your questions. You've
25 done a lot of things to me over the years and you requested

1 that I be here at this deposition. Frankly, I don't know
2 what information I have for you, but you seem to think I
3 have some information for you, so I'm appearing at this
4 deposition as I am supposed to do.

5 And you have a very aggravated witness here
6 because you have been unrelenting for 20 years torturing
7 myself, my family, my attorneys. You have successfully
8 denied me my right to counsel by asking one of my
9 attorneys, Given your age how many children --

10 MR. ROTE: Mr. Albertazzi, I'm going to object
11 to --

12 A. -- how many children have you raped. Okay.
13 You asked my attorney how many children he has raped, sir.
14 You like to fly under the radar and you like to do these
15 actions and then you like to step back from them, like, you
16 know, oh, I didn't do that.

17 Or I don't know what you think, but everybody
18 else sees your actions. And I think it's pretty important
19 that everybody sees your actions, sir. Your credibility
20 has stretched beyond belief and perhaps you should consider
21 that before you keep going as your own attorney.

22 You walked into a courtroom with \$150,000
23 against you and walked out losing a million. You're not
24 good at it, sir. You should probably stop.

25 MR. ROTE: You have the benefit of continued

1 counsel all this time.

2 MR. ALBERTAZZI: Objection. Do not answer
3 anything related to communications or agreements
4 between yourself and me or any other attorney that
5 represented you.

6 THE WITNESS: Yes, sir.

7 BY MR. ROTE:

8 Q. Do you recall a deposition in August of 2017
9 on the same fraudulent transfer case?

10 A. I do not.

11 Q. You do not remember having your deposition
12 taken in August 2016?

13 A. I had a lot of depositions taken as a result
14 of the things that you've done to me, my family, and my
15 attorneys. And also included judges once in a while. So
16 no, I do not.

17 Q. Do you recall in August 2016 that Linda
18 Marshall admitting to having driven by the Sunriver
19 property?

20 A. You have a deposition that you can show me
21 that indicates that?

22 Q. No, I do not.

23 A. Are you telling me that Linda Marshall said
24 this in a deposition?

25 Q. I'm saying the August 2016 deposition she

1 admitted to driving by the Sunriver house.

2 when did you discover the ownership of the
3 Sunriver property or the existence of the Sunriver
4 property?

5 **A. That would go against attorney/client**
6 **privilege. I do not remember the date and I will tell you**
7 **that. And I have no idea where you're going with Linda**
8 **Marshall. No. I don't remember anything that you're**
9 **talking about about that.**

10 Q. You placed a lien on the Sunriver property as
11 well as a lis pendens. Are you aware of that?

12 Did you hear my question?

13 **A. I don't know.**

14 Q. Ward Greene's firm, Williams Kastner, placed
15 the lien on the Sunriver property?

16 **A. Okay.**

17 Q. Do you know that?

18 **A. Yes, sir.**

19 Also, I'm going to trust what you're saying in
20 that. And believe me that's tough. I don't trust a lot of
21 what you say, but if you're saying that happened I have to
22 believe that you're consulting a piece of paper that
23 indicates that. So, fine.

24 Q. Yeah. We -- I can continue to give you the
25 same kind rhetoric back and forth so --

1 **A. You do whatever you want, sir. This is your**
2 **deposition --**

3 Q. And I'm trying to take it.

4 **A. You do whatever you want.**

5 THE REPORTER: Excuse me.

6 MR. ROTE: I'm trying to take it.

7 THE REPORTER: Hold on. I can only report one
8 person at a time.

9 BY MR. ROTE:

10 Q. Ready to go on?

11 **A. You asked me here, sir. Some of your answers**
12 **-- I have been -- I have been asked to tell the truth, the**
13 **whole truth, and nothing but the truth.**

14 That whole truth part seems to be the problem
15 where you're concerned. So a lot of times you're asking me
16 questions that have other circumstances surrounding them
17 and I'm going to make sure they're mentioned.

18 Q. Are you ready to go on? I've got lots of
19 other questions for you.

20 **A. I'm sure you do.**

21 Q. Okay. You're aware that the lis pendens
22 caused the sale of the property to fail?

23 **A. I'm not aware -- no. I'm not aware of that.**
24 **If that property failed, I was not there with you. I don't**
25 **know the particulars of what happened there. Properties**

1 fail for a lot of reasons. I have no idea why your
2 property failed to sell.

3 Q. How long have you been following or aware of
4 the Sunriver property?

5 A. As I sit here today, I don't remember.

6 Q. Was it in 2004, 2015, 2016?

7 Does that jog your memory?

8 A. I believe I answered your question.

9 Q. Joel Christiansen owns half the judgment you
10 referred to earlier?

11 A. I believe you may be talking about an
12 attorney.

13 Q. That's correct.

14 A. I don't know what Joel Christiansen owns or
15 has.

16 Q. What role did Joel Christiansen play in filing
17 the lis pendens?

18 Do you know?

19 A. You have to be aware of these areas that
20 you're going into that have already been discussed that I'm
21 not supposed to go into.

22 THE REPORTER: I'm sorry. What was that?

23 MR. ROTE: I said there was no objection to
24 that question.

25 THE REPORTER: Thank you.

1 A. If you need me to tell you again that I'm not
2 going to go into answers that would go into attorney/client
3 privilege, then I'll be happy to say that as my answer.

4 BY MR. ROTE:

5 Q. So we need to note that for the record because
6 that is not an attorney/client privilege question.

7 when did you discover the Sunriver property
8 was being marketed for rent on VRBO?

9 A. As I sit here today, I don't remember.

10 Q. Have you filed a malpractice claim against
11 Williams Kastner?

12 MR. ALBERTAZZI: Objection as to relevance.

13 You can answer it.

14 A. No.

15 BY MR. ROTE:

16 Q. Why was Williams Kastner fired?

17 MR. ALBERTAZZI: Object.

18 THE WITNESS: I would like to answer that
19 question.

20 MR. ALBERTAZZI: Hold on.

21 A. Yeah. I'm sorry.

22 Williams Kastner quit because you sent an
23 e-mail to ward saying, Given your age how many children
24 have you raped. You denied me that right to counsel.

25 Thank you for asking the question.

1 BY MR. ROTE:

2 Q. Are you aware that Michael Montag who
3 represented us -- Northwest Holding at the time -- I want
4 to refer you to Exhibit 2.

5 (Exhibit 2 identified.)

6 Q. Do you have it?

7 A. **Not yet, sir.**

8 MR. ALBERTAZZI: If it's possible to enable
9 screen sharing, I can bring these up if that would be
10 easier.

11 THE WITNESS: I think I have it now. If I
12 can't get one, sir, I'll let you know, but I got this
13 one.

14 MR. ALBERTAZZI: All right.

15 BY MR. ROTE:

16 Q. Are you aware that Michael Montag offered you
17 alternative property as opposed to pursue this lawsuit
18 against Tanya Rote?

19 A. **Sir, the award -- the half-million-dollar**
20 **award given by the jury -- the jury -- sorry -- was a**
21 **cash award. Not interested in getting into a land deal**
22 **with a completely untrustworthy person.**

23 So you can sell your land. You can sell
24 whatever you need to sell and I imagine you probably will
25 have to. And you can pay your judgment. The award was for

1 a cash judgment.

2 Q. -- to do so. That is correct.

3 A. **I'm sorry. I talked over you. Can you say**
4 **that again?**

5 Q. Yeah. I'm just restating. You refuse to
6 accept that property?

7 A. **Sir, the property had no objective value.**
8 **It's a subjective value commodity. You can't even say a**
9 **statement of, here, I am offering you X amount of money.**
10 **It is a subjective commodity, so it doesn't even work. You**
11 **can't just offer something and say whatever --**

12 I'm sorry. What's that, sir?

13 Q. Do you consider yourself a real estate expert?

14 A. **No, I don't, but I consider myself to have**
15 **common sense.**

16 Q. Let's go to Exhibit 3 please.

17 (Exhibit 3 identified.)

18 A. **I have it.**

19 Q. Okay. On the last page, can you give me the
20 date that that was signed on page four?

21 A. **This is your document, sir.**

22 Q. It is.

23 A. **It is.**

24 Q. When did you --

25 A. **I'm not going to discuss your documents.**

1 These are your documents for your case. And I'm not going
2 to discuss your documents for your case.

3 MR. ROTE: Mr. Albertazzi, I'm having a very
4 difficult time deposing Max. He seems to want to
5 interject a commentary here.

6 I'm trying to decide -- get an observation
7 from him, a comment, or an acknowledgment of when
8 this document -- when he first became aware of this
9 document.

10 MR. ALBERTAZZI: And so your question is when
11 did you first become aware of Deposition Exhibit
12 Number 3?

13 MR. ROTE: Correct.

14 MR. ALBERTAZZI: Okay. So you can answer
15 that, Mr. Zweizig.

16 THE WITNESS: Okay. As I sit here today, I
17 don't remember when I became aware of this. I
18 basically would challenge the authenticity of almost
19 any document you said you prepared. You forged
20 subpoenas to other attorneys before. I mean, it's
21 very difficult to trust any document that you --

22 MR. ROTE: Enough. Enough of the nonsense.
23 Okay. Let's get to the questions. Answer my
24 questions. You'll have your day in court if that's
25 what you choose and you can show up and do that.

1 THE WITNESS: No. You're choosing that, sir.

2 MR. ROTE: Right now --

3 THE WITNESS: You're choosing the day in
4 court.

5 MR. ROTE: This is not your deposition. This
6 is my deposition. I'd like --

7 THE WITNESS: I understand that.

8 MR. ROTE: -- like to be able to complete it
9 without --

10 THE WITNESS: I understand.

11 MR. ROTE: -- without the ongoing commentary.
12 okay?

13 THE WITNESS: I appreciate that desire. I
14 appreciate you not telling me it's my day in court
15 and I want it. I don't want it. I want you to pay
16 your judgment. And you can go on and have all the
17 real estate and houses and everything that you want.

18 Your life doesn't concern me, sir. What
19 you've done to mine does. So don't tell me that I'm
20 looking for a day in court. You're the one causing
21 all of this to happen.

22 MR. ROTE: You filed this lawsuit.

23 THE WITNESS: Yes, sir. You're not paying
24 your judgment. You need to pay your judgment. If
25 you think I'm not going to try and get you to pay

1 your judgment -- if you choose not to pay it, then
2 that would be silly on your part.

3 BY MR. ROTE:

4 Q. How about Exhibit 4?
5 Can you take a look at Exhibit 4?
6 (Exhibit 4 identified.)

7 A. **I have it.**

8 Q. Okay. When did you first receive notice of
9 this Exhibit 4 from Williams Kastner?

10 MR. ALBERTAZZI: I guess I'm going to object
11 if you're asking him when he got information from
12 Williams Kastner because that could get into
13 attorney/client privilege.

14 The question is when did he become aware of
15 the existence of this agreement. I mean, is that
16 what you're trying to ask?

17 If you can narrow it that way, you know, that
18 might help. When did he become aware of the
19 existence of this document. Not assuming that it's
20 valid -- not valid, authenticate or not. When did he
21 become aware. I don't have any objection to that.

22 BY MR. ROTE:

23 Q. Okay. When did you become aware of this
24 document?

25 A. **As I sit here today, I don't remember.**

1 Q. This document was filed almost two years ago.
2 Does that jog your memory?

3 A. **That's something you're saying. I don't**
4 **believe you.**

5 Q. The document was filed in a summary judgment
6 motion almost two years ago.

7 A. **If you say so.**

8 Q. Does that jog your memory?

9 A. **No. It does not jog my memory.**

10 Q. Let's go to Exhibit 5 please.

11 (Exhibit 5 identified.)

12 A. **I have it.**

13 Q. All right. On the left-hand side about three
14 quarters of the way down on J, area J, you see Tanya Rote's
15 ownership percentage of Northwest holding?

16 A. **This is your tax return or somebody else's tax**
17 **return. It's not mine.**

18 Q. It's Northwest Holding's tax return.

19 A. **Okay. I don't know anything about Northwest**
20 **Holding's tax return. I'm not comfortable commenting on**
21 **documents for Northwest Holding.**

22 MR. ALBERTAZZI: what's the question about
23 item J, Mr. Rote? Maybe you can just ask the
24 question.

25 BY MR. ROTE:

1 Q. The ownership percentage, you see that on item
2 J?

3 A. **Okay. I see it.**

4 Q. Okay. What does it say?

5 A. **Says profit, loss, capital, beginning, ending.**

6 Q. What are the percentages?

7 A. **I don't know. 25, 25, 25. Isn't that**
8 **supposed to add up to something? Is it 75 it's supposed to**
9 **add up to? I don't understand what I'm looking at. This**
10 **is your document.**

11 And, again, I would challenge the authenticity
12 of any document that you would give me.

13 MR. ROTE: That gets old, Mr. Albertazzi.

14 THE WITNESS: It can get hold. You're right.
15 It has gotten old.

16 MR. ALBERTAZZI: Are you asking him just to
17 repeat what he sees on that?

18 MR. ROTE: He answered 25 percent. That's
19 fine. It's the after document commentary. You know,
20 we showed I think professional courtesy to you during
21 our depositions. And I'm going to -- I'm going to
22 ask that of Mr. Zweizig if he can summon that up.

23 THE WITNESS: Well, I'm trying, sir, but like
24 I explained in the beginning of this, you're putting
25 myself and my family in danger while you're asking me

1 to come here and give a deposition. So I'm sorry for
2 your look.

3 MR. ALBERTAZZI: So let's proceed with the
4 questions.

5 THE REPORTER: I'm sorry. I cannot hear you.

6 BY MR. ROTE:

7 Q. Let's go to Exhibit 7 please.

8 (Exhibit 7 identified.)

9 A. **I have it.**

10 Q. So that is a -- I'll represent to you that's a
11 VRBO home-away marketing statement that we provided to your
12 counsel.

13 Do you see that Tanya Rote's identified up
14 above as an owner and member?

15 A. **I see that.**

16 Q. All right. Let's go to Exhibit 8 please.

17 (Exhibit 8 identified.)

18 A. **I have it.**

19 Q. Okay. This a declaration from your attorney
20 tear Taryn Basauri, former attorney. Notes that the
21 quitclaim -- on paragraph three the quitclaim was dated
22 April 24th, 2017. It was submitted as a document in
23 opposition to the motion for summary judgement.

24 Do you see that?

25 MR. ALBERTAZZI: Mr. Rote.

1 THE WITNESS: I'm sorry. I didn't hear.

2 MR. ALBERTAZZI: I'm sorry. Which paragraph
3 number did you say? I'm just trying to follow along.

4 MR. ROTE: Paragraph three, three.

5 THE WITNESS: Can you repeat the question?

6 BY MR. ROTE:

7 Q. Referring to paragraph three, do you see that
8 Taryn Basauri has admitted into evidence there for the
9 first time the quitclaim deed? You see it by reference?

10 A. I do.

11 Q. Go ahead and read that paragraph.

12 Okay. And the date of that -- the date of
13 that deposition by Taryn Basauri on page two, do you see
14 it's dated March 1st, 2019, on page two?

15 A. Looking for it. You're saying there's a date
16 there?

17 Q. Right after --

18 A. Yeah. I see it.

19 Q. Okay.

20 A. I got it.

21 Q. Okay. Referring back to paragraph four, you
22 see that she made reference -- Taryn did -- to the
23 secretary of state's documentation as to a member's
24 interest on that date, December 11, 2017?

25 A. Couple things. I don't understand what a

1 **member's interest is. What is that?**

2 Q. That's the question we're going to get to.

3 Do you understand LLC or partnership law at
4 all, tax law or any other?

5 A. No.

6 Q. No. So do you understand that a member has an
7 ownership interest in an LLC or partnership?

8 Do you understand that?

9 A. **You're telling me that right now. Are you**
10 **saying that the members are you and Tanya.**

11 Q. Members are me and Tanya. They were.

12 A. **Oh. Any other members?**

13 Q. Even if that were true no other members need
14 to be disclosed. Do you understand that?

15 A. **Sure.**

16 Q. Okay. And on that same document dated March
17 1, 2019, it is on paragraph five, do you see that it is
18 referencing a general warranty deed of the Sunriver
19 property?

20 Do you see that?

21 A. **Yeah. I see what it says.**

22 Q. would these be the approximate dates then that
23 on or before this declaration was provided that you became
24 aware of the quitclaim and warranty deed or was it before
25 that?

1 **A. As I sit here today, I don't remember.**

2 Q. Okay. Like to look at Exhibit Number 9
3 please.

4 (Exhibit 9 identified.)

5 **A. I have it.**

6 Q. Okay. would you go to paragraph three on the
7 second page, starting at line one?

8 **A. You're saying second page?**

9 Q. Page two.

10 **A. Got it.**

11 Q. Line one.

12 **A. Yep.**

13 Q. You see it says, My office informed
14 Mr. Zweizig of these transfers?

15 **A. I see that.**

16 Q. You also see that, Mr. Zweizig also informed
17 my office that Mr. Rote has previously been listed as an
18 owner of the Sunriver property on VRBO?

19 **A. VRBO is what? Is that a website?**

20 Q. It is. It's a marketing website --

21 **A. Okay.**

22 Q. -- for vacation rental property.

23 You see that Ms. Basauri is acknowledging that
24 you were -- you informed her or her office about some
25 content on the Sunriver property that was on VRBO?

1 Do you see that on lines two and three?

2 A. Yeah. I see it.

3 Q. Okay. Do you see on line five that in a
4 addition to other information provided by Mr. Zweizig's
5 internet research?

6 A. I'm not seeing the words "internet research".
7 Sorry.

8 Q. It's on line five.

9 A. Okay. Got it.

10 Q. Can you tell me what that internet research
11 was?

12 A. I don't remember.

13 Q. Can you tell me when you did that internet
14 research?

15 A. I cannot. I don't remember.

16 Q. Remember how far back -- do you happen to know
17 when you discovered the Sunriver property?

18 A. I think I answered that, but as I sit here
19 today I don't remember that.

20 I'm going to need a break in about five
21 minutes.

22 Q. Probably a good time to break if you'd like.

23 A. Okay.

24 (Pause in proceedings at 10:36 a.m.)

25 (Proceedings resumed at 10:42 a.m.)

1 Q. All right. I think we left off with Exhibit 9
2 and I want to restate again for the record -- or ask the
3 question again how long you've been following the Sunriver
4 property on VRBO?

5 A. I believe I answered that.

6 Q. Do you have any documents that you turned over
7 to -- that you saved that would identify when you
8 discovered the Sunriver property? It appears that Taryn
9 Basauri makes reference to information you provided.

10 A. I believe I've turned over all the documents I
11 have.

12 THE REPORTER: I'm sorry. What was the
13 question?

14 BY MR. ROTE:

15 Q. I asked if there were additional documents
16 that Taryn -- that Mr. Zweizig has turned over or
17 identified or saved that he should have turned over by now
18 by reference to Taryn Basauri's statement in the Exhibit
19 Number 9.

20 A. That was a long time ago. As I sit here
21 today, I don't remember.

22 Q. So I, again, restate that you've only turned
23 over two documents to us in discovery. And Taryn Basauri's
24 declaration makes it clear that you provided information to
25 her, including documents.

1 Do you not have those documents? Is that your
2 position?

3 A. AS I sit here today, I don't remember. There
4 may be things that were printed out from a website that you
5 had. It's your website. So it may be a document that you
6 already have. I don't know.

7 MR. ROTE: Well, I'll note for Mr. Albertazzi
8 that according to Taryn Basauri there are other
9 documents that Mr. Zweizig has provided on his
10 discovery data of VRBO that we're still looking to
11 receive from you.

12 THE WITNESS: If you can identify any
13 documents, I'd be happy to turn them over. Like I'm
14 telling you, I don't know if documents that you're
15 alleging are missing were responsive or not.

16 BY MR. ROTE:

17 Q. Well, we'll have to -- the Exhibit Number 9
18 made reference to that and you've just been deposed on
19 that. And it is clear that you provided other documents to
20 Taryn Basauri on your discovery data of the Sunriver
21 property. So we do, in fact, want those documents.

22 A. That's fine. I'm saying -- to clear it up --
23 it's not clear to me. So you're saying it's clear. Fine.

24 Q. Good. Go to Exhibit Number 10.

25 (Exhibit 10 identified.)

1 Q. Do you have it?

2 A. **Not yet.**

3 Yes, I have it.

4 Q. Okay. I'll represent to you that this is a
5 rental agreement between Northwest Holding and a renter of
6 that property.

7 Under paragraph one, under term, do you see
8 the date there?

9 A. **I see the date there.**

10 Q. And is it November 29th -- 25th to November
11 29th, 2013?

12 A. **That's what the document says.**

13 THE REPORTER: I'm sorry. Your voice cut out
14 again.

15 BY MR. ROTE:

16 Q. I'd like to go to the last page of that same
17 document.

18 A. **I'm at the last page.**

19 Q. Do you see that Tanya Rote is listed as
20 manager and, in fact, signed that document?

21 A. **I see on the document that there is a
22 signature that reads in handwriting Tanya Rote.**

23 Q. She's identified as the manager?

24 A. **Underneath whoever signed it that says Tanya
25 Rote, it says manager Tanya Rote. Yes, sir.**

1 Q. And the date it was executed, do you see May
2 24th, 2013?

3 A. **I do see that.**

4 Q. Okay. Back up to the page two, it says,
5 Please make checks payable. It's about the middle of the
6 page. Do you see that?

7 A. **I do see that.**

8 Q. And it says Northwest Holding LLC.
9 Do you see that?

10 A. **I do see that.**

11 Q. All right. Go to Exhibit Number 11 please.

12 A. **Is that your company you're saying that has
13 those members? Is that what you're saying?**

14 Q. Go to Exhibit 11 please.
15 (Exhibit 11 identified.)

16 Q. Do you have it?

17 A. **There it is. Sorry. Go ahead.**

18 Q. So you see that this is a sell document. If
19 you look on line two, do you see who the seller is?

20 A. **I see that.**

21 Q. And you see on line four that it is the
22 Sunriver property that's the topic of this -- subject of
23 this litigation?

24 A. **I see that as well.**

25 Q. Okay. I'll represent to you that this is an

1 offer that failed because of the lis pendens you filed.

2 were you aware of that?

3 **A. I think I already answered I'm not aware why**
4 **any real estate sales that you made were successful or**
5 **failed. I'm not there with you.**

6 Q. Do you know that the lis pendens caused a lien
7 that caused the buyers to want to exit the purchase of the
8 property?

9 **A. That's a lot of clauses. And I'm not there.**
10 **I don't know. I don't know how I can answer your question.**
11 **I'm not trying to be difficult. I'm just -- I wasn't there**
12 **with you. I don't know.**

13 Q. Do you know what a lis pendens is?

14 **A. Not really.**

15 Q. Okay. Your attorney hasn't disclosed to you
16 or educated you on what a lis pendens is?

17 **A. Can't answer that question.**

18 Q. You can answer that question.

19 MR. ALBERTAZZI: No. Hold on. I'm just going
20 to instruct him not to answer that, Mr. Rote. You're
21 asking him what his attorney has educated him about.
22 It's fine to ask him if he knows what something is.

23 I don't object to that, but I object to your
24 asking him what he learned or what communications
25 were made by his attorney to him because that's

1 attorney/client privilege.

2 BY MR. ROTE:

3 Q. Did Sandra wear (ph) educate you on what a lis
4 pendens is?

5 A. Sir, I'm not going to talk to you about other
6 people.

7 Q. Is Sandra wear still your fiancé?

8 A. I really don't believe that's any of your
9 business. And given what you've done with anybody that
10 comes in contact with me, I don't think that that is very
11 responsible of me to talk about anyone. I will tell you
12 that your information is sadly out of date. That's the
13 answer you're going to get.

14 Q. The Clackamas County case 19CV14552 you were
15 represented by the Professional Liability Fund; is that
16 correct?

17 A. Are you telling me I was represented by an
18 attorney?

19 Q. Nina Cook who was hired by the Professional
20 Liability Fund. Can you confirm that?

21 A. I believe I did have Nina Cook as somebody I
22 knew in regard to all this.

23 Q. Did you file a malpractice claim against Linda
24 Marshall?

25 A. No.

1 Q. Can you tell me why the PLF represented you
2 during that litigation?

3 A. I think they have a phone number. I think
4 you're starting to get into an area of conversations with
5 an attorney that -- I don't think that's an area we should
6 get into. You're welcome to ask them.

7 Q. You don't know why you were represented by the
8 PLF?

9 MR. ALBERTAZZI: I guess I would object on
10 relevance. He can answer it if he knows as long as
11 it doesn't venture into what would -- what he was
12 advised by an attorney.

13 A. Yeah. Because of the attorney/client
14 privilege area, I don't think I can answer that.

15 BY MR. ROTE:

16 Q. Did you file this lawsuit to just harass Tanya
17 Rote?

18 A. No, sir. I am trying to collect a half
19 million dollar that will likely in my opinion turn into a
20 million dollar judgment against you which you could simply
21 pay. Anything happening to Tanya Rote, you're causing.
22 You don't need to be doing any of this.

23 Q. You filed this lawsuit against Tanya Rote?

24 A. I believe this is fraudulent transfer lawsuit.
25 And as I've told you, I'm not an attorney. I'm not sure

1 you're characterizing this properly, but if you say that
2 that's how it's worded, then that's how it's worded.

3 MR. ROTE: I don't have any other questions.

4 MR. ALBERTAZZI: I just wanted to do a little
5 bit of follow-up just to -- just to clear up the
6 record here on this discovery issue.

7 I am going to e-mail an exhibit here. I've
8 got two exhibits actually. And, Mr. Rote, I'm going
9 to e-mail those to you and then the court reporter.
10 I'm going to e-mail those to her as well, so that I
11 can put these in the record. So just give me a
12 moment here while I do that. And once you receive
13 them, please let me know.

14 MR. ROTE: What e-mail address are you using?

15 MR. ALBERTAZZI: I'm using
16 Tim@rote-enterprises.com or which one do you want me
17 to use?

18 MR. ROTE: That's fine.

19 MR. ALBERTAZZI: Okay. So the first -- I just
20 sent it and it has two attachments. The first one is
21 named Discovery Responses. And I would like to have
22 that be Exhibit Number 12 to this deposition.

23 (Exhibit 12 identified.)

24 Q. The second one is called Twitter post and I'd
25 like that to be Exhibit 13.

1 (Exhibit 13 identified.)

2 MR. ROTE: The first one appears to be your
3 deposition exhibit responses; is that accurate?

4 MR. ALBERTAZZI: Yes. So Exhibit 12 is the
5 formal response that my office did to your request
6 for production of documents. And you -- and I see
7 attached onto there some documents starting at 000001
8 to 14.

9 THE REPORTER: I'm sorry. I can't hear you,
10 Mr. Rote.

11 MR. ROTE: I said those are documents that I
12 have also represented -- presented here in this
13 deposition as well as the quitclaim and warranty deed
14 and the others. I think a title report. So, yeah.

15 MR. ALBERTAZZI: Okay. So, anyway, there was
16 some comments made before that only two documents had
17 been produced. And I wanted to clarify for the
18 record that -- that this here is what was produced,
19 which is Exhibit Number 12, was the response to
20 production of documents.

21 And I think, Mr. Rote, you acknowledge here
22 that, yes, you did receive that?

23 MR. ROTE: Correct.

24 MR. ALBERTAZZI: As to discovery from other
25 attorneys, I just wanted to clarify that to my

1 knowledge there has just been one request for
2 production of documents from you, Mr. Rote. And I've
3 actually reproduced those here in the response. They
4 number from 1 to 47.

5 Are there any other discovery requests,
6 document requests, in this case that you have
7 submitted to Mr. Zweizig?

8 MR. ROTE: Yes. We submitted a request for
9 production to Williams Kastner some time ago as you
10 know and -- but I think that these requests are
11 identical. So they did not respond to it, so I
12 think --

13 MR. ALBERTAZZI: So what I am hearing from you
14 is that Williams Kastner did not produce anything in
15 response to your request; is that accurate?

16 MR. ROTE: That's correct.

17 MR. ALBERTAZZI: Okay. Just clarifying.

18 So this was intended to -- Exhibit 12 was
19 intended to be the complete response, so I just
20 wanted to have that put on the record for
21 clarification purposes.

22 And if you have additional questions relating
23 to that, you can certainly ask them.

24 The next item is Exhibit Number 13. And this
25 is a Twitter post that I brought up during your

1 deposition, Mr. Rote, last week. And you asked me to
2 e-mail this to you which I did.

3 MR. ROTE: Correct.

4 MR. ALBERTAZZI: Okay. I wanted to know if
5 this is something that -- this type of public
6 communication is going to continue or if it's going
7 to stop during the pendency of this litigation while
8 we're not wanting to taint the jury?

9 MR. ROTE: So I have taken that down at your
10 request or at least I interpreted that to be your
11 request.

12 MR. ALBERTAZZI: All right. And that this
13 type of communication then won't -- won't be posted
14 while the case is pending; is that our agreement?

15 MR. ROTE: No. I haven't necessarily agreed
16 to that. I have agreed to curtail anything that is
17 that specific, but I'll continue to post on my blog.

18 MR. ALBERTAZZI: Okay. But this Twitter post
19 which is Exhibit 13 has been taken down you say?

20 MR. ROTE: At your request I took it down.

21 MR. ALBERTAZZI: Okay. All right. And, once
22 again, it's not -- the purpose here -- main purpose
23 is to not have communications out there that could
24 contaminate the jury pool.

25 what you say that's not related to this case

1 is certainly something that you can do should you
2 choose to do that, but these kind of personal attacks
3 on Mr. Zweizig and his attorneys is not appropriate
4 and I'm hoping it doesn't continue.

5 If it does continue, I'll take it up with the
6 court. I'm assuming based on our discussions today
7 it won't, but if it does, I will take it up with the
8 court.

9 MR. ROTE: There may be a time when we need to
10 do that.

11 MR. ALBERTAZZI: Okay. And so I just wanted
12 to make that clear.

13 So with that, I don't have any follow-up. And
14 are you done with your questioning now, sir?

15 MR. ROTE: Yeah.

16 MR. ALBERTAZZI: Okay. So we can close this
17 deposition. And then I just wanted to make sure the
18 court reporter got those exhibits.

19 If you didn't get them, please let me know.

20 And I guess we'll go ahead and conclude. I'm
21 going to log off.

22 MR. ROTE: Okay.

23 MR. ALBERTAZZI: Thank you.

24 (Deposition concluded at 11:05 a.m.)

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REPORTER'S CERTIFICATE

I, LARISA Y. GIACOMINI, Registered Professional Reporter and Certified Shorthand Reporter for the State of Oregon, California and Idaho, hereby certify that, pursuant to Oregon Rules of Civil Procedure, MAX ZWEIZIG, appeared remotely at the time and place set forth in the caption hereof; that at said time and place I reported remotely in stenotype all testimony adduced and other oral proceedings had in the foregoing matter; that thereafter my notes were transcribed through computer-aided transcription, under my direction, and that the foregoing pages, numbered 1 to 40, both inclusive, constitutes a full, true and accurate record of all such testimony adduced and oral proceedings had, and of the whole thereof. Further, that I am a disinterested person to said action.

WITNESS my hand at Bend, Oregon, this 29th day of December, 2020.



LARISA Y. GIACOMINI, RPR, CSR
Oregon CSR No. 10-0415
Expiration September 30, 2022
California CSR No. 5734
Expiration June 30, 2021
Idaho CSR No. SRL-981
Expiration June 30, 2021

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<hr/> <p style="text-align: center;">T</p> <hr/> <p>taint - 38:8 taken [6] 1:17, 2:3, 11:12, 11:13, 38:9, 38:19</p>				

[Print](#) | [Close Window](#)

Subject: RE: Interrogatories and discovery
From: tim@rote-enterprises.com
Date: Sat, May 23, 2020 3:31 pm
To: "Greene, Ward" <WGreene@williamskastner.com>

Actually I won both times.

Oh we definitely have to confer.

Tell me. How many children have you raped so far...given your age?

----- Original Message -----

Subject: Re: Interrogatories and discovery
 From: "Greene, Ward" <WGreene@williamskastner.com>
 Date: Sat, May 23, 2020 9:18 am
 To: "tim@rote-enterprises.com" <tim@rote-enterprises.com>

Mr. Rote,

There is no need for us to meet in person. Frankly, I don't see any reason to confer.

Your motion to stay is not well founded, nor is there any reason to delay your response to our request for production of documents.

You moved for summary judgment two times and lost both times. The conclusion whether your transfer to Mrs. Rote was fraudulent, within the meaning of the law, will be decided by a jury.

If you do not respond in a timely and proper way to the request for production, I will seek appropriate sanctions.

Please govern yourself accordingly.

Ward Greene

Sent from my iPhone (with all attendant errors and superficial thought-Sorry!)

S. Ward Greene

Williams Kastner | Senior Counsel
 1515 SW Fifth Avenue, Suite 600
 Portland, OR 97201-5449
 P: 503-546-1492 | F: 503-222-7261
www.williamskastner.com | [Bio](#) | [V-Card](#)

WASHINGTON OREGON

On May 22, 2020, at 9:26 PM, "tim@rote-enterprises.com" <tim@rote-enterprises.com> wrote:

Give me a few dates in the near future when you will not be working from home.

----- Original Message -----

Subject: Re: Interrogatories and discovery
 From: "Greene, Ward" <WGreene@williamskastner.com>
 Date: Fri, May 22, 2020 5:34 pm
 To: "tim@rote-enterprises.com" <tim@rote-enterprises.com>,

3:15-cv-2401
 Excerpt of Record
 Page 84

Exhibit 1
 page 47

1 ALBERTAZZI LAW FIRM
2 296 SW Columbia St., Ste. B
3 Bend, OR 97702
4 541 317-0231

5 Anthony V. Albertazzi, OSB #960036
6 a.albertazzi@albertazzilaw.com
7 Of Attorneys for Plaintiff

8 IN THE CIRCUIT COURT OF THE STATE OF OREGON
9 FOR THE COUNTY OF DESCHUTES

10 MAX ZWEIZIG,) Case No. 19CV00824
11 Plaintiff,)
12 vs.) DECLARATION OF MAX ZWEIZIG IN
13) SUPPORT OF MOTION FOR
14 NORTHWEST DIRECT TELESERVICES,) CONTEMPT SANCTIONS
15 INC.; NORTHWEST DIRECT)
16 MARKETING OF OREGON, INC.;) [Confinement Sought]
17 TIMOTHY ROTE; NORTHWEST DIRECT)
18 MARKETING (DELAWARE), INC.;)
19 NORTHWEST DIRECT OF IOWA, INC.;)
20 ROTE ENTERPRISES, LLC; and)
21 NORTHWEST DIRECT MARKETING,)
22 INC.)
23 Defendants.)
24)
25)
26)
27)
28)

20 I, Max Zweizig, being first duly sworn, do depose and say:

21 1. I am the Plaintiff and judgment creditor in this case. Except where specifically
22 indicated, I make the following statements from my personal knowledge. If called to testify, I
23 would competently testify in accordance with this declaration.

24 2. After being ordered to produce documents in connection with his judgment
25 debtor examination, defendant TIMOTHY ROTE failed to comply with the court's orders.
26 Instead, he filed a new lawsuit against me in Clackamas County Circuit Court.
27
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3. Defendant has repeatedly made false statements to the court and filed frivolous pleadings for the sole purpose of avoiding paying the money he owes to me. He also filed these papers to harass and annoy me.

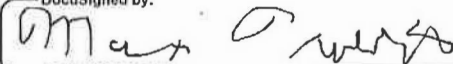
4. Defendant is a prolific blogger and conspiracy theorist. He has posted numerous "articles" falsely claiming that I am a child predator and pedophile.

5. Defendant has consistently claimed the "Rote Irrevocable Trust" as the owner of the shares in a corporation which owns real property in Klamath County Oregon. Despite that, he has willfully failed to produce a copy of the trust or any evidence that it exists at all.

6. Defendant has made a mockery of the court system. I request that the court issue orders against him which are meaningful and effective. I truly believe that the only way to get him to obey the orders of the court is to subject him to confinement in the county jail.

7. My only goal in these proceedings is to be paid the over \$1 million verdict, damages, and attorney fees which I have been awarded.

I HEREBY DECLARE THAT THE FOREGOING STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

DocuSigned by:

AF1A025629AC471...
Max Zweizig

9/13/2022 | 5:02 PM PDT
Date

1 ALBERTAZZI LAW FIRM
2 296 SW Columbia St., Ste. B
3 Bend, OR 97702
4 541 317-0231

4 Anthony V. Albertazzi, OSB #960036
5 a.albertazzi@albertazzilaw.com
6 Of Attorneys for Plaintiff

7
8 IN THE CIRCUIT COURT OF THE STATE OF OREGON
9 FOR THE COUNTY OF DESCHUTES

10	MAX ZWEIZIG,	)	Case No. 19CV00824
	Plaintiff,)	
11	vs.	)	MOTION FOR ORDER REQUIRING
		)	DEFENDANT TIMOTHY ROTE TO
12	NORTHWEST DIRECT TELESERVICES,	)	APPEAR AND SHOW CAUSE WHY
	INC.; NORTHWEST DIRECT	)	HE SHOULD NOT BE HELD IN
13	MARKETING OF OREGON, INC.;	)	CONTEMPT FOR FAILURE TO
	TIMOTHY ROTE; NORTHWEST DIRECT	)	PRODUCE DOCUMENTS
14	MARKETING (DELAWARE), INC.;)	
15	NORTHWEST DIRECT OF IOWA, INC.;	)	[Ex Parte]
	ROTE ENTERPRISES, LLC; and)	
16	NORTHWEST DIRECT MARKETING,	)	[Confinement Sought]
	INC.)	
17)	
	Defendants.)	
18)	

19
20 Motion

21 Plaintiff and judgment creditor MAX ZWEIZIG moves the court for an order requiring
22 defendant TIMOTHY ROTE (“Defendant”) to appear and show cause why he should not be
23 held in contempt for willfully failing to comply with the orders of this court.

24 Plaintiff seeks maximum remedial sanctions against Defendant of:

25 a. Confinement in the Deschutes County Jail until Defendant complies with the
26 court’s order;

27
28 Page 1 of 3 EX PARTE MOTION FOR ORDER REQUIRING DEFENDANT TIMOTHY
ROTE TO APPEAR AND SHOW CAUSE WHY HE SHOULD NOT BE
HELD IN CONTEMPT FOR FAILURE TO PRODUCE DOCUMENTS

- 1 b. An award of Plaintiff’s reasonable attorney fees incurred in bringing this
- 2 motion;
- 3 c. An order establishing that Rote CPA, PC, is an alter ego of Defendant.
- 4 d. An order establishing that the “Rote Irrevocable Trust” referenced by Defendant
- 5 in his filings herein is an alter ego of Defendant.
- 6 e. An order establishing that the judgment in favor of Plaintiff in this action is
- 7 enforceable against Rote CPA, PC in the same manner as it may be enforced against
- 8 Defendant.
- 9 f. An order establishing that the judgment in favor of Plaintiff in this action is
- 10 enforceable against Rote Irrevocable Trust in the same manner as it may be enforced against
- 11 Defendant.

Points and Authorities

This motion is based on the records and files herein, ORS 33.015 to 33.155, and the declaration of counsel filed with this Motion.

Counts of Contempt

Defendant willfully failed to produce documents as ordered by the Honorable Alison Emerson on November 4, 2021 (the “Order”). A copy of the Order is **Exhibit 1**.

Count 1: Defendant failed to produce a copy of the Timothy Rote Trust even though he has used this entity in these court proceedings to prevent Plaintiff from executing his judgment. This was in violation of the Order.

Counts 2-9: Defendant refused to provide documents responsive to 3.8, 3.10, 3.20, 3.30, 3.35, 3.39, 3.40, and 3.41 of the Order based on an unfounded objections and general non-responsiveness.

///

///

///

1 Counts 10 – 27: Defendant willfully failed to produce documents in response to
2 paragraphs: ¶¶3.1, 3.2, 3.3, 3.5, 3.6, 3.8, 3.10, 3.15, 3.16, 3.20, 3.21, 3.22, 3.27, 3.28, 3.30,
3 3.35, 3.39, and 3.40 of the Order.

4 Dated: September 15, 2022

5
6 /s/ Anthony V. Albertazzi
7 Anthony V. Albertazzi, OSB #960036
8 Of Attorneys for Plaintiff
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MAX ZWEIZIG,)	
)	
Plaintiff,	)	No. 3:15-cv-02401-HZ
)	
vs.	)	January 16, 2018
)	
TIMOTHY C. ROTE, a citizen of	)	Portland, Oregon
the state of Oregon, NORTHWEST)	
DIRECT TELESERVICES, INC., an)	
Oregon for-profit corporation,)	
NORTHWEST DIRECT MARKETING OF)	
OREGON, INC., an Oregon)	
for-profit corporation,)	
NORTHWEST DIRECT MARKETING,)	
INC., an Oregon for-profit)	
corporation, NORTHWEST DIRECT)	
OF IOWA, INC., an Iowa)	
for-profit corporation, ROTE)	
ENTERPRISES, LLC, an Oregon)	
limited liability company,)	
NORTHWEST DIRECT MARKETING,)	
INC., aka Northwest Direct)	
Marketing (Delaware), Inc., a)	
Delaware Corporation, and)	
DOES 1 through 5,)	
)	
Defendants.)	

TRIAL - DAY 1

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARCO A. HERNANDEZ
UNITED STATES DISTRICT COURT JUDGE

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APPEARANCES

FOR THE PLAINTIFF: Joel Christiansen
Vogele & Christiansen
812 N. W. 17th Avenue
Portland, OR 97209

FOR THE DEFENDANT
TIMOTHY C. ROTE: Timothy C. Rote
Pro se
24790 S. W. Big Fir Road
West Linn, OR 97068

COURT REPORTER: Nancy M. Walker, CSR, RMR, CRR
United States District Courthouse
1000 S. W. Third Avenue, Room 301
Portland, OR 97204
(503) 326-8186

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P R O C E E D I N G S

(The Court, counsel, and the parties convene.)

THE COURT: We're together on Zweizig and NDT and Mr. Rote. There's some -- I said that we'd get together and just kind of wrap up some questions that you all might have.

Mr. Rote, you submitted a memo on the employment relationship issue. I read it. I don't know that we need to talk about it at this juncture. It may come up as a legal issue at some point during the course of a trial.

You did not submit anything on that issue?

MR. CHRISTIANSEN: I submitted jury instructions, Your Honor.

THE COURT REPORTER: I'm sorry. I cannot hear you.

MR. CHRISTIANSEN: I submitted jury instructions.

THE COURT: On that issue?

MR. CHRISTIANSEN: Yes.

THE COURT: Okay. I'll take a look at them.

Then, Mr. Rote, you had some questions about my rulings regarding some of the materials that -- I don't know whether you wanted in or the other side wanted in, but I can give you again an outline of what my thoughts are regarding the arbitration.

I don't want to retry the arbitration. And to the extent that exhibits from your side trigger exhibits from their side so that we're now litigating the merits of the

1 arbitration, that's what I want to avoid. It sounds like some
2 of the things that they're going to introduce may trigger you
3 being able to introduce some other things anyway, but
4 generally I do not want to relitigate the arbitration. That
5 goes for both sides.

6 So exhibits that trigger that kind of tit for tat,
7 where, you know, this exhibit shows that there was
8 retaliation, this exhibit shows there wasn't retaliation,
9 that's what I want to avoid.

10 Does that make sense to you, Mr. Rote?

11 MR. ROTE: Yes. Yes, Your Honor.

12 THE COURT: I'm not asking you to agree with it.
13 I'm just asking you whether it makes sense.

14 MR. ROTE: I'm just still trying to mold this into my
15 mind as to -- since -- since the blog went into great detail
16 on the evidence --

17 THE COURT: And I'm not prohibiting you from talking
18 about it. I just don't want all the exhibits so that we're
19 ending up with another trial.

20 MR. ROTE: I understand.

21 So, for example, when I'm talking about forensic
22 reports, you don't want me to introduce the forensic report,
23 but I can talk about what I wrote.

24 THE COURT: Right. If you want to talk about why it
25 was an injustice --

1 MR. ROTE: Yeah.

2 THE COURT: Because your theory of the case, as I
3 understand it, is that your blog was not retaliation; your
4 blog was merely a statement on arbitration and the problems
5 with arbitration.

6 MR. ROTE: That's correct.

7 THE COURT: And if that's your theory of the case and
8 you want to explain that to the jury, I'm going to give you
9 the opportunity to do that. I'm not going to get in the way
10 of you doing that.

11 But, again, you lost the arbitration. And so we're
12 not going to relitigate whether you -- that part of it by
13 introducing exhibits and trying to show the jury why you
14 should have won at arbitration.

15 MR. ROTE: Yes, I understand.

16 THE COURT: Okay. And I don't know how that affects
17 the Kugler materials or how that affects the Jones transcript.
18 If they start introducing that kind of stuff, you will be able
19 to respond to it.

20 MR. ROTE: Okay.

21 THE COURT: All right?

22 MR. ROTE: Could I make one comment on that, Your
23 Honor?

24 THE COURT: Yes, sir.

25 MR. ROTE: The Kugler transcript specifically was

1 dismissed with prejudice in New Jersey. It was the basis of a
2 defamation complaint and introduced into the arbitration
3 again, and the arbitrator concluded that he was not going to
4 award anything on it. So it's been tried twice.

5 And the introduction of it, for example, in this
6 case, it would be tantamount to me introducing the forensic
7 reports. And so I'm just -- they're, on the one hand, arguing
8 to not litigate, which they prevailed on. On the other hand,
9 they're relitigating with many of their documents. And so I'm
10 just --

11 MR. CHRISTIANSEN: Can I answer that?

12 THE COURT: Sure.

13 MR. CHRISTIANSEN: So we do intend to discuss that
14 letter to Judge Kubler. I was going to raise it with you.
15 But it's discussed in this website and it's misrepresented in
16 this website and what actually was communicated to that judge.
17 And we do want to bring that letter in on that basis.

18 Mr. Rote is representing to the public that one thing
19 happened, and it was something completely different. And the
20 thing that did happen was just awful. He accused my client of
21 pedophilia with the judge's clerk.

22 THE COURT: Is somebody introducing all of the blog?
23 Didn't we talk about that? The blog is coming in?

24 MR. CHRISTIANSEN: We did, yes. That particular
25 chapter is marked as one exhibit, not just the whole website.

1 THE COURT: Okay. And as I understand it, the
2 arbitration had to do with retaliation for --

3 (Mr. Christiansen and Mr. Rote speak at the same
4 time.)

5 THE COURT REPORTER: I'm sorry. One at a time. I
6 couldn't hear.

7 MR. ROTE: Shall I speak?

8 THE COURT: No.

9 MR. ROTE: Okay.

10 MR. CHRISTIANSEN: It was a whistle-blowing case,
11 yes.

12 MR. ROTE: But he also sought emotional distress and
13 other components. And the arbitrator refused to award those
14 damages. So he considered the letter and refused to award
15 damages for it.

16 MR. CHRISTIANSEN: We're seeking damages for
17 something completely different. This is for representing to
18 the public, because my client brought that case in the first
19 place, that he was engaged in this porn ring with a judge and
20 their staff, completely different.

21 And it's part of a bigger message here, which is
22 Mr. Rote has taken my client's identity and smeared it all
23 over the Internet, all because he brought an employment case
24 against him.

25 THE COURT: Let me think about that one. I mean, I

1 time I wondered if Max was setting up private websites for
2 these judges to watch their porn, how that would have worked,
3 that a private website would be set up for the exclusive use
4 only, content provided by the hosting person. And the only
5 thing the judge would need to do is access the site with his
6 login and ID. But I digress.

7 THE COURT: What -- that's a portion of the blog?

8 MR. CHRISTIANSEN: That's the blog.

9 THE COURT: Okay.

10 MR. CHRISTIANSEN: The actual letter that went to the
11 judge -- what's misrepresented there is when the letter goes
12 to the judge, it actually says a number of things.

13 (Reading) Note that the plaintiff has been
14 downloading video from a pedophile site. Is it possible that
15 plaintiff has some contact with your clerk? Plaintiff clearly
16 received a great gift from the Court. We have to ask why.
17 Plaintiff's girlfriend graduated from law school a few years
18 ago and manufactured this case. Is it possible your clerk
19 knows her and sought to assist in their effort?

20 This is all in the world now. So I think Mr. Rote's
21 letter to the judge, the jury gets the whole picture.

22 THE COURT: The blog part comes in. I don't have any
23 problem with that. In fact, I think he wants the blog --

24 MR. CHRISTIANSEN: Right.

25 THE COURT: -- in.

Opening Statement - Plaintiff

1 what this thing has done now is assumed an identity for
2 Mr. Zweizig on the Internet that he -- he never wanted.

3 And so it's been 14 years. And when Mr. Zweizig
4 Googles his name now, he is being accused of being a criminal.
5 He's being accused of downloading and sharing pornography.
6 We'll go through it, but it's some of the most vile things
7 that you can imagine.

8 And it doesn't stop there. It's also his family.
9 You'll learn that Mr. Zweizig is engaged to an attorney -- has
10 been for a long time -- in New Jersey. Her name is Sandra
11 Ware. So what you'll hear today is that Mr. Rote and this
12 information on the Internet also focuses on Ms. Ware. And so
13 not only does Mr. Zweizig have to live with the horror of
14 finding this and knowing that this is out there about himself,
15 it's also his fiancée.

16 You'll also see that this website also disparages
17 anyone who has tried to help Mr. Zweizig with his claims. And
18 we'll go through it, but the sheer content of this thing and
19 the breadth of how long this has gone on, that's the reason
20 Mr. Zweizig is here today. He's here today to get a ruling in
21 this case and to reclaim his identity. And at the end of this
22 case, I'll stand up and ask you to help us with that.

23 Thank you.

24 THE COURT: Opening statement for the defense.

25 Mr. Rote.

Zweizig - D

1 different mechanisms to do that than for you and I.

2 You know, so I watched it really affect my family.

3 You know, Sandra Ware never worked for Tim Rote. There was no
4 reason for him to be publishing anything about her on the
5 Internet.

6 Q. How about your profession, Mr. Zweizig? What does this
7 website contain with respect to your profession?

8 A. It -- it speaks to, you know, again, things that are
9 completely untrue, saying that I'm willing to hold on to work
10 product, you know, that I'm not going to turn over work
11 product.

12 And, again, this is so unfair. We went through a
13 proceeding about this. Evidence was offered. You know,
14 there's e-mails that clearly show that not only did I turn
15 over that work product, that work product was received and
16 someone said, "Thank you." I mean, this is complete
17 revisionist history. That's just an example of that.

18 I certainly was never doing anything bad at work,
19 like downloading porn. This pornography stuff that he's
20 alleging, I don't know where he got it. He says it's on one
21 of the hard drives. When we wanted to analyze one of the hard
22 drives, instead of providing us with that hard drive, he
23 provided us with an empty CD-ROM drive. We never got a
24 chance -- my experts never got a chance to look at that, you
25 know, evidence that he says that stuff was on.

Zweizig - D

1 And, of course, in 97 chapters of this, all that
2 stuff is left out. He gets to just try this with whoever,
3 with the public, in any way he wants to, after we had done a
4 proceeding that was structured, where I did have a voice,
5 where, you know, I could have some degree of parity. And
6 during that process, it was found that all of his claims were
7 baseless and mine were not.

8 MR. ROTE: Your Honor, I just wanted to --

9 THE COURT: Your objection is sustained.

10 You need to just answer the question.

11 You may go ahead and ask your next question.

12 BY MR. CHRISTIANSEN: (continuing)

13 Q. Mr. Zweizig, what did you see on that website, just
14 generally, what kinds of content that related to your morals?

15 A. Well, he said, you know, I was downloading pornography.
16 He said that I was distributing pornography. He said that I
17 was doing that with other people in the world. He said I was
18 bad at my job, you know.

19 I'm sorry. Morality?

20 Q. Morality.

21 A. Yeah. I mean, that's the worst of it, I think.

22 Q. Okay. How about publicity for this website, Mr. Zweizig?
23 What did you come to learn about -- you know, was it -- was it
24 just the website or was it more?

25 A. No, it wasn't just the website. Tim was reaching out to

Zweizig - D

1 Q. A demonstrative of this. This is the first paragraph,
2 first sentence.

3 (Reading) The first act of perjury was, as just
4 noted, that he now admits but first denied that he was, in
5 fact, the person who downloaded the porn.

6 Do you know what this is about?

7 A. I don't know what this is about. I do want to mention
8 this is from the website that we're still on. It's from the
9 website. This is out there for people to see.

10 No, I never downloaded any porn. Mr. Rote has a
11 better description of how to do things like this than I do,
12 which I just read.

13 You know, he's saying now -- and this is, you know,
14 the most major problem I have with this website that's out
15 there. He's saying that I now admit that I downloaded porn.

16 I did not download any porn working for him. I did
17 his work for him. That's what I did. And I did the work of
18 our company for him. I never downloaded any porn. I
19 certainly did not admit to anyone that I downloaded porn.

20 And these are the kind of things that he's able to do
21 on this website. And this is the recourse I have. Out in the
22 world, I don't have any.

23 Q. Turn now to Exhibit 12, page 184. I'm going to put up a
24 blowup of the second paragraph here.

25 It says that (reading) Since M is not the only one

Zweizig - X

1 pages.

2 Okay. I see it. It's a piece of an e-mail. It's
3 incomplete. It's an incomplete e-mail exchange.

4 BY MR. ROTE: (continuing)

5 Q. Would you please describe what -- First of all, let's
6 confirm, this is an e-mail between -- from me to you?

7 A. It is. This is also talking about -- this is discussing
8 reasons for termination. It's in here.

9 I mean, that's something that's been decided.

10 Q. I'm asking a specific question.

11 A. I understand that. But you're giving me evidence that we,
12 I believe, have already gone over in the arbitration; and
13 these matters have been decided.

14 THE COURT: Mr. Zweizig, I want you just to listen to
15 his question and answer his question and trust that your
16 lawyer will do his job.

17 THE WITNESS: Okay. Thank you. Sorry.

18 BY MR. ROTE: (continuing)

19 Q. The e-mail from me to you, this is document 595. You see
20 that, the top of 595?

21 A. I see it, yes.

22 Q. Do you see that it's representing that "I'm sure that we
23 can work out some kind of public statement for public
24 consumption"?

25 MR. CHRISTIANSEN: Objection, relevance. It's an

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MAX ZWEIZIG,)	
)	
Plaintiff,	)	No. 3:15-cv-02401-HZ
)	
vs.	)	January 16, 2018
)	
TIMOTHY C. ROTE, a citizen of	)	Portland, Oregon
the state of Oregon, NORTHWEST)	
DIRECT TELESERVICES, INC., an)	
Oregon for-profit corporation,)	
NORTHWEST DIRECT MARKETING OF)	
OREGON, INC., an Oregon)	
for-profit corporation,)	
NORTHWEST DIRECT MARKETING,)	
INC., an Oregon for-profit)	
corporation, NORTHWEST DIRECT)	
OF IOWA, INC., an Iowa)	
for-profit corporation, ROTE)	
ENTERPRISES, LLC, an Oregon)	
limited liability company,)	
NORTHWEST DIRECT MARKETING,)	
INC., aka Northwest Direct)	
Marketing (Delaware), Inc., a)	
Delaware Corporation, and)	
DOES 1 through 5,)	
)	
Defendants.)	

TRIAL - DAY 1

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARCO A. HERNANDEZ
UNITED STATES DISTRICT COURT JUDGE

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APPEARANCES

FOR THE PLAINTIFF: Joel Christiansen
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Portland, OR 97209

FOR THE DEFENDANT
TIMOTHY C. ROTE: Timothy C. Rote
Pro se
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West Linn, OR 97068

COURT REPORTER: Nancy M. Walker, CSR, RMR, CRR
United States District Courthouse
1000 S. W. Third Avenue, Room 301
Portland, OR 97204
(503) 326-8186

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P R O C E E D I N G S

(The Court, counsel, and the parties convene.)

THE COURT: We're together on Zweizig and NDT and Mr. Rote. There's some -- I said that we'd get together and just kind of wrap up some questions that you all might have.

Mr. Rote, you submitted a memo on the employment relationship issue. I read it. I don't know that we need to talk about it at this juncture. It may come up as a legal issue at some point during the course of a trial.

You did not submit anything on that issue?

MR. CHRISTIANSEN: I submitted jury instructions, Your Honor.

THE COURT REPORTER: I'm sorry. I cannot hear you.

MR. CHRISTIANSEN: I submitted jury instructions.

THE COURT: On that issue?

MR. CHRISTIANSEN: Yes.

THE COURT: Okay. I'll take a look at them.

Then, Mr. Rote, you had some questions about my rulings regarding some of the materials that -- I don't know whether you wanted in or the other side wanted in, but I can give you again an outline of what my thoughts are regarding the arbitration.

I don't want to retry the arbitration. And to the extent that exhibits from your side trigger exhibits from their side so that we're now litigating the merits of the

1 arbitration, that's what I want to avoid. It sounds like some
2 of the things that they're going to introduce may trigger you
3 being able to introduce some other things anyway, but
4 generally I do not want to relitigate the arbitration. That
5 goes for both sides.

6 So exhibits that trigger that kind of tit for tat,
7 where, you know, this exhibit shows that there was
8 retaliation, this exhibit shows there wasn't retaliation,
9 that's what I want to avoid.

10 Does that make sense to you, Mr. Rote?

11 MR. ROTE: Yes. Yes, Your Honor.

12 THE COURT: I'm not asking you to agree with it.
13 I'm just asking you whether it makes sense.

14 MR. ROTE: I'm just still trying to mold this into my
15 mind as to -- since -- since the blog went into great detail
16 on the evidence --

17 THE COURT: And I'm not prohibiting you from talking
18 about it. I just don't want all the exhibits so that we're
19 ending up with another trial.

20 MR. ROTE: I understand.

21 So, for example, when I'm talking about forensic
22 reports, you don't want me to introduce the forensic report,
23 but I can talk about what I wrote.

24 THE COURT: Right. If you want to talk about why it
25 was an injustice --

1 MR. ROTE: Yeah.

2 THE COURT: Because your theory of the case, as I
3 understand it, is that your blog was not retaliation; your
4 blog was merely a statement on arbitration and the problems
5 with arbitration.

6 MR. ROTE: That's correct.

7 THE COURT: And if that's your theory of the case and
8 you want to explain that to the jury, I'm going to give you
9 the opportunity to do that. I'm not going to get in the way
10 of you doing that.

11 But, again, you lost the arbitration. And so we're
12 not going to relitigate whether you -- that part of it by
13 introducing exhibits and trying to show the jury why you
14 should have won at arbitration.

15 MR. ROTE: Yes, I understand.

16 THE COURT: Okay. And I don't know how that affects
17 the Kugler materials or how that affects the Jones transcript.
18 If they start introducing that kind of stuff, you will be able
19 to respond to it.

20 MR. ROTE: Okay.

21 THE COURT: All right?

22 MR. ROTE: Could I make one comment on that, Your
23 Honor?

24 THE COURT: Yes, sir.

25 MR. ROTE: The Kugler transcript specifically was

1 dismissed with prejudice in New Jersey. It was the basis of a
2 defamation complaint and introduced into the arbitration
3 again, and the arbitrator concluded that he was not going to
4 award anything on it. So it's been tried twice.

5 And the introduction of it, for example, in this
6 case, it would be tantamount to me introducing the forensic
7 reports. And so I'm just -- they're, on the one hand, arguing
8 to not litigate, which they prevailed on. On the other hand,
9 they're relitigating with many of their documents. And so I'm
10 just --

11 MR. CHRISTIANSEN: Can I answer that?

12 THE COURT: Sure.

13 MR. CHRISTIANSEN: So we do intend to discuss that
14 letter to Judge Kubler. I was going to raise it with you.
15 But it's discussed in this website and it's misrepresented in
16 this website and what actually was communicated to that judge.
17 And we do want to bring that letter in on that basis.

18 Mr. Rote is representing to the public that one thing
19 happened, and it was something completely different. And the
20 thing that did happen was just awful. He accused my client of
21 pedophilia with the judge's clerk.

22 THE COURT: Is somebody introducing all of the blog?
23 Didn't we talk about that? The blog is coming in?

24 MR. CHRISTIANSEN: We did, yes. That particular
25 chapter is marked as one exhibit, not just the whole website.

1 THE COURT: Okay. And as I understand it, the
2 arbitration had to do with retaliation for --

3 (Mr. Christiansen and Mr. Rote speak at the same
4 time.)

5 THE COURT REPORTER: I'm sorry. One at a time. I
6 couldn't hear.

7 MR. ROTE: Shall I speak?

8 THE COURT: No.

9 MR. ROTE: Okay.

10 MR. CHRISTIANSEN: It was a whistle-blowing case,
11 yes.

12 MR. ROTE: But he also sought emotional distress and
13 other components. And the arbitrator refused to award those
14 damages. So he considered the letter and refused to award
15 damages for it.

16 MR. CHRISTIANSEN: We're seeking damages for
17 something completely different. This is for representing to
18 the public, because my client brought that case in the first
19 place, that he was engaged in this porn ring with a judge and
20 their staff, completely different.

21 And it's part of a bigger message here, which is
22 Mr. Rote has taken my client's identity and smeared it all
23 over the Internet, all because he brought an employment case
24 against him.

25 THE COURT: Let me think about that one. I mean, I

1 think that's the basis of your claim is the problem, the --
2 what your side claims to be untrue in the blog.

3 MR. CHRISTIANSEN: And misleading and vile and
4 terrible about my client. It goes right to the element of
5 would this dissuade a reasonable worker from bringing a claim.

6 THE COURT: Yeah. Yeah. All right.

7 And Mr. Rote's position is that was litigated at the
8 arbitration?

9 MR. CHRISTIANSEN: That wasn't, though. The things
10 that he's written on this website, that was years after this
11 arbitration.

12 MR. ROTE: The arbitrator's opinion and award with
13 respect to that letter specifically addresses the letter and
14 refusing to award anything.

15 I don't introduce the letter. I describe what our
16 time in New Jersey with Judge Kugler was about, in my opinion,
17 but I don't reinforce the --

18 MR. CHRISTIANSEN: I mean, I'll read you the passage.

19 (Reading) In my somewhat emotional way, I fired off a
20 letter challenging why the -- the why of dismissing our case
21 with prejudice.

22 It goes on to say, By this time I wondered if Max
23 was --

24 THE COURT: Slow down.

25 MR. CHRISTIANSEN: (Reading) I wondered by -- by this

1 time I wondered if Max was setting up private websites for
2 these judges to watch their porn, how that would have worked,
3 that a private website would be set up for the exclusive use
4 only, content provided by the hosting person. And the only
5 thing the judge would need to do is access the site with his
6 login and ID. But I digress.

7 THE COURT: What -- that's a portion of the blog?

8 MR. CHRISTIANSEN: That's the blog.

9 THE COURT: Okay.

10 MR. CHRISTIANSEN: The actual letter that went to the
11 judge -- what's misrepresented there is when the letter goes
12 to the judge, it actually says a number of things.

13 (Reading) Note that the plaintiff has been
14 downloading video from a pedophile site. Is it possible that
15 plaintiff has some contact with your clerk? Plaintiff clearly
16 received a great gift from the Court. We have to ask why.
17 Plaintiff's girlfriend graduated from law school a few years
18 ago and manufactured this case. Is it possible your clerk
19 knows her and sought to assist in their effort?

20 This is all in the world now. So I think Mr. Rote's
21 letter to the judge, the jury gets the whole picture.

22 THE COURT: The blog part comes in. I don't have any
23 problem with that. In fact, I think he wants the blog --

24 MR. CHRISTIANSEN: Right.

25 THE COURT: -- in.

1 The question is whether the letter to the judge comes
2 in.

3 MR. CHRISTIANSEN: Yeah, and it's not just that.

4 It's a printout from some Discovery Systems place,
5 with "older muscled guy fucks young twink mpeg."

6 THE COURT: That's a letter to the judge?

7 MR. CHRISTIANSEN: It's attached to the letter to the
8 judge, yes.

9 THE COURT: Hang on to the letter.

10 The blog I don't have any problem you talking about.
11 I don't know about the letter to the judge, so I have to think
12 about that part of it.

13 MR. ROTE: The attachment he's referring to is out of
14 a forensic report by one of our forensic experts that
15 discovered this on a 120-gig hard drive. So --

16 MR. CHRISTIANSEN: I mean, that goes to the heart of
17 our case, Your Honor. There's this person who's controlling
18 his version of reality for the public as it relates to my
19 client, his former employee. And the jury needs to see how
20 he's misrepresenting this.

21 THE COURT: What does the forensic report show us?

22 MR. CHRISTIANSEN: The alleged videos that are
23 smearing -- that my client -- somehow attributing them to my
24 client, and these are the videos that he's putting on a
25 website for judges to view through improper contact with their

1 clerks.

2 MR. ROTE: That's a misinterpretation.

3 THE COURT: What is it from your perspective,
4 Mr. Rote?

5 MR. ROTE: The attachment to the letter was a couple
6 of pages from the forensic report on the 120-gig hard drive.
7 We provided that forensic image to law enforcement. And with
8 the letter, that forensic image or that couple of pages was
9 provided as an attachment.

10 But, again, Mr. Zweizig filed a defamation case
11 against us. It was -- against me. It was dismissed with
12 prejudice. And he litigated this issue with the arbitrator,
13 who refused specifically to award any damages.

14 So, again, to the extent the forensic reports or
15 portions of the forensic reports they want to bring in, it's
16 kind of consistent with what I wanted to do, but we haven't --
17 you know, it falls within that re-litigation point, and --

18 THE COURT: Were you planning on introducing forensic
19 reports?

20 MR. CHRISTIANSEN: No, just this letter to the judge,
21 which included, as an attachment, one of these many forensic
22 reports.

23 THE COURT: So will the forensic reports be -- were
24 they part of the letter to the judge, then?

25 MR. CHRISTIANSEN: One page, a snippet from that

1 forensic report.

2 THE COURT: And you want the rest of the report in?
3 Is that what you're telling me?

4 MR. ROTE: Well, yes. To the extent that they're
5 going to use a snippet, then I would want the entire forensic
6 report to come in.

7 THE COURT: Was the entire forensic report attached
8 to the letter?

9 MR. ROTE: No, it was not.

10 THE COURT: And is your retaliation claim based on
11 the blog or on the letter to a judge?

12 MR. CHRISTIANSEN: It's based on the website. And
13 our argument is this website contains false, disparaging,
14 terrible things about my client. It misrepresents what
15 actually happened.

16 THE COURT: So why is the letter to the judge
17 relevant to that point?

18 MR. CHRISTIANSEN: Because it shows all of the
19 omissions and misrepresentations about what's in the website.

20 THE COURT: The letter to the judge does?

21 MR. CHRISTIANSEN: No, no -- yeah, the letter to the
22 judge shows why that website is inaccurate, misleading, and,
23 yeah, harmful to my client.

24 THE COURT: And what was your way of introducing the
25 forensic report?

1 MR. ROTE: The forensic reports are discussed at
2 length in the blog. I specifically, for example, discuss the
3 120-gig forensic report in the blog. It's one of the
4 chapters.

5 THE COURT: The blog is coming in, so you'll get to
6 talk about it in the blog.

7 MR. ROTE: Yeah.

8 And I've attached links in those chapters to the
9 forensic reports. They're part of the media. It's part of
10 the -- part of the blog.

11 THE COURT: Okay.

12 MR. ROTE: So --

13 THE COURT: Yeah. I don't know about the reports
14 themselves, but you get to discuss everything that's in the
15 blog, because the blog is coming in.

16 MR. ROTE: Yeah.

17 THE COURT: Hold off on the reports themselves. I
18 don't know that you have the right foundation to introduce the
19 reports as a legal matter. Okay?

20 MR. ROTE: Yeah.

21 THE COURT: But you get to discuss them. If it's in
22 the blog, you get to talk about them.

23 Do you understand?

24 MR. ROTE: I do.

25 THE COURT: Okay.

1 You subpoenaed somebody from the Oregon State Bar?

2 MR. ROTE: No. I only -- I only reached out to her,
3 that based on correspondence between the two, Mr. Christiansen
4 and Carol Bernick, that she should be prepared. I expected
5 that Ms. Bernick would respond to Mr. Christiansen about that.

6 And a good chunk of the blog is about -- about the
7 relationship between the PLF and Mr. Christiansen and Linda
8 Marshall. And I go into great detail about, you know,
9 attorney collusion with respect to these issues. And this was
10 simply additional evidence that somehow she's, for some
11 reason, wanting to be actively communicating with
12 Mr. Christiansen on this case.

13 So there are several components that -- for example,
14 Mr. Christiansen has added the Complaint, in his exhibits,
15 that I filed in Clackamas County for defamation. And the PLF
16 hired representation for Mr. Christiansen and Ms. Marshall.
17 And in response to all of that, I subpoenaed documents from
18 the U.S. Marshals Service.

19 So we get into this -- this big cycle of things that
20 have been previously precluded, but yet he still is interested
21 in -- in somehow offering a Complaint that I filed against him
22 and Linda Marshall for defamation. This is all this Judge
23 Jones stuff that you had --

24 THE COURT: Said no.

25 MR. ROTE: -- said no about. He still has his

1 defamation Complaint that he's going to introduce.

2 MR. CHRISTIANSEN: We'll take that out. We don't
3 need it.

4 THE COURT: Okay. That solves that.

5 MR. CHRISTIANSEN: And, also, Your Honor, I told you
6 we talked about that stipulated protective order. We'll take
7 that out, too, and the Judge Jones transcript.

8 THE COURT: Okay. Does that solve your problem?

9 MR. ROTE: Yes.

10 THE COURT: Okay.

11 Then there's a bunch of other exhibits that were
12 offered late. Honestly, exhibits were due a long time ago.
13 I haven't looked at any new exhibits.

14 MR. CHRISTIANSEN: So I received -- in Mr. Rote's
15 rebuttal exhibits, he sent part of an e-mail thread between he
16 and I, suggesting he's going to say that Mr. Zweizig hasn't
17 mitigated his damages because Mr. Rote has offered to have
18 Mr. Zweizig edit his website.

19 And I've reached out to Mr. Rote probably a dozen
20 times now offering to meet with a third party to do that. And
21 if we go down that road, I intend to offer those e-mails,
22 saying that I've made that -- that offer in response.

23 THE COURT: Yeah, I don't want to hear about
24 negotiations between you.

25 MR. CHRISTIANSEN: Yeah.

1 THE COURT: That's not appropriate for the jury.

2 MR. ROTE: Aren't the offers to mitigate appropriate?

3 THE COURT: Offers of settlement are not
4 appropriate --

5 MR. ROTE: No.

6 THE COURT: -- between the parties.

7 MR. ROTE: I understand. But to mitigate?

8 I mean, if I reached out and said, "What is it you
9 want? In order to stop demanding us taking down the blog,
10 what is it you need?," and I get no specific response, it
11 seems to me like that is a credible point for the jury.

12 THE COURT: Yeah, I don't know about that one. This
13 is all emotional distress and punitive damages.

14 And so you want to let the jury know that you made an
15 offer, Mr. Rote, to take the blog down?

16 MR. ROTE: Not to take the blog down. But I asked
17 them to tell me what it is that they needed from the blog.

18 They had earlier demanded that I take the blog down
19 in its entirety. But, you know, only 25 percent of it is
20 really about Mr. Zweizig and the arbitration. A good chunk of
21 it is about things that happened afterwards or his attorney.

22 So I had offered to say, you know, "What is it you
23 need to -- for me to -- for us to resolve this?" In response,
24 they have offered to go through alternative dispute
25 resolution.

1 And my argument on that is that's -- that's just
2 litigating in a different forum. It's not -- it's not a
3 response to "Tell me specifically what it is you need." And
4 they haven't told me what they needed. So --

5 THE COURT: Was this made before or after the lawsuit
6 was filed?

7 MR. ROTE: It was made about a year after the lawsuit
8 was filed.

9 THE COURT: All right. I'll think about that one as
10 well.

11 MR. CHRISTIANSEN: Your Honor, I'd ask, if Mr. Rote
12 does bring that -- that e-mail in, that my client at least be
13 allowed to say, "I offered to sit down with a third party to
14 talk about this."

15 My client's testimony will be "I didn't want to have
16 anything to do with him. If I did, I wanted a third party
17 there."

18 THE COURT: I understand.

19 I mean, he doesn't just get to do it one way. The
20 whole conversation comes in.

21 All right. So on the offer to mitigate or take down
22 a portion of the blog, hold off on that one, Mr. Rote. Let me
23 think about that, whether that's actual mitigation in the
24 context of this case or not. Again, this is emotional
25 distress and punitive damages. It might be relevant to

1 punitive damages. I have to think about that.

2 As regards everything else, we've decided we're
3 staying away from all of the things that have to do with the
4 arbitration.

5 The Kugler materials having to do with some salacious
6 allegations by Mr. Rote against Mr. Zweizig in the blog --
7 everything in the blog is coming in. We've already decided
8 that. The question, then, is whether or not there is an
9 additional letter that was sent to a judge. I need to -- I'll
10 take a look at that. I'm not sure that that's coming in.

11 And whether or not there are forensic reports that --
12 Mr. Rote's position is that helps show what was in the blog is
13 true?

14 MR. ROTE: Correct.

15 THE COURT: But if all materials in the blog are
16 coming in anyway, and that includes references to the forensic
17 reports, what else do you need?

18 MR. ROTE: I don't know that I need anything else.
19 But if they're going to -- again, if they're going to
20 introduce -- start introducing pages from the forensic reports
21 or from a forensic report, then I think that my argument is
22 that whole forensic report should come in, because it's bigger
23 than just that topic that they want to introduce. So --

24 THE COURT: Okay. Well, I will cross that bridge
25 when we get there.

1 If you introduce the letter, I don't know what that's
2 going to do about any additional reports or not.

3 Is there anything else that we needed to resolve this
4 morning or do you all understand where we are?

5 From the plaintiff's perspective, Mr. Christiansen?

6 MR. CHRISTIANSEN: I understand, Your Honor.

7 THE COURT: Mr. Rote, is there anything else we need
8 to talk about?

9 MR. ROTE: Just one other exhibit related to, I
10 think, this conversation that we just had.

11 The -- many of the forensic reports are already
12 public. They're -- so part of the Complaint, argument in the
13 Complaint, and, of course, originally the proposed media order
14 was that we didn't have a right to have those in or that he
15 was harmed by our publishing of those forensic reports.

16 If that component of his Complaint is now gone in
17 terms of their argument, then -- then I do understand it. To
18 the extent that it comes in as an argument by reference, then
19 I have an exhibit here that shows the -- that many of these
20 forensic reports are already in the public space. They were
21 filed with the motion to vacate in 2011, Exhibit 602.

22 THE COURT: I'll take a look at it.

23 MR. ROTE: Okay.

24 One other exhibit, Your Honor, that I had offered was
25 Exhibit 599, which was the Secretary of State -- showing the

1 date of dissolution of Mr. Zweizig's employer, NDT. And that
2 was -- that's Exhibit 599. And that exhibit shows that the
3 company was administratively dissolved in April 30th, 2000 --
4 or April of 2005.

5 The blog was -- the first blog post was started after
6 it was suspended as a corporation, before the administrative
7 dissolution. And all subsequent blog posts were after his
8 employer was administratively dissolved, and so the first blog
9 post before, but after it was suspended, and the other 95
10 chapters all written after.

11 THE COURT: And that was in response to my point
12 about his employment relationship?

13 MR. ROTE: That's correct.

14 THE COURT: You figured out that NDT actually was
15 dissolved before the blog?

16 MR. ROTE: That's correct.

17 I think I represented to you at the time that I
18 thought it was just inactive. In fact, it had been
19 administratively dissolved.

20 THE COURT: Okay. If you want to introduce that
21 exhibit, you can.

22 Anything else?

23 MR. CHRISTIANSEN: No.

24 THE COURT: So, Mr. Rote, you understand on those
25 things where I said I don't want it coming in, that means you

1 don't mention it in opening statement, you don't raise it
2 during cross-examination, unless you get permission from me
3 because you feel that a door has been opened and you'd like to
4 explore a particular area.

5 Do you understand?

6 MR. ROTE: I think so. Let me restate and make sure
7 I do.

8 In my opening statement, I can talk about what I've
9 written in the blog --

10 THE COURT: Yes.

11 MR. ROTE: -- including making reference to forensic
12 reports, but I can't explain more than what I've talked about
13 in the blog.

14 THE COURT: Correct.

15 MR. ROTE: I can if I, for example, talked a great
16 deal about a forensic report. I can't, however, use the
17 forensic report language specifically.

18 THE COURT: Anything that's in the blog, I will let
19 you use --

20 MR. ROTE: Okay.

21 THE COURT: -- because the blog is coming in. I'm
22 not limiting you in that way at all. But I don't want you
23 referring to exhibits that aren't coming in, by way of
24 example, because I've already ruled they're not coming in.

25 MR. ROTE: Right.

1 So if I were to refer to that, I would simply refer
2 to the forensic report not as an exhibit that I discussed,
3 but -- because some of the chapters, Your Honor, are actually
4 the forensic reports and the 120-gig hard drive report and
5 other things that are specific. And so if -- if during my
6 opening statement I talk about what I discussed in detail in
7 the blog --

8 THE COURT: That's okay.

9 MR. ROTE: -- I'll end up saying -- talking about the
10 forensic reports.

11 THE COURT: And I'm okay with that.

12 Again, I don't want you referencing exhibits that
13 aren't coming into evidence because I've ruled they're not
14 coming in --

15 MR. ROTE: Okay.

16 THE COURT: -- or I've reserved ruling on that point.

17 MR. ROTE: Okay. I get it.

18 THE COURT: All right.

19 Go get the jury.

20 THE CLERK: I don't think they're ready yet.

21 THE COURT: The jury is not ready yet?

22 THE CLERK: They're going to message me when they're
23 ready.

24 THE COURT: Oh, okay.

25 THE CLERK: Judge Mosman has a trial, too, so they're

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1 seating theirs first.

2 THE COURT: Oh, okay. They're seating Mosman's case
3 first and then seating ours?

4 (The Court and the courtroom deputy confer off the
5 record.)

6 THE COURT: Okay. Thank you.

7 (A recess is then taken.)

8 (The Court, counsel, the parties, and the panel of
9 prospective jurors convene.)

10 THE COURT: Good morning. Please be seated.

11 THE CLERK: Your Honor, we're here today for a jury
12 trial in the case of Zweizig versus Northwest Direct
13 Teleservices, Inc., et al., Case No. 15-cv-2401.

14 Do you want me to commence with calling the jury?

15 THE COURT: Members of the jury, I need eight of you
16 today, so that means most of you are going home. And the way
17 we do jury selection is we're going to put eight of you -- or
18 16 of you in the jury box right now, and we need to do it in a
19 particular order.

20 So what's going to happen is Jennifer is going to
21 call your names, and then you're going to be seated in the
22 jury box. You will begin being seated by going to the back
23 row to my left is where Juror No. 1 will be, through 8. And
24 then Juror No. 9 will be in the front row, through 16.

25 And then we're going to put those of you in the back

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1 in order as well. Okay?

2 Go ahead, Jennifer.

3 THE CLERK: Juror No. 1 is Kevin Ladd, L-a-d-d.

4 THE COURT: Come on up, Mr. Ladd.

5 THE CLERK: No. 2, Renee Cameron.

6 THE COURT: You can come up along the front. It's a
7 little easier.

8 THE CLERK: No. 3, Kenneth Kauffman, K-a-u-f-f-m-a-n.

9 No. 4 --

10 THE COURT: Mr. Kauffman, you can enter from that
11 side.

12 THE CLERK: -- Kenneth Harwood, H-a-r-w-o-o-d.

13 No. 5, Mark Youso, Y-o-u-s-o.

14 No. 6, Cameron Thiemann, T-h-i-e-m-a-n-n.

15 No. 7, Joann Parsell, P-a-r-s-e-l-l.

16 No. 8, Bret Walker, W-a-l-k-e-r.

17 No. 9, Erin Schaefer, S-c-h-a-e-f-e-r.

18 No. 10, Ronald Rutter, R-u-t-t-e-r.

19 No. 11, Timothy Ackley, A-c-k-l-e-y.

20 No. 12, James Bolin, B-o-l-i-n.

21 No. 13, Andrea Estrada, E-s-t-r-a-d-a.

22 No. 14, Stephen Thompson, T-h-o-m-p-s-o-n.

23 No. 15, Rachael Highton, H-i-g-h-t-o-n.

24 No. 16, Rachel Friedstrom, F-r-i-e-d-s-t-r-o-m.

25 And No. 17, Robert Taylor.

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1 No. 18, David Erdt, E-r-d-t.

2 No. 19, Linda Wells, W-e-l-l-s.

3 No. 20, Brandon Fillis, F-i-l-l-i-s.

4 21, Karen Jones, J-o-n-e-s.

5 22, Michael Evans, E-v-a-n-s.

6 Actually, Ms. Jones --

7 THE COURT: That's okay, Jennifer. Let them be where
8 they are. That will work.

9 THE CLERK: Okay.

10 Ann Hart, H-a-r-t.

11 Eric Payne, P-a-y-n-e.

12 Daniel Wagner, W-a-g-n-e-r, or Danielle.

13 Raymond Johnson, J-o-h-n-s-o-n.

14 THE COURT: Move down to the last row, towards the
15 left side of the room.

16 THE CLERK: And No. 27, Carol Gossett, G-o-s-s-e-t-t.

17 THE COURT: Members of the jury, the parties want to
18 get to the place in the process where we get to talk to you
19 about your qualifications to act as jurors in this specific
20 case. The way that works is I ask you a bunch of questions
21 and you answer the bunch of questions, and they get to know a
22 little bit about you and then exercise challenges.

23 But before your questions, you must take an oath to
24 answer the questions truthfully. So I need all of the
25 potential jurors at this time to stand up, all of you, please,

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1 raise a hand, and take an oath.

2 (The panel of prospective jurors is then sworn.)

3 THE COURT: Thank you. Please be seated.

4 We are selecting a jury for the case of Zweizig
5 versus Northwest Direct Teleservices, Incorporated, et al.

6 My name is Marco Hernandez. This is Jennifer Paget.
7 Jennifer is my courtroom deputy and acts as the bailiff in
8 this case, which means she takes care of you. She swears
9 witnesses and takes control over the exhibits which are
10 introduced into evidence.

11 The plaintiff this morning, Mr. Zweizig, is being
12 represented by Joel Christiansen.

13 You can introduce yourselves. Go ahead and stand up
14 and tell everybody who you are.

15 MR. CHRISTIANSEN: Hi. I'm Joel Christiansen, and I
16 represent Max Zweizig.

17 THE PLAINTIFF: Hi. I'm Max Zweizig.

18 THE COURT: Be seated.

19 The defendant, Mr. Rote, is representing himself.

20 MR. ROTE: My name is Tim Rote, and I am one of the
21 defendants in this action.

22 THE COURT: Your job as jurors is to apply the facts
23 to the law which I will give to you.

24 This is a civil case. It's not a criminal case. You
25 may have seen criminal cases on television or in the movies.

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1 And you know that in a criminal case, the prosecutor must
2 prove the defendant guilty beyond a reasonable doubt.

3 Civil cases are different. In civil cases the party
4 who has to prove something only has to prove it by a
5 preponderance of the evidence or that it's more likely true
6 than not true.

7 In a few minutes I'm going to be asking you some
8 questions. The purpose of the questions is not to argue the
9 case or embarrass you, but, rather, to determine your
10 qualifications to act as jurors in this case. Please respond
11 to my questions honestly and sincerely. If you do not
12 understand a question, ask me to repeat it or to ask it in
13 another way.

14 Since you are in an unfamiliar setting among
15 strangers, it might be a little uncomfortable for you to be
16 completely open and honest in your answers to my questions.
17 The process requires you to overcome that discomfort and do
18 your best to be open, honest, and complete when you answer
19 questions. It's extremely important, and the fairness of the
20 trial depends on it.

21 If you're asked a question that involves something
22 you consider very sensitive or private, please tell us so. I
23 do not anticipate that happening during the course of my
24 questioning this morning in this type of a case.

25 In the event that that does happen, however, I can

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1 arrange for you -- to receive your questions outside the
2 presence of the other jurors.

3 When the questioning is completed, the lawyers or
4 parties will be allowed to exercise challenges. If you're not
5 selected for this jury, please do not feel that your
6 attendance has been without value. We need a substantial pool
7 of potential jurors so that an impartial panel can be
8 selected. And all of you who are here today provide an
9 important contribution to this process. Your presence assures
10 fairness.

11 Before we get to my more specific questions, I want
12 to provide or have each of you provide some biographical
13 information by answering the questions that appear on the
14 screen. For those of you that can't see the screen, we'll
15 give you a little piece of paper that has the exact same
16 information on it that you can look at.

17 By the time we get to those of you in the back, you
18 will have memorized the points and you won't need the screen
19 in any event, but we'll give you a piece of paper anyhow so
20 you feel more comfortable.

21 After we get this biographical information, I will
22 ask you some questions that are more specific about this case.
23 And then after that, we will move on to taking challenges.

24 With that, if you look at the screens there in front
25 of you on your display, there should be on there biographical

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1 points. I don't know if they're really questions. And if you
2 would -- we're just going to go down the row.

3 And we'll start with you. You happen to be in chair
4 No. 1, Mr. Ladd, so we'll start with you. And we'll just go
5 down the row, and just briefly, Reader's Digest version of the
6 points that are on there, so that the parties can learn a
7 little bit about you.

8 PROSPECTIVE JUROR NO. 1: My name is Kevin Ladd. I
9 live in Astoria or near Astoria, Oregon. My wife and my
10 mother-in-law lives with me.

11 My occupation is I work retail, marine and
12 industrial. I have an associate's degree. My wife has had a
13 little bit of college experience. My mother-in-law is
14 retired.

15 I belong to Viking Nordic Scandia dancers. I'm one
16 of the instructors. That's one of my hobbies. I also like to
17 hunt. I like shooting.

18 And, yes, I have appeared as a juror about 30 years
19 ago.

20 THE COURT: Is there anything about your experience
21 30 years ago that left you any questions about the justice
22 system, whether it's good, bad, neutral about it?

23 PROSPECTIVE JUROR NO. 1: No. It was interesting.

24 THE COURT: Okay. Thank you.

25 Next.

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1 PROSPECTIVE JUROR NO. 2: My name is Renee Cameron.
2 I live in Irvington with my husband. We -- let's see. I am
3 a -- strategic planning is my occupation. He's the director
4 of a nonprofit.

5 Let's see. I have a bachelor's and an MBA in
6 marketing. I belong to a gym and am involved with a -- CHAP,
7 Children's Healing Art Project, so not really something I
8 belong to, but am involved with, that organization.

9 I enjoy travel, reading, gardening, and painting.
10 I've been a witness, but never a juror or a party.

11 THE COURT: How long ago were you a witness?

12 PROSPECTIVE JUROR NO. 2: Fifteen years.

13 THE COURT: Do you remember what type of case it was?

14 PROSPECTIVE JUROR NO. 2: It was -- there was -- I
15 think it was civil. There was a traffic accident, and I
16 witnessed the traffic accident.

17 THE COURT: Okay. Anything about that experience
18 that left you a bad taste in your mouth about the justice
19 system?

20 PROSPECTIVE JUROR NO. 2: No.

21 THE COURT: Thank you.

22 PROSPECTIVE JUROR NO. 3: My name is Kenneth
23 Kauffman. I live south of Canby, in Clackamas County. I live
24 with my wife. We are both retired. She was a registered
25 nurse. I was an environmental health specialist. I worked

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1 for the State of Oregon for 40 years.

2 We don't have any other living companions. I'm not a
3 member of any clubs. I'm a member of our local church. I'm a
4 hobby locksmith. I also like to build things out of steel. I
5 weld.

6 I've been in court quite a lot because of my work
7 with the State of Oregon, as a witness. And I actually was
8 party to a lawsuit.

9 THE COURT: What did you do with the State of Oregon?

10 PROSPECTIVE JUROR NO. 3: I worked for the Oregon
11 Health Authority in environmental health. We did a lot of
12 inspection work, licensing.

13 THE COURT: And you said you were in court a lot.
14 What type of cases were you in court a lot?

15 PROSPECTIVE JUROR NO. 3: The health division cases
16 had to do with license suspension, license denials, those
17 kinds of cases.

18 THE COURT: So those weren't -- not this kind of
19 court. That's more of an administrative setting; is that
20 correct?.

21 PROSPECTIVE JUROR NO. 3: They were often in circuit
22 courts.

23 THE COURT: Oh, they were?

24 PROSPECTIVE JUROR NO. 3: Yes. There were
25 administrative hearings as well.

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1 THE COURT: Okay. So when was the last time you were
2 in Circuit Court as a result of something with the Oregon
3 Health Authority?

4 PROSPECTIVE JUROR NO. 3: Oh, my goodness. It was
5 probably -- it would have probably been in the eighties.

6 THE COURT: Okay. Is there anything about your
7 experiences in court, whether as a witness or as a party to a
8 case, that would cause you difficulty in being neutral in this
9 case?

10 PROSPECTIVE JUROR NO. 3: No.

11 THE COURT: You said you were a party in a case as
12 well. How long ago was that?

13 PROSPECTIVE JUROR NO. 3: That would have been in the
14 early seventies.

15 THE COURT: All right. Thank you.

16 PROSPECTIVE JUROR NO. 4: You have me listed at
17 Kenneth Harwood, but I go by my middle name, Wesley,
18 preferred.

19 Area of residence, I'm in Happy Valley, and I live
20 with my wife, the only other person in our household at this
21 time. We both work at Portland Community College. I'm an
22 education coordinator, continuing education programs for
23 health care. She is a job specialist at the college. We both
24 have our master's degree in adult education.

25 The organizations I belong to, I'm affiliated with

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1 the National Association of Nutrition Professionals, because
2 that's one of my passions is food and cooking and nutrition.
3 My other hobbies include golf. And I'm teaching myself the
4 guitar, and so I'm a very early musician of interest.

5 Have I ever been involved in court proceedings?
6 Well, I was a witness 40 years ago in a case in -- I believe
7 it was Circuit Court in Oregon City. I was a grand jury
8 member in Circuit Court a couple years ago in Clackamas County
9 as well. And I was a successful litigant in a case, oh,
10 probably 15 years ago against a private party.

11 THE COURT: What kind of a case was it?

12 PROSPECTIVE JUROR NO. 4: It was regarding a piece of
13 property that it was falsely represented to us that he owned
14 it, and we ended up in court over that. It was a non-jury
15 situation.

16 THE COURT: Okay. Anything about your experiences
17 with the court system that would cause you difficulty in being
18 neutral in this case?

19 PROSPECTIVE JUROR NO. 4: Not at all.

20 THE COURT: Thank you.

21 PROSPECTIVE JUROR NO. 5: Hello. My name is Mark
22 Youso, and I live out in Hillsboro. I'm residing with a
23 girlfriend, and she's a medical assistant.

24 And what I do for a living is, since I was in my
25 twenties, is owning an apartment complex, so I guess it would

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1 be real estate investor, mainly in rentals. Let's see. Oh, I
2 live with my Labrador retriever.

3 What organizations do I belong to? No organizations.
4 I do play the guitar.

5 And I have been a juror. I was picked as a juror in
6 Washington County around two years ago, and it was a criminal
7 case, sexually -- sexual abuse type of a case.

8 THE COURT: Anything about your experience with the
9 criminal justice system that would cause you difficulty being
10 neutral in this case?

11 PROSPECTIVE JUROR NO. 5: No.

12 THE COURT: Is there anything about that experience
13 that left a bad taste in your mouth one way or another?

14 PROSPECTIVE JUROR NO. 5: No. It was enlightening.

15 THE COURT: Okay. All right. Thank you.

16 PROSPECTIVE JUROR NO. 6: I'm Cameron Thiemann. I
17 live in Newberg, Oregon, with my parents. I don't have a job.
18 I'm a student at Oregon State University. My parents are an
19 IT specialist for Providence and my dad is a salesman.

20 I do not belong to any organizations or clubs.
21 Hobbies, I like to play sports with my free time.

22 And I have never appeared in a court before.

23 THE COURT: Are you missing school to be here?

24 PROSPECTIVE JUROR NO. 6: Yeah,

25 THE COURT: Do you have school tomorrow?

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1 PROSPECTIVE JUROR NO. 6: Yeah.

2 THE COURT: I don't want you to miss college, so I'm
3 going to excuse you so that you can go back to school and do
4 well.

5 PROSPECTIVE JUROR NO. 6: Okay. Thank you.

6 THE COURT: All right.

7 I take it they don't need him downstairs.

8 THE CLERK: They do want him to return.

9 THE COURT: Okay. So there is another trial
10 downstairs. You might not find a judge that thinks as much
11 about education as I do.

12 Go to college. Do well. Go downstairs. Return down
13 there. There's another trial.

14 PROSPECTIVE JUROR NO. 7: Hi. I'm Joann Parsell, and
15 I live in Oregon City with my husband. And I'm a special
16 education instructional assistant, and my husband is a tooling
17 technician for a local company. I have an associate's degree
18 plus, and my husband has some college.

19 I don't -- I'm not involved in any clubs or
20 organizations. I love to read and garden and crochet and
21 things like that and walk.

22 I have served on a jury four times, and it's always
23 been a positive experience.

24 THE COURT: How long ago was the last one?

25 PROSPECTIVE JUROR NO. 7: Probably five years ago.

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1 THE COURT: Do you remember what type of a case it
2 was?

3 PROSPECTIVE JUROR NO. 7: It was a -- well, it was,
4 I assume, a civil case. It dealt with a father being able to
5 see his children.

6 THE COURT: Okay. All right. Thank you.

7 PROSPECTIVE JUROR NO. 8: Hi. My name is Bret
8 Walker. I live in outer Northeast Portland. I live with my
9 daughter. I'm a schoolteacher at David Douglas.

10 I'm a member of the United States Tennis Association.
11 I like to play golf and all water sports, snowboard.

12 I've never appeared either as a witness, a juror, or
13 a party.

14 THE COURT: Thank you.

15 PROSPECTIVE JUROR NO. 9: Hi. I'm Erin Schaefer. I
16 live in Sherwood. I live with my husband, two daughters, and
17 a son. I am -- work in food service at an elementary school.
18 My husband is a project manager in IT for Nike. I have an
19 associate's degree. My husband has a bachelor's degree and is
20 an Army and National Guard veteran.

21 I don't belong to any clubs or organizations. I
22 enjoy reading and watching my children's sports activities.

23 And I've never appeared in a court proceeding.

24 THE COURT: Thank you.

25 PROSPECTIVE JUROR NO. 10: Ron Rutter. Inner East

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1 Burnside. I live alone. I'm a carpenter. I finished high
2 school. No organizations or clubs. I like to read and go to
3 movies.

4 And I've been a juror a couple of different times.

5 THE COURT: When was the last time you were a juror?

6 PROSPECTIVE JUROR NO. 10: Last time was Multnomah
7 County back in '07 or '08.

8 THE COURT: Anything about your experiences that
9 would cause you difficulty being neutral in this case?

10 PROSPECTIVE JUROR NO. 10: No, sir.

11 THE COURT: Thank you.

12 PROSPECTIVE JUROR NO. 11: My name is Timothy Ackley.
13 I live over by Mt. Tabor with my wife and five-year-old
14 daughter. I have my own construction business, with four
15 employees.

16 I don't belong to any clubs or organizations. We do
17 a lot of family camping in the summertime.

18 I have never appeared in court.

19 THE COURT: Thank you.

20 PROSPECTIVE JUROR NO. 12: My name is James Bolin.
21 I live in Tigard with my wife. I'm an aircraft mechanic. My
22 wife is an administrator at a hospital. I have some college
23 and vocational training; my wife, some college.

24 I'm a union member for my job. I belong to a car
25 club. I enjoy car clubs and RC boats.

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1 I've been a witness in a court case.

2 THE COURT: How long ago were you a witness?

3 PROSPECTIVE JUROR NO. 12: Forty-six years ago.

4 THE COURT: All right. Anything about any of your
5 experiences that would cause you difficulty being neutral --

6 PROSPECTIVE JUROR NO. 12: No.

7 THE COURT: -- in this case?

8 Thank you.

9 PROSPECTIVE JUROR NO. 13: I'm Andrea Estrada, and I
10 live in Northeast Portland. I have a roommate and her son
11 that lives with me. We both work in energy efficiency
12 consulting. I have some college.

13 I don't belong to any clubs. I do like to run and
14 exercise and crafts at home.

15 And I've never appeared in court.

16 THE COURT: Thank you.

17 PROSPECTIVE JUROR NO. 14: I'm Steve Thompson. I
18 live in Lake Oswego with my wife, Vicky. She is retired, was
19 a property manager when she retired about 20 years ago. I'm a
20 lawyer here in Portland. I have a bachelor's degree in
21 economics, as does my wife. And I have a J.D. degree.

22 Organizations, obviously I belong to the Oregon State
23 Bar, the Washington State Bar, the bar of this court, the bar
24 of the Western District of Washington and the Eastern District
25 of Washington, the Ninth Circuit. I'm also a member of the

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1 Panner Inn of Court.

2 Hobbies, I ski, both snow and water. I ride bikes,
3 mountain and road. I windsurf in the Gorge in the summer.
4 And I'm a helicopter pilot.

5 I have never been a witness and I have never been a
6 juror. I have been a party to litigation, but I have never
7 appeared in a court proceeding in connection with my party
8 status.

9 THE COURT: What kind of law work do you do?

10 PROSPECTIVE JUROR NO. 14: Primarily, Your Honor, I
11 represent injured railroad workers against the railroads under
12 the Federal Employers Liability Act. I have done some other
13 work, including grade crossing collisions, aviation, some
14 Jones Act work. And I've also done some business fraud cases
15 and some medical malpractice.

16 THE COURT: Have you ever done any employment work?

17 PROSPECTIVE JUROR NO. 14: In this connection, I've
18 tried several Railway Labor Act cases with respect to my
19 railroad employees against the railroad, under the Railway
20 Labor Act, which is a pretty narrow focus.

21 THE COURT: Have you ever done any whistleblower
22 claims or anything like that?

23 PROSPECTIVE JUROR NO. 14: Yes, sir. Under the
24 Federal Railroad Safety Act, I have done a number of
25 whistleblower claims.

Voir Dire

1 THE COURT: Have you done any retaliation claims as
2 well --

3 PROSPECTIVE JUROR NO. 14: Yes.

4 THE COURT: -- on the whistle blowing?

5 PROSPECTIVE JUROR NO. 14: Yes.

6 THE COURT: Is there anything about your experience
7 that would cause you to be -- cause you difficulty in being
8 neutral in this case?

9 PROSPECTIVE JUROR NO. 14: I don't know anything
10 about the case. I don't really believe so.

11 THE COURT: Okay. We'll talk about the case and what
12 its nature is a little bit more.

13 This is a claim of employer retaliation. So if you
14 know that much about the case, is there anything about that?

15 PROSPECTIVE JUROR NO. 14: No.

16 I think it's -- I think it's probably important for
17 the Court and both the parties to know that, obviously, I
18 primarily do plaintiffs' work --

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 14: -- and I have in respect
21 to those retaliation claims. But I don't think that that's
22 going to impact my judgment in this case.

23 THE COURT: Okay. Thank you.

24 PROSPECTIVE JUROR NO. 14: Thank you.

25 PROSPECTIVE JUROR NO. 15: My name is Rachael

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1 Highton. I live in Northeast Portland, and I live with my
2 husband and 14-year-old son. I am a pharmacist, and my
3 husband is a real estate broker. And we both have bachelor's
4 degrees, and I have a doctor of pharmacy.

5 I don't belong to any organizations or clubs. I
6 enjoy gardening and watching and playing soccer.

7 And I appeared as a juror in Multnomah County court
8 a little less than two years ago.

9 THE COURT: What kind of a case was it?

10 PROSPECTIVE JUROR NO. 15: It was a criminal case, a
11 trespassing claim.

12 THE COURT: Anything about any of your experience
13 that would cause you difficulty being neutral in this case?

14 PROSPECTIVE JUROR NO. 15: No.

15 THE COURT: Thank you.

16 PROSPECTIVE JUROR NO. 16: My name is Rachel
17 Friedstrom. I live in Northwest Portland. My husband and
18 daughter reside with me. My husband is a maintenance
19 technician. We have some college.

20 We do not belong to any clubs. I enjoy cooking and
21 reading.

22 And I have served on a grand jury.

23 THE COURT: How long ago?

24 PROSPECTIVE JUROR NO. 16: About 10 years ago.

25 THE COURT: All right. Anything about your

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1 experiences that would cause you difficulty being neutral in
2 this case?

3 PROSPECTIVE JUROR NO. 16: No.

4 THE COURT: All right.

5 PROSPECTIVE JUROR NO. 17: My name is Robert Taylor.
6 I live in Southwest Portland. I am currently living with my
7 mom, my brother, and my girlfriend. As for my occupation, I'm
8 a test associate. My brother is a software developer. My mom
9 is a writer, editor. And my girlfriend works at the YMCA with
10 organizing activities for children.

11 For education, my brother and I have a bachelor of
12 science in computer science. My mom has a master's in
13 writing. My girlfriend has a little bit of college.

14 Organizations and clubs, none currently. Hobbies,
15 activities, competitive gaming, streaming, and programming.

16 As far as appearing in court, have not.

17 THE COURT: Thank you.

18 PROSPECTIVE JUROR NO. 18: My name is David Erdt,
19 and I live out in Scholls, Oregon. I live with my wife and
20 three children. My wife has a bachelor's in business and
21 child development, and I have an associate of science. I
22 currently work at UPS as their tech support group.

23 I don't belong to any organizations. My hobbies are
24 Legos, computer gaming, and Facebook programming.

25 And I've never appeared in court before.

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1 THE COURT: Thank you.

2 PROSPECTIVE JUROR NO. 19: My name is Linda Wells,
3 and I live in Southwest Portland with my husband. We are both
4 retired. We both have bachelor's degrees, mine in social
5 sciences, and my husband's was in mathematics. I worked for
6 the State of Oregon in the Department -- for the Department of
7 Human Resources. My husband was a software engineer.

8 I belong to a church. I enjoy reading, travel,
9 walking.

10 I have been a juror in a civil case, and I also
11 served on a grand jury in Multnomah County.

12 THE COURT: How long was your jury experience?

13 PROSPECTIVE JUROR NO. 19: Oh, probably both of them
14 at least 20 years ago.

15 THE COURT: Okay.

16 Keep going. Anything else?

17 PROSPECTIVE JUROR NO. 19: No. I don't think so.

18 THE COURT: You said that you worked with the
19 Department of --

20 PROSPECTIVE JUROR NO. 19: The Department of Human
21 Services, the Oregon State Department of Human Services -- or
22 Human Resources, excuse me. I was a vocational rehabilitation
23 counselor.

24 THE COURT: Okay. And that job never brought you
25 into the court system?

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1 PROSPECTIVE JUROR NO. 19: No. Only sometimes,
2 not -- not this kind of court. I mean, they were
3 administrative law court perhaps, but not --

4 THE COURT: How often did you go into the
5 administrative law --

6 PROSPECTIVE JUROR NO. 19: Oh, not very many times.

7 THE COURT: Okay. Anything about your experiences
8 that would cause you difficulty being neutral in this case?

9 PROSPECTIVE JUROR NO. 19: No.

10 THE COURT: Thank you.

11 PROSPECTIVE JUROR NO. 20: My name is Brandon Fillis.
12 I live in Tualatin. I live with my parents. I'm going to
13 school at PCC right now and have a job at Fred Meyer.

14 My hobbies, I have a membership to LA Fitness, and I
15 play video games and teach a class at my church.

16 And I've never been a juror, witness, or a party.

17 THE COURT: Thank you.

18 Let's stop there. Just hang on to the microphone.

19 I don't think we're going to get any deeper into the
20 jury pool. So it's not that I don't want to hear about all of
21 you, but I want to save a little bit of time and try to get
22 everybody on their way as quickly as possible. So let's just
23 stop there for the time being. If we get that deep, then I'll
24 have you introduce yourselves.

25 We're going to move to now some more questions about

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1 the case itself. So the first question I have at this point
2 is whether any of you know any of the parties in this case, if
3 you think you might recognize them. And, if so, please raise
4 a hand.

5 The lawyers -- and if you wouldn't mind getting your
6 witness lists together, I'm going to have you tell us, tell
7 the jury who your potential witnesses are.

8 I want you to listen to the names of the potential
9 witnesses, and I'm going to ask the same question: Do you
10 think you might know those people or recognize their names?

11 I'll start with the plaintiff. Who are your possible
12 witnesses?

13 MR. CHRISTIANSEN: Our possible witness is Mr. Max
14 Zweizig.

15 THE COURT: And for the defense?

16 MR. ROTE: Just myself, Your Honor.

17 THE COURT: Oh, okay. So we've already answered that
18 question. We can move on.

19 This case involves the following: The plaintiff in
20 this case is Mr. Zweizig, and the defendant is Mr. Rote.

21 The following are business entities that are related
22 to the case: Northwest Direct Teleservices, Incorporated;
23 Northwest Direct Marketing of Oregon, Incorporated; Northwest
24 Direct Marketing, Incorporated, a Delaware for-profit
25 corporation; Northwest Direct of Iowa, Incorporated; Northwest

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1 Direct Marketing, Incorporated, an Oregon for-profit
2 corporation; and Rote Enterprises, LLC.

3 Have any of you heard of those entities or had any
4 relationship with those entities? If so, please raise a hand.

5 The liability of the business entities is not a part
6 of this trial. The plaintiff claims that the defendant,
7 Mr. Rote, aided and abetted the business entities in
8 retaliating against the plaintiff, in violation of state law.

9 Is there anything about the nature of the claim that
10 would cause any of the potential jurors difficulty in being
11 neutral in this case? If so, please raise a hand.

12 Have any of you --

13 THE COURT REPORTER: Judge, there's a hand.

14 THE COURT: I'm sorry. Sir?

15 Can you say your name first, please.

16 And pass the microphone back.

17 PROSPECTIVE JUROR NO. 22: Michael Evans.

18 THE COURT: Sure. Mr. Evans, tell me.

19 PROSPECTIVE JUROR NO. 22: Well, I mean, I just have
20 a -- kind of a bias against employers, just straight up
21 against employers.

22 So if it's like a -- if it's like a beef between an
23 employer and an employee, I'm automatically siding with the
24 employee, like, every single time, not -- you know, I'm just
25 saying that that's what happens in my head.

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1 THE COURT: Yeah.

2 PROSPECTIVE JUROR NO. 22: When I heard it was
3 against -- it was like an employer against an employee, then
4 I'm already very, very biased against the employer.

5 THE COURT: Okay. Well, we don't really want a
6 biased jury, so I'll go ahead and excuse you at this juncture.

7 PROSPECTIVE JUROR NO. 22: Okay.

8 THE COURT: You can go downstairs there where you
9 were before on the second floor. There is another jury
10 waiting for you. I don't think it has the same topic, so it
11 might be a better fit for you.

12 Thank you very much for your honesty. I appreciate
13 it.

14 Anybody else?

15 Have any of the potential jurors heard or read about
16 this case? If so, please raise a hand.

17 This case is going to take two days to try. We
18 should be done by tomorrow. When I say we're going to be
19 done, that means that the jury will begin their deliberations
20 by tomorrow. I don't control how long deliberations take.
21 That's entirely up to the jury.

22 Does the fact that we're going until tomorrow create
23 any particular problems for anybody? If so, please raise a
24 hand.

25 Hang on a second. Let me start with the people in

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1 the box.

2 After I tell them, now everybody is going to keep
3 their hands down.

4 Back row. Start with the back row, please.

5 PROSPECTIVE JUROR NO. 4: Actually, I don't have
6 tomorrow, but --

7 THE COURT: Can you say your name, please.

8 PROSPECTIVE JUROR NO. 4: Oh, I'm sorry. Kenneth
9 Wesley Harwood.

10 I don't have tomorrow as a problem, but my wife just
11 found out she has a surgical appointment on Thursday that I
12 need to take her to. So if it goes any longer than tomorrow,
13 then I have an issue.

14 THE COURT: The jury will be deliberating tomorrow.
15 Again, I don't know how long they will deliberate for.

16 I'm going to hang on to you right now, okay?

17 PROSPECTIVE JUROR NO. 4: That's fine.

18 THE COURT: Thank you.

19 PROSPECTIVE JUROR NO. 14: Your Honor, more as a
20 precaution -- Steve Thompson -- I have initial disclosures due
21 in the District Court of Idaho on Friday. And, more
22 importantly, I have an oral argument before Judge Rice in the
23 Eastern District of Washington on Monday on a very important
24 matter that is potentially case dispositive.

25 THE COURT: You'll be done by Monday. There's no way

Voir Dire

1 that we'll be --

2 PROSPECTIVE JUROR NO. 14: That's what I thought, but
3 I thought I'd, in an abundance of caution --

4 THE COURT: All right. And as far as your
5 disclosures, I'm going to hang on to you.

6 PROSPECTIVE JUROR NO. 14: They're pretty easy in
7 this particular matter.

8 THE COURT: Okay. Thank you.

9 PROSPECTIVE JUROR NO. 14: Thank you.

10 THE COURT: Anybody else?

11 PROSPECTIVE JUROR NO. 20: I'd be missing two days of
12 community college to participate in this.

13 THE COURT: Oh, you're in community college? I'm
14 sorry. I missed that.

15 PROSPECTIVE JUROR NO. 20: Yeah, Portland Community.

16 THE COURT: Yeah, we'll go ahead and excuse you.

17 PROSPECTIVE JUROR NO. 20: Thank you, sir.

18 THE COURT: Yeah. Good luck with your schooling.
19 Anybody else?

20 Although I think you'd learn a lot more here.

21 We already spoke about prior jury experience. Have
22 any of you been involved in a lawsuit, in particular -- well,
23 let's just start there. Anybody been involved in a lawsuit
24 before? Some of you have raised your hands.

25 All right. In the back.

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1 Any of you that raised your hands, have you ever been
2 involved in a lawsuit that involves employment, whistle
3 blowing, that kind of an issue? If so, please raise your
4 hand.

5 There's a hand up here.

6 PROSPECTIVE JUROR NO. 3: This doesn't involve
7 whistle blowing, but I was fired by the County commissioners
8 of Lincoln County in the seventies, and I sued them in federal
9 court because I claimed they had no cause and provided no due
10 process.

11 THE COURT: Is there anything about that experience
12 that would cause you difficulty being neutral in this case?

13 PROSPECTIVE JUROR NO. 3: Not that I can think of.

14 THE COURT: Okay. Thank you.

15 Anybody else?

16 There's a hand in front.

17 THE COURT REPORTER: Would you state your name first.

18 PROSPECTIVE JUROR NO. 12: James Bolin.

19 It wasn't a court case, but it was a union
20 arbitration about employment.

21 THE COURT: Okay. Anything about that experience
22 that causes you difficulty --

23 PROSPECTIVE JUROR NO. 12: No, sir.

24 THE COURT: -- being neutral?

25 PROSPECTIVE JUROR NO. 12: No.

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1 THE COURT: All right. And I think there was a hand
2 way in the back.

3 Yeah, we're never going to get to you. If you want
4 to tell your story, you can feel free to let us know.

5 Say your name first.

6 PROSPECTIVE JUROR NO. 27: I'm (inaudible.)

7 THE COURT REPORTER: And I'm sorry. Wait for the
8 microphone. I can't hear you.

9 PROSPECTIVE JUROR NO. 27: Carol Gossett.

10 I owned a business for 27 years, and I had a contract
11 dispute with a -- with a client, and so we went to court over
12 that.

13 THE COURT: All right. Thank you.

14 Somebody talked about arbitration, and one of the
15 issues in this case that is going to be litigated is, in fact,
16 about arbitration.

17 Have any of you been involved in arbitration before?
18 I know we've already spoken to one. Anybody else been
19 involved in arbitration before? If so, please raise a hand.

20 For those of you that raised your hand on
21 arbitration, is there anything about your experience in
22 arbitration that would cause you difficulty being neutral in
23 this particular case? If so, please raise a hand.

24 This case also involves a blog. I don't blog, so I'm
25 not really that savvy about what blogs are, other than I think

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1 they're communications on social media that is available for
2 pretty much anybody in the public to view.

3 The alleged retaliation took place on a blog. Is
4 there anything about the fact that a blog is involved in this
5 particular case that causes you difficulty being neutral in
6 this case? If so, please raise a hand.

7 Have any of you ever been in a position where someone
8 has written something unfavorable about you in a blog? If so,
9 please raise a hand.

10 One of your jobs as jurors, should you be chosen to
11 sit in this particular case, is that you will be required to
12 make a decision based on the evidence and only on the
13 evidence, not on any experience outside. This is a contained
14 setting, and you need to decide it based on the evidence and
15 the law that I give you.

16 Is there anybody that has difficulty with that
17 notion? If so, please raise a hand.

18 Is there anybody that has difficulty with the notion
19 that you must follow the law, whether you agree with it or
20 not? If you have trouble with that idea, please raise a hand.

21 Having heard a little bit about what the case is
22 about, kind of reflecting now, is there anybody sitting as
23 potential jurors at this time that would have difficulty being
24 neutral and fair in this case? And, if so, please raise a
25 hand.

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1 I'm going to take a minute just to confer with the
2 lawyers for a minute, and then we'll get back to talking to
3 you.

4 Come on up over here, please.

5 (The Court, counsel, and Mr. Rote confer off the
6 record.)

7 THE COURT: Are there any challenges for cause on the
8 part of the plaintiff?

9 MR. CHRISTIANSEN: No, Your Honor.

10 THE COURT: For the defense?

11 MR. ROTE: No, Your Honor.

12 THE COURT: Then you may exercise your peremptory
13 challenges. Jennifer will be over to visit with you.

14 This is the part of the process where we just look at
15 each other while they're exercising their challenges.

16 (The challenges are then taken.)

17 THE COURT: She's just going to double-check, to make
18 sure you agree with our selection.

19 (There is a brief pause in the proceedings.)

20 THE COURT: I'm going to read eight names. If I read
21 your name, please stand up.

22 Kevin Ladd, Renee Cameron, Wesley Harwood, Joann
23 Parsell, Bret Walker, Ronald Rutter, James Bolin, Andrea
24 Estrada.

25 I need for you to raise a hand and take an oath.

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1 (The jury is then sworn.)

2 THE COURT: Please be seated.

3 For the rest of you, your service in this courtroom
4 is complete. I know that there's another trial going on
5 somewhere else, and I don't know what's going on with that
6 one, but they still haven't selected their jury. So I need
7 you to go ahead and go back down to the second floor jury
8 assembly room and see what happens next.

9 Thank you for your service. Thank you so much.

10 (The remaining prospective jurors leave the
11 courtroom.)

12 THE COURT: So those of you in the front row, slide
13 on down. Those of you in the back row, slide on down, except
14 for we're going to want -- yeah, come on down to the front.
15 One of you comes up to the front row, so we have four and
16 four. And the idea is I want you to be as close as you can to
17 the people that are testifying.

18 Note where you are seated. We're going to take a
19 10-minute or so, 12-minute recess at this time.

20 When you come back, I will give you what's called the
21 preliminary precautionary instructions. We'll do opening
22 statements, and we will begin the trial. So things are going
23 to move quickly after now.

24 So Jennifer will escort you into the jury room.
25 She'll show you where your home base is, and I'll see you in

Preliminary Instructions

1 just about 10 or 15 minutes.

2 (The jury leaves the courtroom.)

3 THE COURT: We are in recess for 15 minutes. Thank
4 you.

5 (A recess is then taken.)

6 (The Court, counsel, the parties, and the jury
7 reconvene.)

8 THE COURT: You are now the jury in the case, and I
9 want to take a few minutes to tell you something about your
10 duties as jurors and give you some instructions. At the end
11 of the trial, I will give you more detailed instructions.
12 Those instructions will control your deliberations.

13 It's your duty to decide what the facts are from the
14 evidence. You, and you alone, are the judges of the facts.
15 You will hear the evidence, decide the facts, and then apply
16 those facts to the law which I will give you. And that is how
17 you will reach your verdict. In doing so, you must follow the
18 law, whether you agree with it or not.

19 The evidence will consist of the testimony of
20 witnesses, documents and other things received into evidence
21 as exhibits and any facts on which the parties agree or which
22 I instruct you to accept.

23 You should not take anything I say or do during the
24 trial as indicating what I think of the evidence or what your
25 verdict should be.

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1 The following things are not evidence and you must
2 not consider them as evidence in deciding the facts in this
3 case.

4 Statements and arguments by the parties are not
5 evidence. Questions and objections are not evidence.
6 Testimony that I tell you to disregard, not evidence, and
7 anything you may have seen or heard when the Court is not in
8 session.

9 Do not communicate any private or special knowledge
10 about any of the facts of this case to your fellow jurors.
11 Decide the case only on the evidence received here in court.

12 Some evidence may be admitted for a limited purpose
13 only. When I instruct you that some evidence is admitted for
14 a limited purpose, you must consider it only for that limited
15 purpose.

16 Evidence may be direct or circumstantial. Direct
17 evidence is testimony by a witness about what that witness
18 personally saw or heard or did. Circumstantial evidence is
19 indirect evidence; that is, it is proof of one or more facts
20 from which one can find another fact. You are to consider
21 both direct and circumstantial evidence. The law permits you
22 to give equal weight to both, but it is for you to decide how
23 much weight to give any evidence.

24 There are rules of evidence which control what can be
25 received into evidence. When a lawyer asks a question or

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1 offers an exhibit into evidence and the other party or lawyer
2 on the other side thinks that it is not permitted by the rules
3 of evidence, the other side may object.

4 If I overrule the objection, the question may be
5 answered or the exhibit received. If I sustain the objection,
6 the question cannot be answered and the exhibit cannot be
7 received. Whenever I sustain an objection to a question,
8 ignore the question and do not guess what the answer would
9 have been.

10 Sometime I may order that evidence be stricken from
11 the record and that you disregard or ignore the evidence.
12 That means when you're deciding the case, you must not
13 consider the evidence which I told you to disregard.

14 In deciding the facts of this case, you may have to
15 decide which testimony to believe and which testimony not to
16 believe. You may believe everything a witness says or part of
17 it or none of it.

18 In considering the testimony of any witness, you may
19 take into account the opportunity and ability of the witness
20 to see or hear or know the things testified to; the witness's
21 memory; the witness's manner while testifying; the witness's
22 interest in the outcome of the case, if any; the witness's
23 bias or prejudice, if any; whether other evidence contradicted
24 the witness's testimony; the reasonableness of the witness's
25 testimony in light of all the evidence; and any factors

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1 that -- any other factors that bear on believability.

2 The weight of the evidence as to a fact does not
3 necessarily depend on the number of witnesses who testify.
4 You're to weigh evidence, not count witnesses.

5 From time to time during the trial, it may be
6 necessary for me to talk to the parties outside the hearing of
7 the jury by having a conference at the bench when you're
8 present in the courtroom or by calling a recess.

9 Please understand that while you're waiting, we're
10 working. The purpose of the conferences is not to keep
11 relevant information from you, but to decide how certain
12 evidence is to be treated under the rules of evidence and
13 avoid confusion and error.

14 We will, of course, do what we can to keep the number
15 and length of these conferences to a minimum. I may not
16 always grant a request for a conference. Do not consider my
17 granting or denying a request for a conference as any
18 indication of my opinion of the case or what your verdict
19 should be.

20 Regarding your conduct as jurors, keep an open mind
21 throughout the trial. Do not decide what the verdict should
22 be until you and your fellow jurors have completed your
23 deliberations at the end of the trial.

24 Second, because you must decide the case based only
25 on the evidence received in the case and on my instructions as

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1 to the law that applies, you must not be exposed to any other
2 information about the case or to the issues it involves during
3 the course of your jury deliberations.

4 Thus, until the end of the case, unless I tell you
5 otherwise, do not communicate with anyone in any way and do
6 not let anyone else communicate with you in any way about the
7 merits of the case or anything to do with it.

8 This includes discussing the case in person, in
9 writing, by phone or other electronic means, by e-mail, text
10 message, Internet chat room, blog, website, or other feature.

11 This applies to communicating with your fellow jurors
12 until I give you the case for deliberation and it applies to
13 communicating with everyone else, including your family
14 members or your employer or the media, press, and people
15 involved in the trial.

16 Although you can tell your family and your employer
17 that you've been selected to be seated as a juror in the case,
18 if you are asked or approached in any way about your jury
19 service or anything about the case, you must respond that
20 you've been ordered not to discuss the matter and report such
21 contact to the Court.

22 Because you will receive all of the evidence and
23 legal instructions you properly may consider to return a
24 verdict here in court, do not read, watch, or listen to any
25 news or media accounts or commentary about the case or

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1 anything to do with it.

2 Do not do any research, such as consulting
3 dictionaries, searching the Internet, or using other reference
4 materials. Do not make any investigation or in any other way
5 try to learn about the case on your own.

6 The law requires these restrictions to ensure that
7 the parties have a fair trial based on the same evidence that
8 each party has had an opportunity to address. And if you
9 violate these restrictions, that jeopardizes the fairness of
10 these proceedings. If any juror is exposed to outside
11 information, please notify the Court.

12 At the end of the trial, you will have to make your
13 decision based on what you recall of the evidence. Although
14 you will have all the exhibits which have been admitted with
15 you in the jury room, you will not have a written transcript
16 to refer to, so I urge you to pay close attention to testimony
17 as it's given.

18 If you wish, you may take notes to help you remember
19 what a witness said. If you do take notes, keep them to
20 yourself until you and your fellow jurors go to the jury room
21 to decide the case. Do not let your note-taking distract you
22 from hearing answers or watching witnesses. It's important
23 that you watch witnesses, as their appearance may assist you
24 in deciding whether you believe their testimony and how much
25 weight to give their testimony.

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1 When you leave at night, your notes should be left in
2 the jury room.

3 If you do not take notes, you should rely on your own
4 memory of what was said and not be overly influenced by the
5 notes of other jurors.

6 If at any time you cannot clearly hear what the
7 witness or a lawyer or party says or you can't see the
8 documents that are on the evidence presentation system, please
9 speak up and let the Court know that.

10 If you need to communicate with me in other
11 circumstances, you simply give a signed note to Jennifer, and
12 she'll give it to me.

13 In a few moments we're going to have -- start the
14 trial. Each side may make an opening statement. An opening
15 statement is not evidence. It's simply an outline to help you
16 understand what that party expects the evidence will show. By
17 the way, a party is not required to give an opening statement.

18 The plaintiff will then present his evidence, and
19 counsel for the defendant may cross-examine -- or the
20 defendant may cross-examine. Following plaintiff's case, the
21 defendant may present evidence and the plaintiff's counsel may
22 cross-examine.

23 After all the evidence has been presented, the
24 attorneys are going to make closing arguments to summarize and
25 interpret the evidence for you. I'll then instruct you on the

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1 law, and you'll return to deliberate.

2 The plaintiff in this case is Max Zweizig. The
3 defendant is Timothy Rote. We've talked about the business
4 entities involved in this particular case. The liability of
5 the business entities is not part of this case.

6 The plaintiff claims that the defendant aided and
7 abetted the business entities in retaliating against the
8 plaintiff in violation of state law, by publishing disparaging
9 statements about the plaintiff on the Internet because the
10 plaintiff previously enforced his employment-related rights.

11 The plaintiff has the burden of proving these claims
12 by preponderance of the evidence. The defendant denies those
13 claims and contends that the publications at issue in this
14 case were not retaliatory, but rather were a private citizen's
15 account of the justice system.

16 The plaintiff seeks damages against the defendant for
17 aiding and abetting the business entities in retaliating
18 against the plaintiff. To prove retaliation, the plaintiff
19 has the burden of proving each of the following elements by a
20 preponderance of the evidence: one, that the plaintiff
21 engaged in or was engaging in an activity protected under
22 state law; two, that the business entity subjected the
23 plaintiff to an adverse employment action; and, three, that
24 the plaintiff was subjected to the adverse employment action
25 because of his participation in the protected activity.

Preliminary Instructions

1 An action is an adverse employment action if a
2 reasonable employee would have found the action materially
3 adverse, which means it might have dissuaded a reasonable
4 worker from making or supporting a charge of whistleblower
5 retaliation.

6 A plaintiff is subjected to an adverse employment
7 action because of his participation in protected activity if
8 he knows that an unlawful motive was a substantial factor in
9 the adverse employment action or, in other words, that the
10 plaintiff would have been treated differently in the absence
11 of an unlawful motive.

12 The plaintiff seeks damages against defendant for
13 aiding and abetting an unlawful employment practice. The
14 plaintiff has the burden of proving each of the following
15 elements by a preponderance of the evidence in addition to
16 proving the retaliation claim: one, that the defendant aided,
17 abetted, incited, compelled, or coerced retaliation by the
18 business entities against the plaintiff; and, two, the
19 defendant acted outside the scope of his employment with any
20 of the business entities, i.e., not for the benefit of the
21 businesses.

22 In determining whether a defendant acted outside the
23 scope of his employment, relevant factors include whether the
24 act occurred substantially within the time and space limits
25 authorized by employment and whether the acts -- the act is of

Opening Statement - Plaintiff

1 a kind which the employee was hired to perform.

2 I will give you copies of those last couple of jury
3 instructions, because it kind of tells you what it is you need
4 to be listening for during the course of this trial. I'll
5 give them to you during the break.

6 Please understand that the instructions may change a
7 little bit at the end of the trial, and it is the instructions
8 at the end of the trial which will control your deliberations.

9 With that, opening statement for the plaintiff.

10 MR. CHRISTIANSEN: Thank you, Your Honor.

11 Good morning, ladies and gentlemen.

12 Fourteen years. It's been 14 years. And my client,
13 Mr. Zweizig, wants to move on with his life.

14 As the judge has instructed you, this is an
15 employment retaliation case. And what you'll learn today is
16 that the employer involved in this case is a business called
17 Northwest Direct -- it's a series of businesses, but I'll call
18 them Northwest Direct today -- and its owner, Mr. Timothy
19 Rote. Mr. Rote, you'll hear, owned Northwest Direct and was
20 actively involved in running the business. It was his
21 business.

22 Northwest Direct was in the business of
23 telemarketing. They ran call centers in Beaverton, Eugene,
24 Iowa. And they had plans to outsource to call centers in the
25 Dominican Republic. And they employed about 150 to 175

Opening Statement - Plaintiff

1 employees, who made outbound telemarketing calls. These are
2 folks who sit at the desk, pick up the call when it tells them
3 to make the call, and make sales.

4 You'll hear that the company made millions of dollars
5 and, on the testimony here from Mr. Rote and what he's
6 written, a \$100,000-per-week business.

7 Mr. Zweizig worked for Northwest Direct. He's the
8 plaintiff in this case. And he worked for them a long time
9 ago. He started -- Mr. Zweizig is from New Jersey, just
10 across the Delaware River from Philadelphia. And he found the
11 job through a friend, who connected him, and he went to work
12 as their director of IT. He was in charge of all of their
13 computers and writing the scripts that would import some of
14 the call logs and get the business to do what it needed to do.
15 And he went to work in 2001 and worked there until November of
16 2003.

17 And what you'll find out is that toward the end of
18 his employment, Mr. Zweizig came across some information that
19 suggested that Northwest Direct was fraudulently overbilling
20 clients. And after consulting with an attorney, he made a
21 report to the Oregon Department of Justice and to the Lane
22 County District Attorney's Office. And because of that, he
23 was -- he lost his job.

24 Now, that, what I just told you, is not going to be a
25 dispute in this case. And as you'll hear, this case -- that

Opening Statement - Plaintiff

1 part of it is already done. Mr. Zweizig filed a Complaint in
2 New Jersey; and as a result of an arbitration agreement he
3 signed in his employment contract, that case came back here to
4 Oregon in a private arbitration.

5 At that arbitration, Mr. Zweizig was represented by a
6 different attorney. Her name is Ms. Linda Marshall. And an
7 arbitrator named Bill Crow, whose name you'll see on some of
8 the things we'll go over, issued a decision in that case.

9 And as part of that, Northwest Direct, after
10 Mr. Zweizig brought his claims, asserted a whole laundry list
11 of its own claims against Mr. Zweizig. They accused him of
12 destroying computers, withholding code, altering software
13 applications, shutting down their business, putting people out
14 of work for a week, a whole laundry list of things. And the
15 arbitrator also ruled on that.

16 And what you'll see is that the arbitrator found in
17 Mr. Zweizig's favor on that claim, on both his claim and all
18 of those things that Northwest Direct had accused him of.

19 And after that, you'll hear that Mr. Rote and his
20 company challenged that result. They took it to court. And
21 the Court looked at that, at all the materials, and they
22 confirmed it. They said, This is final. This is it. And
23 they issued a judgment in Mr. Zweizig's favor for \$75,000.

24 And what you'll find out next is that Mr. Zweizig
25 wasn't paid. And to this day, he's still trying to collect

Opening Statement - Plaintiff

1 his judgment in that case.

2 And in the midst of collecting that judgment, that
3 brings us to what our case is about today. What you're going
4 to see happened is Mr. Rote, on behalf of the corporate
5 entities, signed over the rights to all of his business --
6 businesses's information to himself and took it upon himself
7 to write a blog. And we'll see that blog today, and that blog
8 is what we're here about, and what he's done with that blog
9 and how he's used it.

10 And I'm not going to go into all of the details of
11 that. In fact, even in Mr. Zweizig's testimony, he's not
12 going to go into all of the details of that. But over the
13 last two years -- this blog was first published in February of
14 2015, and Mr. Rote has been consistently publishing on that
15 blog up until today -- or not today, but last week. And that
16 blog has some awful, vile allegations about Mr. Zweizig.

17 And what you'll see today is that Mr. Rote has,
18 because that case -- because that earlier case his company
19 lost, he's now publishing all this stuff about Mr. Zweizig.
20 And it's the same stuff that he's already lost; namely, that
21 Mr. Zweizig destroyed all the computers and shut down the
22 company. It uses extensively Mr. Zweizig's name, and you'll
23 see that.

24 What's worse is you'll see that Mr. Zweizig actually
25 discovered this blog when he Googled his own name. And so

Opening Statement - Plaintiff

1 what this thing has done now is assumed an identity for
2 Mr. Zweizig on the Internet that he -- he never wanted.

3 And so it's been 14 years. And when Mr. Zweizig
4 Googles his name now, he is being accused of being a criminal.
5 He's being accused of downloading and sharing pornography.
6 We'll go through it, but it's some of the most vile things
7 that you can imagine.

8 And it doesn't stop there. It's also his family.
9 You'll learn that Mr. Zweizig is engaged to an attorney -- has
10 been for a long time -- in New Jersey. Her name is Sandra
11 Ware. So what you'll hear today is that Mr. Rote and this
12 information on the Internet also focuses on Ms. Ware. And so
13 not only does Mr. Zweizig have to live with the horror of
14 finding this and knowing that this is out there about himself,
15 it's also his fiancée.

16 You'll also see that this website also disparages
17 anyone who has tried to help Mr. Zweizig with his claims. And
18 we'll go through it, but the sheer content of this thing and
19 the breadth of how long this has gone on, that's the reason
20 Mr. Zweizig is here today. He's here today to get a ruling in
21 this case and to reclaim his identity. And at the end of this
22 case, I'll stand up and ask you to help us with that.

23 Thank you.

24 THE COURT: Opening statement for the defense.

25 Mr. Rote.

Opening Statement - Defendant Rote

1 MR. ROTE: Thank you, Your Honor.

2 Ladies and gentlemen of the jury, the blog was
3 written. It's a personal product of mine, and I've maintained
4 that from the very beginning. I did license information from
5 my former employer. Only one of the corporate entities that
6 they've identified was Mr. Zweizig's employer, only one. And
7 after that company was out of business, I began the blog.

8 I began the blog because we were subjected to very
9 unacceptable behaviors by an arbitrator and an attorney who
10 represented Mr. Zweizig. The arbitrator worked with
11 Mr. Zweizig's attorney for 14 years, seven years as a partner.
12 Neither one of them disclosed that during the course of the
13 arbitration.

14 We discovered that during the course of the
15 arbitration. And, ultimately, when we brought that to the
16 attention of the arbitrator, he resigned. He recused himself.
17 He was convinced by Mr. Zweizig's attorney to reverse that
18 recusal, which he did. And when he returned to the case, he
19 summarily dismissed all of our evidence.

20 Eight witnesses testified. We had three forensic
21 experts testify, thousands of pages of evidence, all dismissed
22 in retaliation for having brought up the fact that he did not
23 raise this issue of independence, and it is an issue that he
24 is required to raise on an ongoing basis.

25 We have a long history. This may -- this has not

Opening Statement - Defendant Rote

1 been going on for 14 years. Mr. Zweizig was terminated in
2 2003, and there was a great deal of question argued with the
3 arbitrator as to whether or not he was terminated before his
4 complaint to the Department of Justice or after.

5 But, most importantly, the issue for the employer and
6 one of the key issues that I raise in this blog is that
7 Mr. Zweizig withheld key evidence, key programming code, that
8 resulted in the company shutting down after his last day for
9 10 days, as we hired and recreated the programming. 150
10 people were laid off a week before Thanksgiving.

11 And part of this blog -- part of this blog addresses
12 the fact that I don't think he should be able to hide behind a
13 whistleblower claim and avoid that issue. None of that issue,
14 though, would raise what had been risen had we not had this
15 difficulty with the arbitrator.

16 I'm going to show you evidence of the fact that his
17 retaliation claim, while serious in his mind, was addressed in
18 48 hours. It was open and closed by the Oregon Department of
19 Justice in a week. And that even a day before his last day,
20 I had reached out to him and said, "Let's put together a
21 public statement. Let's put together something that you find
22 compatible, that we find compatible." This was all before.
23 I was happy to help him with his career. I didn't want him in
24 the company.

25 After the shutdown, obviously that didn't happen

Opening Statement - Defendant Rote

1 anymore. He hurt a lot of people. He cost us a great deal of
2 money.

3 We spent two years in New Jersey, eventually got back
4 here in 2005 to an arbitration. The arbitration went on and
5 on and on, for five years. An arbitrator charges a great deal
6 of money, charged Mr. Zweizig a great deal of money. It was
7 unfair to both of us.

8 But an issue today is whether or not his employer,
9 the corporations, did this. And I can assure you that I did
10 this. Using the material and my experience from it, I did it,
11 I wrote it, because I don't think that perjury and destruction
12 of evidence should be looked the other way just because he
13 prevailed with an arbitrator who didn't disclose his
14 relationship with the attorney that he worked with, who didn't
15 disclose his lack of independence, and then became angry when
16 we brought it to his attention. He became so angry that he
17 took independent forensic reports confirming our positions and
18 rejected them out of hand.

19 Now, the blog goes into a great deal of detail,
20 meaning I examine the forensic reports in great detail. I
21 examine Mr. Zweizig's lack of evidence in great detail. I go
22 through and talk about the evidence that we provided and the
23 evidence that he did not. I go through the arbitrator's
24 actions, his retaliation, and the lack of disclosure.

25 It's difficult to summarize what a blog is about in

Opening Statement - Defendant Rote

1 a single word, a paragraph, or even a page, because it's 96
2 chapters, 96,000 words. Only about 25 relate to this,
3 Mr. Zweizig's time with us, and what happened in the
4 arbitration.

5 The rest is an evolutionary component of behavior
6 that -- that was caused in part by his attorneys. I certainly
7 attacked his attorneys for their honesty.

8 An attorney has a duty to a tribunal, to you, to this
9 Court, to be honest under a code of ethics even when it's not
10 favorable to his or her client's position. And his attorney,
11 Linda Marshall, in the arbitration, perpetrated a fraud on
12 that arbitration.

13 I published 17 counts of perjury and destruction of
14 evidence. I outline in great detail what happened.

15 At the end of the day -- at the end of the day, this
16 issue, in part, spins off not just what I outline in the blog,
17 because that's my representation of the truth. Not every blog
18 post is going to be polite to Mr. Zweizig. Much of it is just
19 an evaluation of the evidence. Some of it, though, is an
20 attack on him personally. I don't deny that.

21 But at end of the day, the sum of the blog is about
22 evaluating the risk of being in an arbitration where an
23 arbitrator doesn't disclose his relationship with the attorney
24 that represents Mr. Zweizig, and all that follows when that
25 happens. It compromises justice, and I set out to expose

Opening Statement - Defendant Rote

1 that.

2 I will testify that I met with the arbitrator a year
3 ago, and he conveyed to me what was in his mind, what was on
4 his mind at the time. And I will convey to you now that he
5 confirmed many of my concerns about his ability to comprehend
6 the evidence, his ability to -- his ability to reread the
7 evidence and understand it.

8 And so he followed the path. He followed the path
9 that was outlined for him by his former partner, someone he
10 trusted, someone who misled him. And that is a substantial
11 part of what this analysis is about, this blog is about.

12 I consider it a risk to the public to be involved in
13 an arbitration when the arbitrator and the attorney both do
14 not disclose that they worked together for 14 years.

15 Again, at the end of the day you have to consider
16 whether or not I was acting by myself or I was acting on
17 behalf of an employer. The employers are out of business,
18 long gone, having suffered three cybercrime attacks. After
19 the last and after the last litigation on that in 2014, these
20 companies were shut down systematically. I shut those
21 companies down because I couldn't protect them.

22 Mr. Zweizig was the second of those cybercrime
23 attacks, and he hurt us a great deal. What we didn't care
24 about what his complaint to the Department of Justice. It's
25 not that we didn't take it seriously. It's just that we dealt

Opening Statement - Defendant Rote

1 with it very quickly. No evidence was provided, and I'll show
2 you that.

3 So our position -- my position today is that it is,
4 in fact, just a product of my own doing, not of the employers
5 that were out of business. It is, in fact, a position that it
6 is about arbitration and the compromise and the perjury and
7 the decision by his attorney, Linda Marshall, knowing that she
8 could put that information on, that evidence on, that perjury
9 on, and not be hurt by it.

10 The arbitrator is -- was, at the time of the
11 arbitration, 79 years old, 85 or so today. And he -- his
12 cognitive skills were deteriorating at the time. And
13 ultimately it is a critique of the failure of the system
14 to -- to remove him even from offering his services at
15 arbitration.

16 That's my story, and I'll put on evidence to support
17 all of those positions.

18 Thank you.

19 THE COURT: Thank you.

20 Jen, can you move the lectern.

21 (There is a brief pause in the proceedings.)

22 THE COURT: Call your first witness.

23 MR. CHRISTIANSEN: Call Max Zweizig.

24 THE COURT: Step forward and be sworn.

25 THE CLERK: Go up the stairs here. Raise your right

Zweizig - D

1 hand.

2

3

MAX ZWEIZIG

4 called as a witness in his own behalf, having been first duly
5 sworn, is examined and testifies as follows:

6

7 THE CLERK: Please have a seat. State your name and
8 spell it.

9 THE WITNESS: Max Zweizig. M-a-x, first name; last
10 name is Z-w-e-i-z-i-g.

11 THE COURT: Thank you.

12 You may inquire.

13

14 DIRECT EXAMINATION

15 BY MR. CHRISTIANSEN:

16 Q. Mr. Zweizig, where do you live?

17 A. I live in Woodbury, New Jersey.

18 Q. Can you describe for the jury just a little bit about
19 Woodbury. Where is it?

20 A. Woodbury, New Jersey is about, depending on traffic, about
21 15 minutes from Philadelphia, over a -- over one of the
22 bridges. You have to go over a bridge to get there.

23 But other places near me that you might have heard
24 about, Cherry Hill, maybe, New Jersey. It's a long way from
25 here.

Zweizig - D

1 Q. How long have you lived in Woodbury?

2 A. Well, since I was 15.

3 Q. All right. And who do you live with?

4 A. I live with Sandra Ware, my fiancée.

5 Q. How long have you been with Ms. Ware?

6 A. Twenty-six years.

7 Q. Okay. What do you like to do for hobbies or fun,
8 Mr. Zweizig?

9 A. Computer stuff, almost anything computers, computer
10 programming for sure, also very big into music. I've been
11 playing guitar for -- it's about 30 or 32 years now, at least
12 that. I've played out, been with bands, and done some
13 recording, things like that, and also have taught guitar for
14 many years.

15 Q. And what's your profession?

16 A. IT specialist.

17 Q. How long have you been doing IT?

18 A. I'd say about 30 years, 30, a little less.

19 Q. How did you get into technology?

20 A. I was working -- I was much younger. I was working in a
21 machine shop, and we built flatbed trailers that would haul,
22 like, heavy equipment down the road, you know. That's what
23 you would put it on and it would go. If you've ever seen
24 something that says "Eager Beaver" on the side of it --

25 THE COURT REPORTER: I'm sorry. I'm going to have

Zweizig - D

1 you slow down. "If you see something that says" -- and I
2 couldn't hear you.

3 THE WITNESS: The model name of the trailer is -- I
4 think the name of the company was Eager Beaver. And some of
5 them are still around. Once in a while I still see one, so we
6 must have done a good job on some of them.

7 But that company closed down at my location. And it
8 was in Thorofare, which is very, very close to Woodbury, one
9 town over. And it was a union job, and they tried to find a
10 lot of us work. They were unable to find me work. And when
11 they were unable to find me work and unemployment ran out, I
12 took a job telemarketing. That was also in Woodbury, New
13 Jersey.

14 And this was before companies -- call companies,
15 anyway, had computers. And we did our job off of labels and
16 made calls, and it was very old school. And the scripts we
17 had were kind of to sell the product on the phone. It was
18 kind of on the fly. And I felt more comfortable if I put that
19 together into something.

20 And I had what was called a Sharp Wizard organizer.
21 I don't know if anybody is going to know what that is, but
22 it's a little kind of organizer that you could do things. It
23 also had basic programming in it. I started my programming,
24 actually, on that.

25 But I kept my scripts in there. I found it easier to

Zweizig - D

1 just read the same thing every time, practice the inflection,
2 get it right, and not really have to think about, you know,
3 the job.

4 So I did that. And then we got computers into place,
5 the old, like, monotone -- these were these gold screen
6 computers, not the green, but the orange. And somebody said,
7 you know, "Well, Max is always playing with that computer
8 thing he has" -- which is totally not really a computer,
9 but -- "Maybe he could do the computer stuff."

10 I asked if it was more money. It was a little more
11 money, so I took the job. And that then -- I took a job as a
12 data processor. I wasn't a programmer. I was running
13 primarily other people's programs to process data. And that's
14 where I got into the field of computer technologies.

15 BY MR. CHRISTIANSEN: (continuing)

16 Q. And what was your job with Northwest Direct?

17 A. I was director of IT.

18 Q. And at that point, how long had you been in information
19 technology?

20 A. I guess that would be around 20 years or so.

21 Q. Can you describe for the jury what -- what Northwest
22 Direct did for their business?

23 A. Northwest Direct set up call centers for the purpose of
24 telemarketing and accomplished telemarketing, a telemarketing
25 company.

Zweizig - D

1 Q. What were your duties as IT director?

2 A. My duties were to manage myself and one -- I think two
3 other people were all they had there. There were other jobs I
4 had a larger staff, but this one, just two people at a
5 maximum, usually one. And so I managed that person and his
6 job.

7 My personal job, my daily duties, were import and
8 export of data from our clients, the call data that would be
9 accomplished at the end of the day, to produce that into
10 reports, and to produce that into client files that they would
11 then put into their system to accomplish the sales, remove
12 people from the list, decide who is not interested, those
13 kinds of things.

14 Q. How many call centers did Northwest Direct have while you
15 were employed there?

16 A. When I started there, I believe they had three. I think
17 they still had one -- I think it was in Beaverton. I'm not
18 sure. That closed down shortly after I worked there. And I
19 don't believe I was ever at that call center. So most of the
20 time they had two: one in Eugene, Oregon; and one in
21 Dyersville, Iowa.

22 Q. How many employees did Northwest Direct have?

23 A. It fluctuated. That type of industry generally does. But
24 I would say between 150 and 175 I would say is about accurate.

25 Q. Okay. And can you turn to Exhibit --

Zweizig - D

1 A. Support staff included, not just telemarketers.

2 Q. Sure.

3 Would you turn to Exhibit 1 in the binder. Do you
4 have a binder?

5 A. No.

6 MR. CHRISTIANSEN: Approach the witness with a
7 binder?

8 THE COURT: Sure.

9 MR. CHRISTIANSEN: (Handing).

10 BY MR. CHRISTIANSEN: (continuing)

11 Q. Can you turn to Exhibit 1.

12 A. I have it.

13 Q. Do you recognize that document?

14 A. Yes, sir.

15 Q. What is that?

16 A. This is my employment agreement.

17 Q. Is that an accurate copy of your employment agreement?

18 A. It is.

19 MR. CHRISTIANSEN: We'd offer Exhibit 1 into
20 evidence.

21 THE COURT: Any objection?

22 MR. ROTE: No objection.

23 THE COURT: Received.

24 BY MR. CHRISTIANSEN: (continuing)

25 Q. When you -- when your employment at Northwest Direct

Zweizig - D

1 ended, to whom did you report? Who was your boss?

2 A. I'm sorry. Would you restate the question?

3 Q. When your employment at Northwest Direct ended, who was
4 your boss?

5 A. Oh, I'm sorry. Tim Rote.

6 Q. All right. And where was Mr. Rote?

7 You don't need the exhibit anymore.

8 Where did Mr. Rote work?

9 A. Mr. Rote worked at an office away from the call centers.
10 It was in Oregon. I'm not sure. I don't remember the city
11 that it was in.

12 Q. But in Oregon?

13 A. Yes.

14 Q. Okay. What were Mr. Rote's roles for the company at that
15 point?

16 A. Day to day?

17 Q. And generally.

18 A. I mean, he managed the business. It was, you know,
19 definitely his company. He was the only one that, you know,
20 did any of the business. There was no board of directors or
21 anything. He was president, listed as CEO. Any top-level
22 title was his.

23 I'm not familiar what his daily duties were. I know
24 what, you know, mine were and the people that I worked with,
25 but as far as up at that level, I -- I can't answer that.

Zweizig - D

1 Q. Did you have any relationship whatsoever with Mr. Rote
2 outside of work?

3 A. No, none at all.

4 Q. Let's turn to the end of your employment. Can you tell
5 the jury how your employment ended?

6 A. I was terminated for -- for whistle blowing. I had found
7 a report that -- that was e-mailed to me inadvertently. And I
8 found it, and it in fact showed that we were overbilling
9 clients. I looked into it to make sure it was true and real
10 as to the data. And I informed Mr. Rote of that via a letter
11 to him from me, an e-mail to him. And I, in fact, found that
12 we were doing that.

13 And I was very concerned because whoever was making
14 those decisions was not only implicating themselves, but was
15 implicating other people in the company and me, and -- because
16 I'm sending the reports, I'm sending the data, I'm sending
17 everything to the client. So if they're going to get
18 something that's not right, you know, my name is going to be
19 attached to it somewhere.

20 And I did call an attorney and find out how I
21 separate myself from that, from that activity, what am I
22 supposed to do. I didn't know what to do. And he said that I
23 need to file a complaint with the Department of Justice, which
24 I did.

25 And at the same time, or before that -- I'm not -- I

Zweizig - D

1 don't remember the events exactly, but -- as far as the
2 timeline, but I did inform Mr. Rote that, you know, I had
3 found this and I believed it to be true.

4 And shortly after that -- some things happened at
5 work, but shortly after that I was terminated, definitely for
6 that.

7 Q. What did you do after you were terminated?

8 A. I filed a wrong suit for -- a lawsuit, I'm sorry -- a
9 lawsuit for wrongful termination.

10 Q. Where?

11 A. In Oregon.

12 Q. You filed a lawsuit in Oregon?

13 A. Oh, no. I'm sorry. I filed a lawsuit in New Jersey. We
14 ended up trying it in Oregon.

15 Q. Okay. Can you turn to Exhibit 2 in that binder.

16 Do you recognize that document?

17 A. Yes, sir.

18 Q. What is it?

19 A. Yes. This is the New Jersey lawsuit that I filed.

20 Q. Is that an accurate copy of the Complaint you filed?

21 A. Yes.

22 Q. All right.

23 MR. CHRISTIANSEN: We'll offer Exhibit 2.

24 MR. ROTE: No objection.

25 THE COURT: Received.

Zweizig - D

1 BY MR. CHRISTIANSEN: (continuing)

2 Q. Can you just briefly -- you don't have to get into the
3 details, but describe for the jury what your lawsuit was
4 about.

5 A. I was -- I was let go for, you know, filing this
6 complaint. I had, you know, done nothing in my job duties
7 that I was let go for. I had good reviews. There was really
8 no problem with my work.

9 I, you know, worked, I'd say -- I'm not kidding
10 you -- 60 to 80 hours a week there, which was okay. I knew
11 what I signed on for. I knew what my position was going to be
12 and that I was going to be doing most of the work, and that
13 was fine.

14 But I didn't do anything to warrant my termination,
15 with the exception of filing that report to the DOJ. And
16 Mr. Rote had some conversation with me about that, and it was
17 clear I was fired for that.

18 Q. So that lawsuit you filed, did that case stay in New
19 Jersey after you filed it?

20 A. No, it didn't. It was moved to Oregon.

21 Q. Why?

22 A. In my contract -- a large part of my contract is dedicated
23 to dispute resolution, which I did fight. I did not want to
24 have to travel all the way to Oregon to handle this. And it
25 stood up, you know. I had to -- I fought it, but, you know,

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1 it was found that I did have to come to Oregon and I did have
2 to follow the arbitration clause in the contract.

3 Q. Northwest Direct also has made legal claims against you,
4 right?

5 A. Yes, sir.

6 Q. Can you describe those?

7 A. I'm not going to remember all of them, but --

8 Q. Just generally.

9 A. Destruction of property, failure to turn over, you know,
10 programs.

11 Without looking, I'm not going to -- there was three
12 or four of those things filed against me.

13 Q. Did they file those claims against you before you started
14 your lawsuit or after?

15 A. After.

16 Q. Can you describe for the jury what arbitration is.

17 A. Arbitration is -- it's a -- it's a dispute resolution, you
18 know, vehicle. It's not -- nothing like this. You know, it's
19 in a single room, you know, table, a conference table, a
20 conference room like you would see at work. And the
21 arbitrator sits at one end. The parties sit on either side of
22 the table with their attorneys, if they have attorneys.

23 And you go through everything pretty much like I
24 believe we're going to do here. And you put on your case, you
25 put on evidence, you have witnesses; and the arbitrator makes

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1 a decision and makes a ruling.

2 Q. Before you went to that arbitration, did you provide
3 documents to the other side?

4 A. Yes.

5 Q. And did you provide testimony before the arbitration
6 itself, like a deposition?

7 A. Oh, yes. Sorry, yes. Yes, there was a deposition process
8 before that.

9 Q. Who were the -- who was the attorney that represented you
10 at that arbitration?

11 A. That was Linda Marshall.

12 Q. And what was the name of the arbitrator?

13 A. Bill or William Crow, Bill Crow.

14 Q. And can you describe for the jury the outcome of that
15 arbitration?

16 A. I won all my claims against Northwest Direct, and
17 Northwest Direct lost all of their claims against me.

18 We put on evidence. I did not destroy any property,
19 and none of that did I do. And, you know, all my claims were
20 found for me and all the claims against me were thrown out,
21 dismissed.

22 Q. Can you turn to Exhibit 3, please.

23 Do you recognize that document?

24 A. Yes. Sorry. This is the order, yeah, at the end of that.

25 Q. So this is the order that the arbitrator issued?

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1 A. Yes, sir.

2 Q. Okay. And is that an accurate copy of that order?

3 A. It is.

4 MR. CHRISTIANSEN: We'll offer Exhibit 3.

5 THE COURT: Any objection?

6 MR. ROTE: No objection.

7 THE COURT: Received.

8 BY MR. CHRISTIANSEN: (continuing)

9 Q. So what happened after you found out you -- you had won
10 that arbitration?

11 A. NDT fought the ruling.

12 THE COURT REPORTER: I'm sorry. Repeat.

13 THE WITNESS: Northwest Direct Teleservices fought
14 the ruling.

15 BY MR. CHRISTIANSEN: (continuing)

16 Q. Where did they fight the ruling?

17 A. They fought that in Oregon, I believe.

18 Q. Was that in the court?

19 A. I believe it was.

20 Q. And what was the outcome of that challenge?

21 A. It -- you know, they were not allowed to fight the ruling.
22 Eventually the opinion and order, that was, I believe, called
23 confirmed and, you know, it stuck.

24 Q. Okay. Have you been able -- how much did you -- how much
25 were you awarded in that arbitration?

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1 A. It was for a few things. It was somewhere around \$75,000
2 total.

3 Q. When you say "a few things," can you describe what you
4 mean?

5 A. Yes.

6 I'd have to look at them. Is that okay?

7 Q. That's fine.

8 A. Okay.

9 (Pause) I'm sorry. I had to get to the right spot.
10 \$67,500 for a period of nine months of employment. That would
11 have been equivalent to what I would have made in nine months
12 at ND -- Northwest Direct. And also included -- I had two
13 weeks' vacation. That also included one week vacation pay for
14 that period of 1,875.

15 Also, during all this -- or before this, actually,
16 sorry -- Mr. Rote fought my unemployment. He claimed at that
17 time that I was fired for fraud, a different reason. And I
18 had to go to an unemployment hearing, with which to recover my
19 unemployment. He lost that hearing as well, and I was able to
20 receive unemployment. For expenses to do with that, the
21 arbitrator also awarded me a thousand dollars for that.

22 There was, I believe, one other -- yeah, and then I
23 mentioned there were some things right before the end of the
24 actual end of my employment. Tim Rote had sent letters to
25 coworkers and, as the arbitrator puts it, was done solely in

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1 an effort to embarrass respondent, me.

2 He said (reading), Such actions were done in
3 retaliation for claimant's perceived misconduct by respondent,
4 by Mr. Rote, and his apparent anger.

5 He awarded me \$5,000 for that.

6 Q. So does the total number of \$75,375 sound about right to
7 you?

8 A. Yes.

9 Q. All right. Have you been able to collect any of that
10 money?

11 A. No, sir.

12 Q. And have you taken any efforts to try and collect that?

13 A. Yes, I have.

14 Q. What?

15 A. My attorney tried to collect that money. I'm not sure
16 specifically, you know, what you do to do that. But, you
17 know, we entered, you know, requests, judgment requests. I
18 believe we sent things to Mr. Rote to try and collect that.

19 Q. Are you still trying to collect that today?

20 A. Yes, sir.

21 Q. How?

22 A. Well, we have a case for that. We -- you did open a case
23 for that, and that is a fraudulent transfer case, and -- to
24 try and collect the money. Tim had done something with the
25 corporations and himself -- I don't understand at all -- to

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1 not pay this.

2 Q. Okay. And that case is not what we're here about today,
3 right?

4 A. No, not at all.

5 Q. All right. So what are we here about today?

6 A. A couple years ago I -- like you said, I Googled my name,
7 and I found an incredibly disparaging website was put up about
8 me and clearly about the arbitration that I had already gone
9 through.

10 Q. Approximately when did you discover that website?

11 A. A couple of years ago now.

12 Q. Can you turn to Exhibit 534, please -- or, sorry. Let me
13 get you a copy of that. It's a defense exhibit (handing).

14 A. Okay.

15 Q. What is that document, Mr. Zweizig?

16 A. This is a letter from my attorney, Linda Marshall.

17 Q. What's the date on that letter?

18 A. October 3rd, 2015.

19 Q. Is that an accurate copy of the letter?

20 A. It is.

21 MR. CHRISTIANSEN: Move to offer Defense Exhibit 534.

22 THE COURT: Any objection to 534?

23 MR. ROTE: No objection.

24 THE COURT: It's received.

25 MR. CHRISTIANSEN: Okay. Permission to publish a

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1 demonstrative of this, this exhibit to the jury?

2 THE COURT: You may.

3 (Defendant's Exhibit No. 534 is then published to the
4 jury.)

5 THE WITNESS: I see it here.

6 MR. CHRISTIANSEN: Oh, you do?

7 THE WITNESS: I do.

8 THE CLERK: I think we're toggling each other. Give
9 it a second.

10 THE COURT: Do the jurors have it on their screen
11 yet?

12 (There is a pause in the proceedings.)

13 MR. CHRISTIANSEN: I see it on my screen.

14 THE CLERK: There it is.

15 MR. CHRISTIANSEN: Oh, there we go.

16 BY MR. CHRISTIANSEN: (continuing)

17 Q. Can you describe for the jury what -- what this letter is
18 about.

19 A. This letter is from my attorney, Linda Marshall, to
20 take -- to Mr. Rote, asking him to please take the website
21 down.

22 Q. And what's the name of the website?

23 A. This website is called Sitting Duck Portland.

24 Q. Do you know who is writing that website?

25 A. Yes, sir: Tim Rote.

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1 Q. And what, generally, was that website about?

2 A. That website was about the arbitration that we went
3 through and considerably, you know, about me.

4 Q. Okay. What was your reaction when you discovered this
5 website about you?

6 A. I -- I was -- you know, angry, of course, confused. I
7 didn't think anybody could possibly do this. I had already
8 gone through, you know -- we're all in agreement that this was
9 a very lengthy arbitration, not an easy process for somebody
10 to go through, cost a lot of money. And, you know, I won. I
11 thought it was over.

12 I thought that my -- it was horrible. It was a -- it
13 was not a good process. It was not something that, you know,
14 felt like you think it would. It was very convoluted,
15 confusing. Awful things said during that as well.

16 And the biggest thing I wanted out of that was to be
17 done with Tim Rote, and I thought that I was. And, you know,
18 this was a job that I had for a year and a half, and it was
19 over. And I filed a lawsuit for that. It was terrible. That
20 was over. I thought this was done.

21 And here it is, and it's coming up again, and not
22 just for me to see, but with a great bunch of revisionist
23 history for anyone to see.

24 Q. After this letter on October 3rd, Mr. Zweizig, did the
25 website come down?

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1 A. No, sir.

2 Q. I'd like you to turn to Exhibit 9, please. Do you
3 recognize this document?

4 A. Yes, sir, I do.

5 Q. What is it?

6 A. This is a Google search I did for my name October 4th,
7 2015.

8 Q. And that exhibit that you're looking at, is that an
9 accurate representation of what you saw when you Googled your
10 name on October 4th?

11 A. Yes, it is.

12 MR. CHRISTIANSEN: I'd offer Exhibit 9 into evidence.

13 THE COURT: Any objection to 9?

14 MR. ROTE: No objection.

15 THE COURT: Received.

16 MR. CHRISTIANSEN: Publish to the jury?

17 THE COURT: You may.

18 THE WITNESS: After you're up, I think you hit the
19 clicker.

20 MR. CHRISTIANSEN: I'm just going to give it a
21 second.

22 THE WITNESS: Okay. I'm guessing, too.

23 (Plaintiff's Exhibit No. 9 is then published to the
24 jury.)

25 THE WITNESS: Again, I see it. It's here.

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1 BY MR. CHRISTIANSEN: (continuing)

2 Q. Can you describe for the jury what you saw when you
3 Googled your name on October 4th?

4 A. I saw that the first, you know, result was this Sitting
5 Duck Portland website.

6 And, you know, it says right there, (reading) It's a
7 story about an arbitration involving one of my companies and a
8 former IT manager by the name of Max Zweizig.

9 Q. And what was your reaction when you saw this?

10 A. That it just -- absolute distress. I mean, you know, I --
11 you know, after I clicked on it, I saw it was a bunch of
12 revisionist history.

13 You had asked me what was my reaction when I saw
14 this. I already said that. Sorry.

15 When I saw this -- you know, when we went through the
16 arbitration, there was a lot of talk about confidentiality and
17 things of that nature and that that would be -- you know, that
18 things were only supposed to be used at the arbitration. When
19 the arbitration was over, it was over.

20 And I couldn't believe that somebody could just go
21 ahead and -- just go ahead and publish all that stuff, you
22 know, to the Internet, when I've already been through this and
23 won. It was over.

24 Q. I see a date, February 27th, 2015. Did you know, until
25 you came across this, that someone had been writing about you

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1 on the Internet?

2 A. I'm sorry. I don't see that date.

3 Q. It's in the --

4 A. Oh, yes, I see it. Sorry.

5 No. No. I mean, I believe this is when I found it
6 and printed it out.

7 Q. Okay. I'll have you now turn to Exhibit 4, please.

8 A. I have it.

9 Q. Do you recognize this document?

10 A. Yes, I do.

11 Q. What is this?

12 A. This is the -- this is the website. This is the first, it
13 looks like, three chapters of the website.

14 Q. And when you say "chapters," what do you mean by that?

15 A. The website is organized into these chapters. There's a
16 chapter, a chapter number, and then Tim talks about what he
17 wants to talk about on that page or for that group of pages
18 for that chapter.

19 Q. And how many chapters are you seeing here?

20 A. Did I say three? Four.

21 Q. And what date did you print this?

22 A. This was October 2nd, 2015.

23 Q. And is this an accurate copy of what you saw on that date?

24 A. Yes, it is.

25 MR. CHRISTIANSEN: We'll offer this as Plaintiff's

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1 Exhibit 4.

2 THE COURT: Any objection to 4?

3 MR. ROTE: No objection.

4 THE COURT: Received.

5 THE CLERK: Go ahead and hit "publish."

6 MR. CHRISTIANSEN: Publish? Yeah.

7 What's that?

8 THE CLERK: Do you have 4 up?

9 MR. CHRISTIANSEN: No, not yet. I'm going to.

10 Sorry. I misunderstood.

11 BY MR. CHRISTIANSEN: (continuing)

12 Q. All right. So I'd like to go through kind of the dates of
13 these and what you saw at which date, without going through
14 all the content at this point.

15 So you just said on Exhibit 4, printed on
16 October 2nd, 2015, that there are four chapters. Based on
17 what you see, are these -- these dates of publication correct
18 in Exhibit 4?

19 A. Yes, sir.

20 Q. All right. I'm going to have you turn to Exhibit 5. Do
21 you recognize this?

22 A. Yes, I do.

23 Q. What is it?

24 A. This is a chapter. It's called Chapter 5, and it says
25 "Our History With Max Zweizig." And now not only my name is

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1 on here, but there's a picture of me on here as well.

2 Q. And what date did you print this?

3 A. This was November 6th, 2015.

4 Q. Can you take a second look at that date?

5 A. I'm sorry. October 6th, 10-6. Sorry. A couple days
6 later, a few days later.

7 Q. And is this an accurate copy of what you saw on the
8 Internet when you printed it?

9 A. It is.

10 MR. CHRISTIANSEN: All right. We're going to offer
11 Exhibit 5.

12 MR. ROTE: No objection.

13 THE COURT: Received.

14 BY MR. CHRISTIANSEN: (continuing)

15 Q. So on Exhibit 5, Mr. Zweizig, it's just that one chapter
16 on October 5th, right?

17 A. Yes, sir.

18 Q. All right. Turn to Exhibit 6. What's this?

19 A. This is Chapter 6. This one is titled "So Why Am I
20 Blogging?"

21 Q. And what date did you print this one?

22 A. I printed this one on the 6th.

23 Q. And this is what you saw --

24 A. Yes.

25 Q. -- when you printed it?

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1 A. Yeah. October -- sorry, October 6th, yes.

2 Q. Chapter 6 -- I'm sorry.

3 MR. CHRISTIANSEN: We'll offer No. 6.

4 MR. ROTE: No objection.

5 THE COURT: Received.

6 BY MR. CHRISTIANSEN: (continuing)

7 Q. So is this accurate, Mr. Zweizig, on October 6th, you see
8 a new chapter published on October 6th --

9 A. Yes, sir.

10 Q. -- that same day?

11 A. Yes, sir.

12 Q. Can you turn to Exhibit 7, please. What date -- or what
13 is this document?

14 A. This is -- these are more chapters on the website now.

15 Q. And what date did you print this?

16 A. This was printed October 12th, 2015.

17 Q. Okay. And that's what you saw on the Internet when you
18 printed it?

19 A. Yes, sir.

20 MR. CHRISTIANSEN: We'll offer Exhibit 7.

21 MR. ROTE: No objection.

22 THE COURT: Received.

23 BY MR. CHRISTIANSEN: (continuing)

24 Q. Mr. Zweizig, is this a correct summary of the chapters
25 that you saw published on October 12th?

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1 A. Yes, sir.

2 Q. Just one more for you. Can you turn to Exhibit 8?

3 A. I have it.

4 Q. All right. What's this document?

5 A. This is the website as I printed it out on October 23rd,
6 2015. Again, two more chapters are up.

7 MR. CHRISTIANSEN: All right. I'll offer that
8 exhibit, Exhibit 8.

9 MR. ROTE: No objection.

10 THE COURT: Received.

11 BY MR. CHRISTIANSEN: (continuing)

12 Q. So, Mr. Zweizig, this summary shows that from October 2nd
13 to October 23rd, you had printed this website five times, and
14 in that time you had seen 15 chapters appear; is that correct?

15 A. Yes, sir.

16 Q. Can you turn to Exhibit 10, please.

17 A. I have it.

18 Q. And what is this document?

19 A. This is a Google web search for my name again on
20 November 9th, 2015.

21 Q. Is this an accurate copy of what you saw when you Googled
22 your own name on November 9th?

23 A. It is.

24 MR. CHRISTIANSEN: We'll offer Exhibit 10.

25 THE COURT: I'm sorry. Is that --

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1 THE CLERK: 10.

2 THE COURT: Any objection to 10?

3 MR. ROTE: No objection.

4 THE COURT: It's received.

5 MR. CHRISTIANSEN: Permission to publish this to the
6 jury?

7 THE COURT: Sure.

8 (Plaintiff's Exhibit No. 10 is then published to the
9 jury.)

10 BY MR. CHRISTIANSEN: (continuing)

11 Q. So, Mr. Zweizig, can you describe for the jury, using this
12 demonstrative, what you saw when you Googled your name on
13 November 9th?

14 A. Yeah. I'm sorry for turning away, but it's much easier if
15 I read it here. It's small.

16 Yeah. This is a representation of my Google search.
17 And this shows that the top two -- not just one now, the top
18 two results for my name come up. And in the top result now
19 my, yes, girlfriend, but my fiancée, Sandra Ware, is also
20 coming up in the search results.

21 Q. That first result uses the word "profiteer." What's that
22 about?

23 A. I don't know. It's alleging something, you know, horrible
24 that I'm not. I'm not a profiteer. I was his employee.

25 Q. Okay. And I'd like to fast-forward, Mr. Zweizig, to

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1 today. As you sit here today, to the best of your knowledge,
2 how many chapters are written on the Internet on this website?

3 A. There are now 97 chapters and one other document.

4 Q. Mr. Zweizig, I'd like to go through and offer some
5 documents.

6 MR. CHRISTIANSEN: And I guess to expedite things,
7 we'd offer Exhibits 11, 12, 18, 19, and 20 into evidence.

8 Mr. Rote, any objection to that?

9 MR. ROTE: Perhaps.

10 MR. CHRISTIANSEN: That's 11, 12, 18, 19, 20.

11 MR. ROTE: No objection.

12 THE COURT: Received.

13 BY MR. CHRISTIANSEN: (continuing)

14 Q. Mr. Zweizig, without going through all of this material,
15 I'd like to talk generally with the jury about what you saw on
16 these websites. And I'd like to go through it by categories.

17 A. Okay.

18 Q. So the first question I have for you is: What did you see
19 on this website that related to your identity?

20 A. I'm sorry. Just in general?

21 Q. In general.

22 A. Yeah. Well, the website talks about -- first of all, like
23 I said, you know, I was employed by Mr. Rote. There were
24 events that happened. We went through those events at the
25 arbitration, and that's what we did.

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1 What was on this website was something very different
2 than that, also peppered in a bunch of personal attacks on me
3 of some pretty bad nature.

4 I feel, you know, clearly a lot of the things that
5 were on the website were of an employment nature, which should
6 be in an employee file and should not be published out to the
7 Internet. I believe he should have maintained his
8 responsibility for any confidentiality to that.

9 I'm not afraid of anything in my employment file. I
10 just don't think people want it out on the Internet. I know I
11 don't need it out on the Internet for somebody to do --
12 especially when they have their opportunity to use their voice
13 to make their commentary and I have not.

14 And, you know, I mean, there's a lot that I saw on
15 that website. I'm sure we're going to go through some of it.
16 Q. What did you see that related to your family, Mr. Zweizig?
17 A. Well, my fiancée, Sandra Ware, you know, is mentioned in
18 this website. In a lot of ways, some very disparaging remarks
19 towards Sandra were, you know, alleged on this website. You
20 know, if people believe these remarks about her, it could
21 affect her, it could affect her career.

22 Her chosen vocation, she's an attorney. You know,
23 any attorney that's caught in any improper acts, you
24 know, they're going to get called on it, you know, greater
25 than any other individual would, you know, by -- there's

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1 different mechanisms to do that than for you and I.

2 You know, so I watched it really affect my family.

3 You know, Sandra Ware never worked for Tim Rote. There was no
4 reason for him to be publishing anything about her on the
5 Internet.

6 Q. How about your profession, Mr. Zweizig? What does this
7 website contain with respect to your profession?

8 A. It -- it speaks to, you know, again, things that are
9 completely untrue, saying that I'm willing to hold on to work
10 product, you know, that I'm not going to turn over work
11 product.

12 And, again, this is so unfair. We went through a
13 proceeding about this. Evidence was offered. You know,
14 there's e-mails that clearly show that not only did I turn
15 over that work product, that work product was received and
16 someone said, "Thank you." I mean, this is complete
17 revisionist history. That's just an example of that.

18 I certainly was never doing anything bad at work,
19 like downloading porn. This pornography stuff that he's
20 alleging, I don't know where he got it. He says it's on one
21 of the hard drives. When we wanted to analyze one of the hard
22 drives, instead of providing us with that hard drive, he
23 provided us with an empty CD-ROM drive. We never got a
24 chance -- my experts never got a chance to look at that, you
25 know, evidence that he says that stuff was on.

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1 And, of course, in 97 chapters of this, all that
2 stuff is left out. He gets to just try this with whoever,
3 with the public, in any way he wants to, after we had done a
4 proceeding that was structured, where I did have a voice,
5 where, you know, I could have some degree of parity. And
6 during that process, it was found that all of his claims were
7 baseless and mine were not.

8 MR. ROTE: Your Honor, I just wanted to --

9 THE COURT: Your objection is sustained.

10 You need to just answer the question.

11 You may go ahead and ask your next question.

12 BY MR. CHRISTIANSEN: (continuing)

13 Q. Mr. Zweizig, what did you see on that website, just
14 generally, what kinds of content that related to your morals?

15 A. Well, he said, you know, I was downloading pornography.
16 He said that I was distributing pornography. He said that I
17 was doing that with other people in the world. He said I was
18 bad at my job, you know.

19 I'm sorry. Morality?

20 Q. Morality.

21 A. Yeah. I mean, that's the worst of it, I think.

22 Q. Okay. How about publicity for this website, Mr. Zweizig?
23 What did you come to learn about -- you know, was it -- was it
24 just the website or was it more?

25 A. No, it wasn't just the website. Tim was reaching out to

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1 coworkers, you know, about this. He was proliferating this
2 through LinkedIn, through some other, you know, different
3 places, you know, telling people to go to this site and to
4 look at this material.

5 He was -- he recently had, you know, a press release.
6 I'm talking like a week ago. You know, I mean, I don't know
7 if he was here with us, but, you know, maybe reporters. I
8 don't know. But he had a press release, you know,
9 saying -- where he sent this out to about 40 people. There
10 were senators in there. There were news agencies in there.
11 There were -- you know, there's all kinds of things like this.

12 On this blog at some point he said that he was going
13 to send out a million e-mails about this to try and drive
14 people to this site to take a look, you know, and would be
15 able to look at these things that he's said about me.

16 I may have missed some.

17 Q. And the last thing I want to ask about is the volume --
18 the sheer volume of the content on this website. And we'll
19 give the jury some exhibits to look at it, but can you
20 describe generally how much was there?

21 A. I don't remember the number that Mr. Rote said in his
22 opening of words or pages or whatever this was. But this is
23 voluminous. It's huge, you know. And, you know, one of my
24 concerns is, you know, what part of this is somebody going to
25 read? Are they going to read something this huge and then

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1 make a determination for themselves whether it has any merit
2 or not, or are they going to just read some horrible part
3 somewhere and go, "Oh, wow, that person is a horrible person,"
4 and just move on.

5 We're not in an attention-span society where we're
6 going to read 97 chapters of something and then determine
7 what's true.

8 Q. Mr. Zweizig, would you turn back to Exhibit 4, page 7.
9 And what I'd like to do is put up an excerpt from this.

10 Let me know when you're there.

11 A. I'm sorry.

12 (Pause) Okay.

13 Q. So, again, this is Exhibit 4, page 7, paragraph 2.

14 A. Yes, sir.

15 Q. What -- do you recognize this passage from there?

16 A. Yeah. After I went to the Google page to Google my -- or
17 went to Google to Google my name, this is in the first chapter
18 that came up after I clicked on that link.

19 Q. What jumped out at you about this?

20 A. Well, that my name is, you know, prominently bolded there.
21 It's the only thing bold in the chapter. That's not added for
22 here. That's the way that it looked.

23 Q. Okay. And down at the bottom there -- so each of these,
24 as we go through them, the bottom has a block that looks
25 similar to this. Can you describe for the jury what -- what

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1 that is?

2 A. That -- at the bottom, that is an actual -- sorry. I'm
3 too close to this.

4 The bottom of that is an actual link that will link
5 you back to that page. In this case it has a path and then
6 the file name of Chapter 1, "The Seven-Year Bitch or
7 Arbitrators in Action." It's actually a folder name. So I
8 don't know what was trying to go on there. And that was not
9 the title of this chapter. Maybe it was the title of a
10 chapter and then he revised it. I don't know. I don't know
11 why that's down there, really.

12 You asked me what jumped out at me about this. In
13 addition to my name being bolded, it said that I was
14 terminated for a variety of job performance reasons. By this
15 time, you know, it's not only me that's saying I wasn't
16 terminated for that reason, but, you know, an arbitrator said
17 I wasn't terminated for that reason.

18 And then he goes on to say -- and this was -- this
19 was right away. This was first, you know. He goes on to say
20 my fiancée practiced as an attorney for a time.

21 (Reading) During his employment with us, they lived
22 together in a small town in New Jersey.

23 That's true.

24 (Reading) A year or so before my false complaint --
25 which was not false -- he was caught conspiring with another

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1 employee of ours to set up a competing company.

2 That's not true. That, of course, was a violation of
3 our noncompete agreement, so none of the -- none of this stuff
4 is true.

5 Q. On the third line there, it says, "During his employment
6 with us." Who is "us" in this context?

7 A. "Us" would be Tim Rote and all of his companies. It
8 wasn't just Northwest Direct Teleservices. There were a
9 number of other companies.

10 Q. Throughout this blog, did you notice Mr. Rote using the
11 term "us," or is he representing that he's writing on his own?

12 A. No. It's usually "us," "we," all those -- that kind of
13 terminology, maybe exclusively. I'd have to look through it.

14 Q. Okay. Can you turn to Exhibit 5.

15 A. I have it.

16 Q. Okay. I'm looking at the -- it's going to be the first
17 page.

18 A. Okay.

19 Q. I'm going to put up a demonstrative for you here.

20 Do you remember seeing this?

21 A. Yes.

22 Q. What jumped out at you about this when you saw it?

23 A. Well, like I said before, you know, here's Chapter 5, "Our
24 History With Max Zweizig." My name is up there again.

25 You know, as I read through it, it's a bunch of,

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1 again, revisionist history of what happened. But now also my
2 picture is up there, you know, on this.

3 Q. And did you have any particular concerns with him using
4 your name in the title of a chapter like that?

5 A. Certainly, because I had -- you know, by what I looked at
6 so far, I knew it was probably going to follow that it wasn't
7 going to be anything flattering, for sure. It was going to
8 be, you know, again, a bunch of lies about me. I was
9 concerned, you know, also that my picture is there.

10 You know, in dealing with Mr. Rote, unfortunately,
11 the only way I can mitigate -- my thing is to keep a low
12 profile. And in seven or eight years or more, the only
13 picture I've ever put up on the Internet is that picture. And
14 that was on my biography to -- you know, to get guitar
15 students out on the Internet. It's called PrivateLessons.com.
16 And I put that picture on that, and he took that and put that
17 on this website.

18 Q. And I want to ask you about that, Mr. Zweizig.

19 Prior to this whole thing, how much of an Internet
20 presence did you have?

21 A. I had a little bit of an Internet presence for, you know,
22 guitar students, but also a pretty decent Internet presence in
23 the IT field.

24 Anybody who is in computers or has ever had a problem
25 with a computer -- you don't necessarily need to be in them --

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1 is probably going to be familiar with tech support forums and
2 things like that. You have a problem; you go up and see if
3 somebody else has had it so, you know, you're not beating your
4 own head against the wall for the first time, you know, ever
5 with this problem. And usually there is.

6 And I was involved, you know, pretty decently in the
7 community with not only looking for stuff when I'm having
8 problems, but also helping others. If they had an issue, you
9 know, I would post up there.

10 And when I was doing that posting, I was using my
11 real name, you know, before, you know, the stuff with Tim Rote
12 started. And then from then, not so much.

13 Q. Okay.

14 A. In fact, on my Private Lesson site, I had taken my last
15 name, Zweizig, off and just had Max after that.

16 Q. Did you take any other efforts to not use your name?

17 A. Oh, sure. Not -- I mean, not just on the Internet, but,
18 you know, I mean, this is out there about me. If somebody
19 Googles my name -- and I have a unique name, unfortunately,
20 for this. If somebody Googles my name, they're going to run
21 into this stuff.

22 So not only that, but also at work. You know,
23 sometimes whatever job I was -- you know, I had at the time,
24 you know, you come in, and they say, "We're going to set you
25 up with an e-mail address." And a lot of times the

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1 nomenclature is your first name, dot, last name, at whatever
2 company it is.

3 And I would try and do some finagling, you know, "Is
4 it okay? I'm kind of known out there as just Max. Is that
5 okay? Do you mind if it's Max at whatever company, you know,
6 we're at?" And I was able to get that done in all cases.

7 But, you know, I did that for my signatures. On
8 e-mails I would send out, I would -- a lot of times I would
9 not put my name. I'd put my address and, you know, where I'm
10 at. But, you know, trying -- the only way for me to combat
11 this was to anonymize myself.

12 Q. Okay. I'd like to move on.

13 I'm going to show you a demonstrative of the same
14 chapter, but I made it really small, and I don't expect you or
15 anyone to be able to read that. But I want to do something
16 here. And I've highlighted all the times your name is used on
17 this.

18 A. Uh-huh.

19 Q. Did that show up on your screen?

20 A. Yes, it did.

21 Q. All right. So what was your reaction to seeing your name
22 in an article like this so many times?

23 A. You know, through -- you know, my reaction to a lot of
24 this stuff is, you know, what you usually hear in the world is
25 that if somebody wants to talk about something or do whatever

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1 they want to do, they don't use people's real names to do that
2 stuff, you know, especially if they're going to editorialize,
3 you know, what they're doing.

4 So, you know, I really took it as a personal attack
5 with my name being used there. And this being used so many
6 times like this, this is going to very easily cause a search
7 engine to find me when anybody searches for me. And it's
8 going to -- it's not going to find me, but it's going to find
9 this content associated with me, not anything else that I
10 might be on the Internet for.

11 Q. I'd like to move forward and have you turn to Exhibit 18.

12 A. Empty.

13 Q. I have a copy for you (handing).

14 A. Thank you.

15 Q. Thank you.

16 So I prepared another blowup of this Exhibit 18 that
17 shows the pertinent dates. But up there on the top of page 1
18 of the exhibit, is this correct, it's published on
19 August 30th, 2017?

20 A. Right.

21 Q. That's just a few months ago --

22 A. Right.

23 Q. -- or six months ago, I guess now.

24 And, again, that's your name on there, right?

25 A. Yes, sir.

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1 Q. And so this is going to come up later. At some point --
2 or I guess was there any point where there wasn't your full
3 name on there?

4 A. Yeah. There were times where there would be "MZ" or "Max
5 Z" or "M" or my first name spelled wrong. And then, you know,
6 if I would go back two days later, my full name would be back
7 in the same place where those things were, or then taken off
8 and put back.

9 Q. So how often was this thing being changed?

10 A. It felt like it was being changed quite a bit, you know,
11 sometimes daily, sometimes, you know, a couple weeks. Then
12 I'd go back to a chapter that I had, you know, looked at
13 before and it was different, saying different things.

14 Q. Okay. Turn to Exhibit 12, please. And this is a big one.
15 It's page 341.

16 A. Okay. I believe everything that we've looked at so far
17 has been the second website.

18 Q. Oh, let's talk about that. So --

19 A. I just wanted to --

20 Q. Yeah. When you said "second website," what do you mean?

21 A. Yeah. This started -- actually, I guess that's -- I guess
22 that's not so. The first exhibits you looked at were the
23 first website. He had one at Sitting Duck Portland. And then
24 at some point Tim Rote had taken that entire website down, and
25 it was gone. I was very happy about that.

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1 And then a short time later, he started up another
2 website called The First Duty Portland at WordPress.com.

3 Q. And do you know where the name for The First Duty Portland
4 came from?

5 A. I'm not sure. I saw it downstairs when I walked in, on
6 the wall. I'm not sure what that relates to.

7 Q. Okay. So Exhibit 12 that you're looking at, is this --
8 this is The First Duty Portland website?

9 A. Yes, sir.

10 Q. All right. I'll put up a blowup of the first paragraph of
11 that. So it says (reading), As noted in many preceding
12 chapters, our IT managers' withholding of our programs caused
13 us to shut down.

14 A. Yes, sir.

15 Q. Do you know who the IT manager here is?

16 A. I believe he's talking about me. He has that plural. I
17 don't know why.

18 Q. It says (reading), It cost us dearly. It cost our
19 employees, some 175 of whom had to be laid off for part of the
20 week just before Thanksgiving.

21 A. Yes.

22 Q. To the best of your knowledge, is that true?

23 A. No, I don't think that's true.

24 Q. Can you turn to Exhibit 13, please.

25 A. I have it.

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1 Q. Do you recognize this document?

2 A. I do.

3 Q. Without going into its contents, what is it?

4 A. Well, this is an e-mail from Chris Cox. That was -- when
5 I said I had one gentleman working for me most of the time,
6 that was Chris Cox. And this is an e-mail from him to me on
7 April 25th, 2017.

8 Q. Is that an accurate copy of the e-mail you received from
9 Mr. Cox?

10 A. It is.

11 MR. CHRISTIANSEN: Offer Exhibit 13.

12 THE COURT: Any objection?

13 MR. ROTE: No objection, Your Honor.

14 THE COURT: Received.

15 BY MR. CHRISTIANSEN: (continuing)

16 Q. Mr. Zweizig, I'd like to put up a copy of this for you.
17 Do you recall receiving this e-mail?

18 A. I do.

19 Q. And what -- what is this about?

20 A. This is an e-mail from Chris to me, like I said. It says
21 (reading), Have you been hearing from Tim at all?

22 It says, He called me at work about a month ago. He
23 went on and on about how there was a complete shutdown of the
24 company after you left -- meaning me.

25 He claims I lied during the questioning at the

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1 arbitration. He's claiming Chris is lying, too.

2 Then he said some dude had to fly out of Chicago --

3 THE COURT REPORTER: I'm sorry. I really need you to
4 slow down when you read and in general.

5 THE WITNESS: I apologize. I will. I'll do my best.

6 (Reading) He said he had some dude had to fly out of
7 Chicago to save the company.

8 And then he tells me, It gets even crazier. He says
9 he is writing a play about the whole situation and wants to
10 meet with me.

11 I do not -- Chris says he doesn't remember a shutdown
12 at all.

13 (Reading) Then he texts me that he needs a deposition
14 and that he is going to subpoena me. I am not sure what the
15 hell he is going to subpoena. I received a registered mail
16 the other day. The post office left me a notice. Unless they
17 bring it to my door and put it into my hand, I am not going to
18 bother. I know it is probably from him. I think he has lost
19 his final screw. Chris.

20 BY MR. CHRISTIANSEN: (continuing)

21 Q. Did you -- did you respond to Chris about this?

22 A. I don't believe I responded to him at all.

23 Q. Why not?

24 A. If I did, it was to tell him I couldn't respond to him
25 because there is ongoing litigation about this and I can't

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1 talk to people about this.

2 Q. I'm going to have you turn to Exhibit 12, page 26. Are
3 you there?

4 A. I think so.

5 No. One moment.

6 (Pause) Yes, sir.

7 Q. All right. And I'm going to put up a blowup of -- there's
8 a box in the middle there called -- with a title "Gay Older
9 Men."

10 A. I see it.

11 Q. What's this?

12 A. This is -- this was on the website. Tim had this on the
13 website. And he's referencing this -- I don't know even know
14 what that means. I know what "gay older men" means. I don't
15 know what that next word means.

16 And then he's talking to my fiancée and saying,
17 "Sandra Ware, I thought you were engaged to Max."

18 Q. What -- how did you feel to see this?

19 A. Very upset, very, very upset, because this is terrible.
20 There is -- there is no reason to be doing this. Somebody
21 says they're mad at arbitrators or something. This has
22 nothing to do with that. This is a direct attack on me
23 instead. This is a direct attack on my family. This is just
24 awful.

25 Q. Did you talk with Sandra about what you saw on this

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1 website?

2 A. Yeah, sure.

3 Q. And, like, what happened when you talked with her about
4 that?

5 A. She was beside herself. She's like, I can't believe that
6 somebody keeps getting to do this, you know.

7 This is -- how hard I worked for this. This is
8 disgusting. It's shocking and it's, you know -- you know, why
9 attack my family? Why?

10 Q. I'm going to have you turn to Exhibit 11. We're going to
11 go to page 2.

12 A. Yeah, I'm there.

13 Q. And I'm going to look at the second paragraph here, blow
14 this up for the jury.

15 A. I have it. I'm sorry.

16 Q. All right. Can you describe -- or I guess read through
17 this and tell us what this is.

18 A. What you have on the screen?

19 Q. The paragraph, yeah.

20 A. Tim says (reading), I received a call from an investigator
21 that told me Sandra Ware, Max's girlfriend, went to law school
22 with one of the federal judge's law clerk, and he suspected
23 they had met and discussed this matter. He further concluded
24 that the law clerk was assigned to this case specifically,
25 would likely have written the order, and may have even slipped

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1 this by the judge. Sometime later Max admitted to me that
2 they had met this judge many times at Rutgers Law School
3 events. I rather doubted that, but it is what he said.

4 Q. And I'd like to go through this in order. "I received a
5 call from an investigator." Do you know what that's talking
6 about?

7 A. I don't. But I -- you know, when I saw that, of course I
8 became very concerned, you know. Is he having people follow
9 me?

10 You know, he's clearly saying that he has an
11 investigator that told him something about my girlfriend.
12 What he's saying here I know isn't true, but I don't -- you
13 know, I mean, what would you think about this? This is --
14 that's terrifying. That's frightening.

15 Q. Had you ever met this judge at a Rutgers Law School event?

16 A. I have never met Judge Kugler, no.

17 Q. Did you ever --

18 A. To answer your question directly, no. And, no, I've never
19 met him at any event.

20 Q. Did you ever admit to Mr. Rote that you had met this judge
21 at a Rutgers Law School event?

22 A. Not at all.

23 Q. I'd like to turn to paragraph 4 of the same page.

24 A. Okay.

25 Q. At this point Mr. Rote is speaking about a letter he sent.

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1 What is this about?

2 A. Well, here he's saying that, you know, he has an emotional
3 way about him, that, you know, causes him to do things; in
4 this case fire off a letter challenging the why of dismissing
5 his case with prejudice, and brought to his attention the
6 conclusions reached -- again, we have the investigator in
7 here. I have no idea what the investigator has to do with the
8 judge. I don't know how that ties together, but I'm just
9 saying the investigator is mentioned again.

10 (Reading) Judge Kugler was not very happy with me,
11 and what was to follow became one of the most entertaining
12 period -- periods of my life, in the courtroom anyway.

13 (Reading) Judge Kugler ordered me to New Jersey to
14 stand trial for contempt -- to be clear, he's talking about
15 himself -- and interference of the court. He demanded that I
16 be -- he be there in person some 30 days after his notice. So
17 I hired yet another attorney, paid him \$10,000, and he went
18 about the business of what he claimed was trying to keep me
19 out of jail -- meaning keep Tim out of jail.

20 Q. And how did it make you feel -- well, let me back up.
21 Were you present at that hearing when that happened?

22 A. Yes, I was.

23 Q. And what happened?

24 A. Mr. Tim Rote very nearly went to jail, in my opinion.

25 Q. Did he appear entertained to you at that point?

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1 A. Oh, no, not at all. He appeared quite frightened.

2 Q. And what about this was troubling to you?

3 A. Well, the investigator thing mentioned again, the fact
4 that he would consider something like this entertaining.
5 There's -- you know, that's -- that's not a theme or anything
6 that I would ascribe to, you know, what this was going on.

7 Also, his willingness to do something like this to a
8 judge. He's publishing his website about me. I'm trying to
9 do everything I can to anonymize myself, to get the website
10 taken down. If he's willing to do these things to a judge and
11 a law clerk as, you know, it comes up in here, if he's willing
12 to do, you know, things like that, what protection do I
13 possibly have against this individual if, you know, he's
14 willing to do things like this?

15 The judge can call him in front of him and say, "Hey,
16 why shouldn't you go to jail," and he hires an attorney to get
17 him out of that. I don't have that option. So this is -- you
18 know, this is his behavior escalating and definitely causing
19 me a lot more fear at this point.

20 Q. Turning now to paragraph 5, this same exhibit, same page,
21 can you read this out loud for the jury.

22 A. (Reading) By this time I wondered if Max was setting up
23 private websites for these judges to watch their porn. How
24 that would have worked is that a private website would be set
25 up for the exclusive use only, content provided by the hosting

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1 person, and the only thing the judge would need to do is
2 access the site with his login ID and password. But I
3 digress.

4 Q. Did you ever set up private websites for judges to watch
5 porn?

6 A. Of course not.

7 MR. CHRISTIANSEN: Your Honor, I have a matter for
8 the Court.

9 THE COURT: Over here.

10 (The Court, counsel, and Mr. Rote confer off the
11 record.)

12 THE COURT: You may proceed.

13 BY MR. CHRISTIANSEN: (continuing)

14 Q. Turn to paragraph -- I'm sorry, Exhibit 18.

15 MR. ROTE: Say that again.

16 MR. CHRISTIANSEN: Exhibit 18.

17 THE WITNESS: Oh, that's the one you handed me,
18 right?

19 BY MR. CHRISTIANSEN: (continuing)

20 Q. Go to page 7.

21 A. Chapter 90 is Exhibit 18?

22 Q. 18, yes.

23 A. Okay. I'm going to put it in the book.

24 Q. Page 7. Are you there?

25 A. Yes, sir.

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1 Q. A demonstrative of this. This is the first paragraph,
2 first sentence.

3 (Reading) The first act of perjury was, as just
4 noted, that he now admits but first denied that he was, in
5 fact, the person who downloaded the porn.

6 Do you know what this is about?

7 A. I don't know what this is about. I do want to mention
8 this is from the website that we're still on. It's from the
9 website. This is out there for people to see.

10 No, I never downloaded any porn. Mr. Rote has a
11 better description of how to do things like this than I do,
12 which I just read.

13 You know, he's saying now -- and this is, you know,
14 the most major problem I have with this website that's out
15 there. He's saying that I now admit that I downloaded porn.

16 I did not download any porn working for him. I did
17 his work for him. That's what I did. And I did the work of
18 our company for him. I never downloaded any porn. I
19 certainly did not admit to anyone that I downloaded porn.

20 And these are the kind of things that he's able to do
21 on this website. And this is the recourse I have. Out in the
22 world, I don't have any.

23 Q. Turn now to Exhibit 12, page 184. I'm going to put up a
24 blowup of the second paragraph here.

25 It says that (reading) Since M is not the only one

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1 who would benefit from contacting Judge Jones, I attempted to
2 add to the lawsuit the other parties that also benefit;
3 namely, Linda Marshall, Chester Marshall, Sandra Ware, and
4 Joel Christiansen.

5 Do you know what lawsuit he's talking about here?

6 A. He had filed a lawsuit against myself, in addition to
7 these people: Linda; her husband, Chester; Sandy, my fiancée;
8 and Joel Christiansen, for defamation, I believe.

9 Q. And just to clarify, who is Linda Marshall?

10 A. Linda Marshall is my attorney that represented me in the
11 arbitration.

12 Q. And who is Chester Marshall?

13 A. Chester Marshall is Linda's husband.

14 Q. And who is Joel Christiansen?

15 A. You are Joel Christiansen. You're my attorney.

16 Q. At the bottom here, it says it probably -- well,
17 (reading) Judge H quickly denied the motion to add the parties
18 under diversity arguments, meaning that some of the parties
19 are residents of Oregon and should not be added. However,
20 insofar as the matter itself is properly in the federal court,
21 it probably could have been allowed with respect to Sandra
22 Ware.

23 What did that mean to you?

24 A. Legally, I have no idea. But what it looks like it means
25 is that he came pretty close to being able to file a lawsuit

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1 against Sandra Ware, my fiancée.

2 Q. Turn to page 258. I'm going to put up a portion of the
3 first paragraph.

4 This reads (reading), I am now on the watch list.
5 The efforts to have the U.S. Marshals Service tell me why I'm
6 on the watch list have been met with great resistance. It's
7 the kind of silent, let's not talk about it behavior you'd
8 expect of child molesters, not the U.S. marshals.

9 What is this about?

10 MR. ROTE: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MR. CHRISTIANSEN: (continuing)

13 Q. How did you feel when you read this?

14 A. Even more scared than before.

15 Q. Why?

16 A. According to Tim Rote, this is something that he put out
17 on the Internet, that he is now on a watch list with the
18 U.S. Marshals Service for some conduct that he has done out in
19 the world. This makes him feel much more dangerous to me.

20 Q. Go to page 85, the same exhibit. And I'm going to put up
21 a portion from paragraph 4.

22 A. Okay.

23 Q. I'll read this. It says (reading), Weeks pass. One
24 workday your children's school is closed because of snow.

25 They are at home playing outside with your best friend's

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1 children, having a great time. Your friend comes by and asks
2 if you can watch her children while she runs to the store, and
3 of course you agree to do so. Happy to do so. But soon after
4 your friend heads to the store, the weather turns worse, and
5 it is the best if the children come inside. You get them
6 inside, and they are all soaked and cold and freezing. You
7 get some warm towels and get the wet clothes off them as best
8 you can, being a mom to all four children.

9 Your ex-employee notifies you the next day that she
10 observed you inappropriately touching your neighbor's children
11 and calls on you to cease and desist from such behavior,
12 attaching a photograph of you wrapping a towel and giving a
13 hug to one of the children. You immediately notify your
14 neighbor and share the e-mail. You also immediately notify
15 the police.

16 Do you know what this is about?

17 A. This is a passage, again, from Tim Rote's website that he
18 wrote.

19 What I believe this is trying to do is make some
20 analogy to the process of the arbitration that we went
21 through. As far as its content, this is an analogy he chose
22 from an endless amount of analogies that a person could
23 choose; and, you know, he chose something like this. He's
24 back to this theme of this kind of subject matter, which I
25 find a bit disgusting.

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1 Q. Do you know why he used the term, "inappropriately
2 touching your neighbor's children"?

3 A. I have no idea why he would say something like that.

4 MR. CHRISTIANSEN: Your Honor, I have a matter for
5 the Court.

6 THE COURT: Members of the jury, we're going to take
7 our midday recess at this time. We'll be in recess -- let's
8 say until 1:15.

9 Remember the instruction telling you not to talk
10 about the case, et cetera. And don't look up information
11 about the case, those kinds of things.

12 Jennifer will escort you out and tell you how to get
13 back into our jury room and space after lunch.

14 So I'll see you in about 55 minutes. Thank you.

15 Go ahead and finish exiting the courtroom, please.

16 (The jury leaves the courtroom.)

17 THE COURT: What's your matter for the Court?

18 MR. CHRISTIANSEN: The "inappropriate touching your
19 children" gets to that letter, that same topic. That's why my
20 client is afraid of what he's seeing on the Internet.

21 The letter discusses pedophilia, I mean, specifically
22 touching children. It's a message to my client. It's a
23 threat.

24 THE COURT: When you're talking about "the letter,"
25 you're talking about Exhibit 22?

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1 MR. CHRISTIANSEN: 22.

2 THE COURT: So that's not just the letter. It
3 actually has an order to show cause.

4 MR. CHRISTIANSEN: Yeah. I mean, we could just --
5 just 2 and 3?

6 THE COURT: I'm sorry?

7 MR. CHRISTIANSEN: We could do pages 2 and 3, just
8 that one letter. And, in fact, I'd be fine redacting all but
9 that one paragraph.

10 THE COURT: Which paragraph?

11 MR. CHRISTIANSEN: The one, two, three, four -- fifth
12 paragraph on the first page.

13 THE COURT: The one that begins with "This, of
14 course"?

15 MR. CHRISTIANSEN: No. "Our diagnostic review."
16 And I'd actually like the attachment, too. It's
17 referenced in this paragraph.

18 THE COURT: Do you care about the fifth paragraph?

19 MR. ROTE: I think it's consistent with what we've
20 represented in the blog, Your Honor, so no.

21 THE COURT: I'm sorry?

22 MR. ROTE: It's consistent with what we represented
23 in the blog, notwithstanding any reference to a pedophile
24 site. But no, I don't care.

25 THE COURT: Okay. So if you're going to redact

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1 everything except for paragraph No. 5, the defense has no
2 objection.

3 Is that correct?

4 MR. ROTE: Correct.

5 THE COURT: You've got it.

6 MR. CHRISTIANSEN: Great.

7 THE COURT: Thank you. I'll see you in about 50
8 minutes.

9 We are in recess.

10 THE WITNESS: I just --

11 THE COURT: You may step down.

12 THE WITNESS: Sorry.

13 THE COURT: No problem.

14 (A lunch recess is then taken.)

15 (The Court, counsel, the parties, and the jury
16 reconvene. The witness retakes the witness stand.)

17 THE COURT: You may proceed.

18 BY MR. CHRISTIANSEN: (continuing)

19 Q. Mr. Zweizig, we left off with the sentence,
20 "inappropriately touching your neighbor's children."

21 Can you -- can you turn to Exhibit 22. It's actually
22 the version I gave you -- the version I gave you.

23 A. I don't have it here.

24 Q. Here (handing).

25 A. Thanks.

Zweizig - D

1 Q. Do you recognize that document, Mr. Zweizig?

2 A. Yes, sir.

3 Q. And without getting into the -- the contents of it, what
4 is it?

5 A. It is a letter from Tim Rote to Judge Kugler.

6 Q. What's the date on that letter?

7 A. It's May 22nd, 2005.

8 Q. And are you familiar with that letter?

9 A. I am familiar with this letter.

10 Q. And other than the redactions on there, is that an
11 accurate copy of the letter that you're familiar with?

12 A. It is.

13 MR. CHRISTIANSEN: And we'd offer Exhibit 22,
14 redacted.

15 MR. ROTE: No objection.

16 THE COURT: Received.

17 BY MR. CHRISTIANSEN: (continuing)

18 Q. Can you please read the unredacted paragraph from that
19 letter for the jury.

20 A. It says (reading), Our diagnostic review -- sorry. Our
21 diagnostic review of the computer plaintiff used in New Jersey
22 provides a history of information on what plaintiff may have
23 been doing with his time. One page follows. The information
24 was recovered from a hard drive plaintiff attempted to destroy
25 by reformatting it prior to returning it to us. Note that

Zweizig - D

1 plaintiff had been downloading video from a --

2 THE COURT REPORTER: I'm sorry. I couldn't hear you.

3 "Note that plaintiff" -- and I couldn't hear the word.

4 THE WITNESS: Pardon me.

5 (Reading) Note that plaintiff had been downloading
6 video from a pedophile site. Is it possible that plaintiff
7 had some contact with your clerk?

8 He's talking about my contact with a judge's clerk
9 somewhere on a pedophile website.

10 BY MR. CHRISTIANSEN: (continuing)

11 Q. Mr. Zweizig, I'd like to turn back to this screen here,
12 Exhibit 12, page 175. Do you have a hard copy exhibit in
13 front of you? Can you get that in front of you?

14 A. 170?

15 Q. Yeah.

16 Page 174 I actually want you to look at.

17 A. Okay.

18 Q. What date was this published?

19 A. February 6th, 2016.

20 Q. Okay. Moving on, turn to page 85, please.

21 A. I have it.

22 Q. Okay. We're going to look at paragraph 4, the last
23 paragraph there.

24 A. I'm sorry. Can you repeat that?

25 Q. Paragraph 4, the final paragraph.

Zweizig - D

1 A. Right.

2 Q. Let me get this to --

3 A. I'm sorry. Did you want me to read it?

4 Q. No, I'm sorry. I'm going to put it on the blowup for the
5 jury.

6 (Reading) My blog is examining the abuse of civil
7 procedure, arbitration, and even litigation itself, which may
8 taint the legacy of all involved, including me. It's the road
9 we are on, and it affects Bill Crow, Linda Marshall, M, and
10 Robert E. Jones.

11 Who is "M" here?

12 A. That's me.

13 Q. And for the jury, who is Bill Crow?

14 A. Bill Crow is the arbitrator at the arbitration.

15 Q. And why did this -- reading this bother you?

16 A. Well, because it's just more indication that -- you know,
17 of what he's going to do. You know, he's going to --

18 Q. What's that?

19 A. Well, which is, you know, tarnish people's reputation,
20 make their legacy, their -- you know, what's your legacy?
21 It's your -- you know, it's what you've done. It's your
22 meaning in life. It's, you know, the kind of person you've
23 been able to represent yourself to the world to be. And he's
24 going to take control of that for myself.

25 And what this is showing here, you know, anybody that

Zweizig - D

1 ever gets in contact with me or tries to help me, he's going
2 to do that to them, too.

3 Q. Turn to page -- page 2 of 4, please. I'm looking at the
4 paragraph -- that top paragraph of that page.

5 A. I see it, yes.

6 Q. (Reading) What are we going to do, question mark. Well,
7 we are going to publish, disseminate, write our Congressional
8 delegation, challenge our media to critically evaluate this
9 issue, raise the awareness, and send out one million e-mails.

10 What jumped out at you when you read that?

11 A. Sending out a million e-mails. You know, also writing our
12 Congressman. Challenging the media to critically evaluate the
13 issue, I imagine that means news stories.

14 You know, it's just a -- it's just a campaign. This
15 guy is never going to stop. You know, it's just a campaign
16 that he's going to have against me for the rest of my life.
17 This thing has been over my head for a while now, and it --
18 he's just going to keep going, and he's going to escalate it.

19 Q. Turn to page 101.

20 A. (Pause) Yes. I'm sorry. I have it.

21 Q. Top paragraph (reading): I am happy to announce that the
22 screenplay based on this arbitration is in its final stage of
23 editing. Soon this will have a larger voice. And as of right
24 now, there is both a fiction version and one based on a true
25 story with no hedging on names, places, and process.

Zweizig - D

1 How did you feel when you read this?

2 A. You know, I think how anybody would feel. Yeah, I mean,
3 this is -- you know, I'm being stalked and terrorized at a
4 pretty high level here. And, you know, he's saying no hedging
5 on names. So names will be wherever he publishes this stuff.
6 It will have a larger voice. He's just -- it's hard to put
7 into words. I mean, it's really -- you know, I can't live
8 like this. You know, seriously, I can't -- I can't live like
9 this.

10 You know, imagine you had -- you've asked me how I
11 feel, right? I don't want to mess up again. You know -- you
12 know, you have a life. You know, imagine you leave a job,
13 which is what happened, you know. And then that job just
14 follows you around forever. Your boss follows you around
15 forever and wants to say whatever he wants to say, and now he
16 wants to publish whatever he wants to publish about you.

17 And there's just no peace, I mean, just not at all.
18 Every -- every day in my life I deal with -- if there's not a
19 new edit to it, if there's not a new thing coming up, you
20 know, I'm always thinking about it. I'm thinking if somebody
21 is going to find it, you know, and then I'm going to have to
22 deal with that. Then I'm going to have to answer for this
23 stuff that I never did.

24 And, you know, human nature, right? You know, as
25 soon as something is said, well, you have to do something to

Zweizig - D

1 turn that around, to do something with that. You know,
2 it's -- you know, whoever speaks first, the next person
3 speaking has to challenge that.

4 I should not have to challenge any of this. I've
5 been through this. I've been through an arbitration. I won.
6 I'm done. I don't work for that gentleman anymore, and I
7 don't want anything to do with him. Tim Rote and I should not
8 know each other. I should be able to go through days of my
9 life without thinking about the name "Tim Rote."

10 This has been, you know, 13, 14 years now. You know,
11 there's no reason that he and I should have contact anymore,
12 you know, especially since we had a contract that said what
13 our dispute resolution process was. And whatever he wants to
14 say about that or however he wants to twist it, it certainly
15 wasn't this.

16 Q. Can you turn to Exhibit 38, please.

17 A. 38?

18 Q. Yes.

19 A. Sorry. I got it.

20 Q. Do you recognize this document?

21 A. Yes. This is a Google search for my name again.

22 Q. And what's the date of that printout?

23 A. That's 1-11 this year, 2018.

24 Q. And is this an accurate representation of what you saw on
25 the Internet when you Googled your name?

Zweizig - D

1 A. It is.

2 MR. CHRISTIANSEN: Offer Exhibit 38 into evidence.

3 THE COURT: Any objection?

4 MR. ROTE: I don't have Exhibit 38, I don't think.

5 (Pause) No objection, Your Honor.

6 THE COURT: Received.

7 MR. CHRISTIANSEN: I'll publish this for the jury.

8 BY MR. CHRISTIANSEN: (continuing)

9 Q. Can you describe for the jury what you see here.

10 A. There's a Google search here on this page that has a lot
11 of results, and this is three of the results taken out of that
12 page that you have here. They do appear on this page as they
13 appear here, one right next to the other.

14 And what this is showing, the first one, is a -- when
15 we talked about those user forums for problem resolution, this
16 is something posted by me. I don't -- I don't think I'm
17 helping anybody in these; I think I'm trying to get help in
18 both of these. And then, you know, they're posted by me. And
19 they're findable in a Google search by my name because I used
20 my name, you know, in those forums.

21 Then right after that, there's this Chapter 90, you
22 know, (reading) Employees desperate for a \$1 million payday
23 can be enticed by an unscrupulous attorney to lie, cheat,
24 steal, and destroy in an effort to prevail -- prevail on a
25 claim. Sorry.

Zweizig - D

1 (Reading) This blog has spent an extraordinary amount
2 of time weighing the evidence and exposing the lies. Let's
3 use this time to bring it all together.

4 And then it goes on, and my name is, you know, down
5 there. My name is in bold on this page because of the Google
6 search. It's not because of anything else, to be clear.

7 You know, the top two results is how I used to be
8 able to live on the Internet, you know, with my name. You
9 know, now I don't do that anymore. I use an alias for forums
10 or, you know, things like that. And I used to like not to do
11 that because, you know, people could seek me out in other
12 areas and, you know, there's contact there, there's
13 networking. And I don't dare do that now.

14 Q. Can you turn to Exhibit 40, please. Do you recognize that
15 document?

16 A. I do.

17 Q. What is it?

18 A. This is also a Google search for my name, but with the
19 word "programming" added, so if someone were to look for me
20 and then put the word "programming" after that.

21 Q. And what's the date of this?

22 A. This is January 9th of this year, 2018.

23 Q. And is that an accurate copy of what you found on the
24 Internet when you Google searched your name?

25 A. It is, yes, sir.

Zweizig - D

1 Q. All right.

2 MR. CHRISTIANSEN: Offer Exhibit 40 into evidence.

3 MR. ROTE: No objection, Your Honor.

4 THE COURT: Received.

5 BY MR. CHRISTIANSEN: (continuing)

6 Q. I'll publish this for you, Mr. Zweizig.

7 Can you describe for the jury here, briefly, what you
8 see.

9 A. This is one of the chapters from the website again. And
10 this is talking about -- Tim Rote, at some point during the
11 arbitration, accused me and on his website accuses me of
12 trying to start a competing company. That was, in fact,
13 another employee of Northwest Direct; and he's ascribing those
14 actions to me here.

15 Q. And Chapter 90 -- can you do me a favor and turn back to
16 Exhibit 18? What's the title of that chapter?

17 A. "The Summary of Evidence, Perjury, and Cybercrime."

18 Q. And what date was that published?

19 A. Um --

20 Q. Not printed, but published.

21 A. August 30th, 2017.

22 Q. Okay. Can you turn to Exhibit 14, please.

23 A. I just noticed something about this. Should I comment on
24 this?

25 Q. Please do.

Zweizig - D

1 A. Okay. It also -- it also says that I was demoted. I was
2 never demoted at work.

3 Q. Okay. I actually also want to -- the word "programs," it
4 appears as though that's in bold font. Can you explain why
5 you think that is?

6 A. The search word used was "programming." That may be in
7 bold because of Google, or it may be in bold because that's on
8 the website like that. I believe Google might do what's
9 called kind of a Soundex search, where close words that may be
10 close to that -- I don't know. I'd have to look at the
11 website and see if that was bolded.

12 Q. Turn to Exhibit 14, please.

13 A. Okay. I've got it.

14 Q. What is this document?

15 A. The print is small.

16 This is Timothy Rote's LinkedIn page.

17 Q. And can you tell what date that was printed?

18 A. That was printed June 13th, 2017.

19 Q. Is this an accurate copy of Mr. Rote's LinkedIn profile
20 when -- when you saw it?

21 A. Yes, it is.

22 MR. CHRISTIANSEN: Offer Exhibit 14.

23 MR. ROTE: No objections.

24 THE COURT: Received.

25

Zweizig - D

1 BY MR. CHRISTIANSEN: (continuing)

2 Q. How many connections are listed with Mr. Timothy Rote on
3 that LinkedIn profile, at the top right, next to his name?

4 A. It's very small. Sorry.

5 It just says 500 plus.

6 Q. And in the middle of that, where it says "experience," can
7 you tell the jury what experience it lists for his current
8 job?

9 A. Yes.

10 Q. Sorry. It's small print.

11 A. That's all right. As I get older -- novelist;
12 screenwriter; owner, Rote Enterprises; owner, Rote & Company.

13 Q. Does it say where that business is located? Can you tell?

14 A. It says Los Angeles for novelist, screenwriter.

15 Q. Okay. Turn to Exhibit 15, please.

16 A. Okay.

17 Q. Do you recognize this?

18 A. Yes.

19 Q. What is it?

20 A. This is also a LinkedIn page.

21 Q. And what date was that printed?

22 A. This was June 13th, 2017.

23 Q. And is that an accurate copy of what you saw when you
24 visited that site?

25 A. It is.

Zweizig - D

1 MR. CHRISTIANSEN: Offer Exhibit 15.

2 MR. ROTE: No objection.

3 THE COURT: Received.

4 BY MR. CHRISTIANSEN: (continuing)

5 Q. Mr. Zweizig, can you just describe briefly for the jury
6 what we're looking at.

7 A. On the LinkedIn page Mr. Rote is promoting the -- some of
8 the chapters out of the website that he put up that we've been
9 talking about, First Duty Portland website, I believe. I
10 think this was the second website.

11 Q. And can you turn to Exhibit 16, please.

12 A. 1-6?

13 Q. 1-6.

14 A. Got it.

15 Q. Do you recognize that?

16 A. I do.

17 Q. What is it?

18 A. This looks like one of the chapters. It's not listed as a
19 chapter, but it says "Arbitration Be Damned."

20 Q. And what date was that printed?

21 A. This was printed June 13th, 2017.

22 Q. Is that an accurate copy of what you saw on the Internet
23 that day?

24 A. It is.

25 MR. CHRISTIANSEN: Offer Exhibit 16.

Zweizig - D

1 MR. ROTE: No objection.

2 THE COURT: Received.

3 BY MR. CHRISTIANSEN: (continuing)

4 Q. What is concerning to you about this, Mr. Zweizig?

5 A. I'm going to need to read it a little bit.

6 Q. Go ahead.

7 A. Pause) Most concerning to me is that he's, you know,
8 going to re-talk about the arbitration. He's saying it's a
9 cautionary story.

10 (Pause) I'm sorry. It's tough to see. I'm sorry to
11 take the time to do this.

12 (Pause) And he's making a -- you know, a claim here
13 that the arbitration was, you know, invalid in some way.

14 Q. Does that link -- or does that article contain a link to
15 the -- the website he's been publishing?

16 A. Yeah. Actually, I'm sorry. I didn't see the bottom here.
17 This is -- yeah, this is one of the printouts from the
18 LinkedIn page, not the -- it looks like one of the chapters,
19 but it's printed from the LinkedIn -- his LinkedIn site.

20 Q. And can you turn to Exhibit 42, please.

21 A. I'm there.

22 Q. Do you recognize this?

23 A. Yes. This is a Twitter account.

24 Q. And what's the --

25 A. Tim Rote's Twitter account.

Zweizig - D

1 Q. And what's the date on that?

2 A. That's January 9th, 2018, this year.

3 Q. Okay. And this is what you saw when you visited this
4 website on that date?

5 A. Yes, it is.

6 MR. CHRISTIANSEN: All right. We'd offer Exhibit 42.

7 It's the Twitter account.

8 MR. ROTE: No objection.

9 THE COURT: Received.

10 BY MR. CHRISTIANSEN: (continuing)

11 Q. Mr. Zweizig, does this account also link to the website
12 Mr. Rote was writing about you?

13 A. Yes, sir.

14 Q. Turn to Exhibit 43.

15 A. Got it.

16 Q. Do you recognize this?

17 A. Yes.

18 Q. What is it?

19 A. It's a Facebook page for Tim Rote, and it references
20 Sitting Duck Denver. It's listed as Sitting Duck Denver. It
21 says that all over it, which is a different website that also
22 references --

23 Q. I'll get into that.

24 A. Okay.

25 Q. What's the date on this?

Zweizig - D

1 A. January 9th, again this year, 2018.

2 Q. And is this what you saw when you visited the Facebook
3 page --

4 A. Yes, sir.

5 Q. -- on that date?

6 MR. CHRISTIANSEN: All right. Offer Exhibit 43.

7 MR. ROTE: No objections.

8 THE COURT: Received.

9 BY MR. CHRISTIANSEN: (continuing)

10 Q. Mr. Zweizig, does Exhibit 43 link to the website as well?

11 A. Yes. Um, yes. Yes, it does.

12 Q. Turn to Exhibit 37.

13 A. Got it.

14 Q. Do you recognize this document?

15 A. I do.

16 Q. What is it?

17 A. This is the -- I had said before that there was 97
18 chapters on the page and one other page. This is the one
19 other page. There's a press release, what Tim Rote called a
20 press release, that he posted on the site. He --

21 Q. Mr. Zweizig?

22 A. Yes.

23 Q. Actually, take a closer look.

24 A. What's that?

25 Q. This is a different exhibit. This looks like an e-mail.

Zweizig - D

1 A. Okay. Yes, you're right. I saw all the -- I thought this
2 was that.

3 Okay. Yes, this is an e-mail.

4 Q. And do you recognize it?

5 A. Hold on a second. Let me make sure I do.

6 (Pause) Yes, I do. Sorry.

7 Q. What's the date of this e-mail?

8 A. This is January 6th, 2018.

9 Q. Is this an accurate copy of the e-mail?

10 A. It is.

11 MR. CHRISTIANSEN: Offer Exhibit 37.

12 THE WITNESS: Do you want me to clarify what this
13 was, since I said it was a press release? It's not.

14 MR. CHRISTIANSEN: We'll get into it.

15 THE WITNESS: Okay.

16 MR. ROTE: I have some objection to this, Your Honor,
17 because --

18 THE COURT: That's okay. Hang on to your objection.

19 I don't have the exhibit in front of me. I don't
20 have a copy of it. We'll take it up later when we're in
21 recess.

22 MR. ROTE: Okay.

23 THE COURT: Thank you.

24 BY MR. CHRISTIANSEN: (continuing)

25 Q. So what -- how did you feel when you saw this?

Zweizig - D

1 A. Can I say what it is?

2 Q. Yeah, please.

3 A. Okay. Yeah. This is an e-mail sent out to -- you know,
4 it looks like about 40 people here. I didn't count them. It
5 looks like about 40. This is sent to senators; news agencies;
6 and the Oregon State Bar; USDOJ, Department of Justice, dot
7 gov, sent out to a lot of different agencies. And this is an
8 e-mail about the arbitration that we went through.

9 Q. And what's the subject of the e-mail?

10 A. "Pending trial on cybercrime and the fraud triangle."

11 It's about this proceeding. The subject is about
12 this proceeding.

13 Q. So, Mr. Zweizig, as you've seen this website go up and
14 Google search results, social media and all of this, can you
15 describe for the jury, what -- what harm this has caused you.

16 A. Yeah. I touched on it a little bit before. You know, I
17 can't get out from under this thing. You know, I can't be
18 myself. I can't just live my life. You know, I don't have
19 the easiest life in the world. Everybody's got challenges,
20 you know, and that's fine. You know, I'm pretty good at
21 taking care of my own challenges and everything.

22 But, you know, this is one I can't control. Somebody
23 has taken my identity. They're saying whatever they want.
24 They're saying, you know, horrible things, not nice things,
25 you know, at all, not something I would want to have to

Zweizig - D

1 explain to anybody for any reason and shouldn't have to.

2 And this -- you know, it's like a dark cloud that
3 just follows me all the time. You know, I'll be, you know,
4 sitting somewhere, just trying to relax, and it's here. I
5 don't know where it's going to go. I worry about how big it's
6 going to get. There's -- you know, he keeps escalating and
7 escalating, saying he's going to do more and more things and
8 publicize it more and more places. So I worry about that on
9 one level.

10 You know, on another one, just what's already out
11 there -- there's 97 chapters of this out there on a second
12 website. I believe the first one went to 89 or 90 chapters
13 before he took that down. You know, I -- while I'm doing my
14 workday, when I go out to lunch, if, you know, it looks like
15 he's putting up more chapters, you know, I'm not going out
16 with people, you know, to lunch like I would like to do maybe.

17 And I'm, you know, sitting somewhere in like
18 a Wendy's out here -- do you have Wendy's? Okay. I'll be
19 sitting in a Wendy's or something like that and I'm looking at
20 my iPad and I'm hitting "refresh." And sometimes it will come
21 down, and then I'm happy. Okay. Maybe he's come to his
22 senses. Maybe, you know, he's not going to do this to me
23 any more. And then, of course, it goes right back up. It was
24 down because there was revisions being made.

25 And it's just constant, all the time. I watch this

Zweizig - D

1 affect my family. You know, sometimes I, you know, will ask
2 Sandy what's wrong, and she's like, you know, just -- you
3 know, she just has to say the word "just," and I know what's
4 wrong. You know, it's this stuff hanging over both of our
5 heads. There's no reason for this, you know. And it's -- it
6 just invades everything. It invades my entire quality of
7 everything.

8 And, you know, I'm a strong personality. I have good
9 ego. I love people. I love interacting with people. I like
10 helping people. I would help anybody with anything in the
11 world. It's just the kind of person I want to be.

12 And I have to be guarded. You know, I have to -- how
13 much can I share about myself? You know, how much -- I can't
14 say, "Go to the Internet," you know. I can't put up, you
15 know, web pages about my music, you know, or anything like
16 that because I can't have that presence. You know, I can't
17 have it.

18 In my -- in the world that we live in today, a very
19 large piece of that has been taken away from that. And in the
20 real world, off of the computers, as I'm walking around with
21 people, I've got to worry about, you know, if they're going to
22 Google my name or did Google my name and find this stuff. And
23 I never know what they're thinking, you know, or what they
24 saw, or what I have to answer for or never get the chance to
25 answer for. And that could be anybody. And it -- it's just

Zweizig - D

1 out there. And, you know, I want to be done with it. I want
2 to be done with this -- this man.

3 You know, go live your life, you know. We had a
4 case. You made a bad business decision to let me go. There
5 was a dispute resolution process in that, and I won, and it's
6 over. Let it be over. You know, go be whoever you want to
7 be. Let your former employee be whoever he wants to be. You
8 know, you were my employer. You had some, you know, specific
9 duties to keep my, you know, things confidential, certainly be
10 truthful to my actions in your company. You've done none of
11 that. Go away. You know, what you've done to me is awful.

12 Believe me, whatever you've wanted to do, I guarantee
13 you've accomplished way more than you thought you possibly
14 could. You've hurt me. You've hurt my fiancée. You've hurt
15 my attorneys. You've hurt everybody you wanted to. I don't
16 know if there is anybody left for you to hurt. And I
17 certainly don't want you to know anybody new in my life,
18 because I know what you're capable of.

19 So I don't know if that gets it across. It's bad.
20 It's bad. I wouldn't -- I wouldn't wish this on anybody, you
21 know. I -- I just -- I really wouldn't. This is -- it sucks.

22 Sorry. I don't know what else to say about it.

23 MR. CHRISTIANSEN: No further questions.

24 THE COURT: Cross-exam.

25

Zweizig - X

CROSS-EXAMINATION

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BY MR. ROTE:

Q. Mr. Zweizig, I would like you to turn to Exhibit 1, Plaintiff's Exhibit 1.

A. I have it.

Q. Can you tell us the name at the top of that page, your employer?

A. Northwest Direct Teleservices.

Q. Northwest Direct Teleservices only, not the names of any of the other corporate entities?

A. This page says "Northwest Direct Teleservices, Inc." only.

Q. You agree that was your employer?

A. You had many companies.

Q. That's not what I asked.

A. There was a lot of legal talk back and forth. You're having me answer something I don't understand. You mentioned through a lot of these processes that there are umbrella companies to other companies. So I can't answer that question.

Q. You can answer who your employer was.

A. My employer, via this contract, says "Northwest Direct Teleservices, Inc." I don't know if that's inclusive of everything that you had.

Q. Thank you.

You looked to the -- Hold on. Please turn to

Zweizig - X

1 Plaintiff's Exhibit 3.

2 A. I have it.

3 Q. Can you please describe the name of the claimant at the
4 top.

5 A. Northwest Direct Teleservices, Inc.

6 Q. No other corporate entity has been identified besides
7 that?

8 A. Not listed on this document, no.

9 Q. They are the employer that you sued in this case, in the
10 arbitration?

11 A. I remember a lot of the people, and there were a lot of
12 your companies on there.

13 You're asking me something that I don't understand.
14 I'm telling you that I agree with you that it says "Northwest
15 Direct Teleservices, Inc." on this page. I agree with that.

16 Q. This is the plaintiff's exhibit, and it is the Opinion and
17 Order of the arbitration, and there are two parties
18 identified, Northwest Direct Teleservices and Max Zweizig,
19 correct?

20 A. I agree with that, yes.

21 MR. ROTE: Your Honor, we have a couple of
22 impeachment exhibits that I feel like we need to do a sidebar
23 on.

24 THE COURT: Do you have other questions that you can
25 ask before we get to those exhibits?

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1 MR. ROTE: Certainly.

2 THE COURT: Why don't we go through that. And then
3 at the end, we can take a break and talk about those.

4 MR. ROTE: Okay.

5 BY MR. ROTE: (continuing)

6 Q. Mr. Zweizig, you testified that -- that you provided a
7 spreadsheet during the course of your complaint to me via
8 e-mail. Is that consistent with what you remember?

9 A. I don't think I said -- Today?

10 Q. Today.

11 A. We can see what I said. I said I informed you about it.

12 Q. You informed me about it via e-mail, claiming that you
13 received a spreadsheet via e-mail. Is that what your
14 testimony was?

15 A. Yeah. I think I said I sent you a letter. I don't know
16 if I said I sent you a letter or e-mail.

17 Q. And in that letter you claimed to have received that
18 spreadsheet evidence in an e-mail from an employee?

19 A. Yeah.

20 We talked about this at the arbitration. This is
21 something we've already gone through.

22 Q. You agree, don't you, that you never turned over that
23 e-mail?

24 A. I don't remember.

25 Q. You don't remember?

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1 A. No. It was 10 years ago. And we've already gone through
2 that, and the case is over.

3 Q. Nonetheless, I have an opportunity to cross-examine you on
4 your testimony today.

5 A. I don't remember.

6 Q. In the course of -- in the course of your evaluation of
7 the blog, were you ever offered the opportunity to -- to --
8 Did I ever offer you the opportunity to modify any component,
9 anything that was written by me on the blog, to modify any
10 representation made by the blog.

11 A. Outside of a couple of communications that you found a way
12 to make to me, since I worked for you, I have not spoken with
13 you.

14 Q. Did I offer to your attorney, Mr. Christiansen, an
15 opportunity to tell me precisely what you wanted to modify
16 from the blog?

17 A. I believe you did.

18 Q. I'd like to have you turn to --

19 A. I have no interest in working on this thing with you.
20 That's abusive. Why would you have me work on this website
21 that you put up about me with you? I shouldn't know you, sir.

22 MR. ROTE: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MR. ROTE: (continuing)

25 Q. Mr. Zweizig, I'd like you to turn to Defendant's Exhibit

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1 595.

2 MR. ROTE: Do you have that?

3 MR. CHRISTIANSEN: No.

4 THE COURT: He does not have your exhibits up there.

5 MR. ROTE: I'm going to have to turn to the clerk.

6 MR. CHRISTIANSEN: He doesn't have it.

7 MR. ROTE: He doesn't have it? Okay.

8 Attorney 2.

9 MR. CHRISTIANSEN: Your Honor, objection. He's
10 publishing it.

11 THE COURT: Yeah. Can you take that down?

12 BY MR. ROTE: (continuing)

13 Q. So, Mr. Zweizig, let's focus on some of your testimony.

14 Did you testify that you did not, in fact, destroy
15 any computer programming at your -- at your last day? Is that
16 what you testified today?

17 A. I didn't destroy anything. I sent you all of the
18 programming in a zip file in an e-mail. This was already
19 covered. And you said, "Thanks."

20 Q. When the -- when the blog was rebranded and --

21 A. Can you explain to me what that means?

22 Q. Sure. When the blog was -- Sitting Duck Denver was taken
23 offline and it was relabeled, there was a period of time in
24 which your name was redacted from the blog. Do you recall
25 that?

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1 A. No. It's not redacted today.

2 Q. It was redacted from the blog. And when it was redacted
3 from the blog, your search results did not show any activity
4 with respect to the blog?

5 A. Sometimes they did; sometimes they didn't. That's how it
6 goes. You can take a page down; it's still going to stay. Or
7 you can make edits to the page, and it will still stay for a
8 while.

9 Q. But it won't link to anything, will it, Mr. Zweizig?

10 A. Yes, it could. It's called caching.

11 Q. But you admit that when it was rebranded to a different
12 blog name and your name was redacted, that you didn't show up
13 in the Google results?

14 A. I think I already answered that.

15 Q. What was your answer?

16 A. Sometimes it did; sometimes it didn't.

17 Q. So let's talk about a couple of Google searches on the
18 defendant's exhibits.

19 First I want to go to, I think, Exhibit 25,
20 Plaintiff's Exhibit 25.

21 Excuse me, no. Plaintiff's Exhibit 546 --
22 Defendant's Exhibit 546. Excuse me.

23 THE COURT: Has that been received already?

24 THE CLERK: No.

25 THE COURT: It has not?

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1 How about if I give him my copies of the exhibits, so
2 that he has them.

3 MR. ROTE: Okay. Thank you, Your Honor.

4 THE COURT: (Handing).

5 THE WITNESS: Were you finished with plaintiff's
6 exhibits?

7 BY MR. ROTE: (continuing)

8 Q. No, we're not finished, but --

9 THE COURT: You can just set them aside there. I
10 think you have some room on the side.

11 THE WITNESS: Is it okay to put them on the floor?

12 THE COURT: Yes. That's your space right now.

13 THE WITNESS: Okay.

14 THE COURT: Which exhibit did you want him to refer
15 to?

16 MR. ROTE: Defendant's Exhibit 546, which I think is
17 the same as Plaintiff's Exhibit 25.

18 THE WITNESS: On the listing on the outside of these
19 books, I do not see 546.

20 BY MR. ROTE: (continuing)

21 Q. I have it now published.

22 THE CLERK: It hasn't been received.

23 MR. ROTE: I'd like to offer this.

24 BY MR. ROTE: (continuing)

25 Q. I'd like to examine you on this document. This is the

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1 source by which you referred to the other corporate entities
2 in your Complaint.

3 A. Okay.

4 Q. Is it? Do you know?

5 A. I see one --

6 Q. Do you see the corporate entities down below?

7 A. It's not up there. It's up here.

8 I see two -- I see a very small part of something.
9 It says "License Agreement" at the top.

10 Q. Okay. Let's go back down to --

11 A. I'm not trying to be difficult. I can't answer your
12 questions.

13 Q. -- down to page 5.

14 A. Okay.

15 Q. Do you see all the entities that signed that agreement?

16 A. Okay.

17 Q. Is it your contention that all of these entities were your
18 employer?

19 A. Like I said, you had a lot of corporations with umbrella
20 corporations. I don't remember the specific names -- specific
21 names, sorry. It's in my document. It's in my Complaint.

22 You had a myriad of them. They're all your companies.

23 They're all you.

24 Q. Well, they're not all me.

25 A. Okay.

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1 Q. The Northwest Direct Teleservices Corporation is
2 identified on page 5 as one of the entities signing this
3 agreement. Do you see that?

4 A. I see that.

5 Q. Okay. And you are not yet -- or you don't understand that
6 your Complaint is based, in part, on this representation from
7 your side that all of these entities were your employer?

8 A. Yeah, I believe that we listed every entity that you had
9 as my employer.

10 Q. But again, you agree that your employer in the contract
11 and your employer in the arbitration opinion was Northwest
12 Direct Teleservices?

13 MR. CHRISTIANSEN: Asked and answered.

14 THE COURT: Overruled.

15 You can answer the question.

16 THE WITNESS: Can you repeat the question?

17 BY MR. ROTE: (continuing)

18 Q. But you agree that the entity that was your employer in
19 your employment agreement and in the arbitration opinion and
20 award was Northwest Direct Teleservices only?

21 A. It's right there on the page.

22 Q. That's a yes?

23 A. Yes. Except I don't understand your umbrella corporation
24 strategy, sir, so I don't know if it's a subsidiary on the
25 page. I don't understand whether it's a parent corporation on

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1 the page. I agree with you completely as to what is on the
2 page.

3 Again, I'm not trying to be difficult. I think
4 you're trying to lead me somewhere. I don't know. I don't
5 understand what you're trying to do.

6 MR. ROTE: I'd like to offer Defendant's Exhibit 546.

7 THE COURT: Any objection to 546?

8 MR. CHRISTIANSEN: No objection.

9 THE COURT: Received.

10 BY MR. ROTE: (continuing)

11 Q. In your testimony, you indicated that you were under the
12 impression that the arbitration was confidential somehow or
13 there was some confidentiality associated with it?

14 A. Yeah.

15 Q. Can you tell me about that?

16 A. Yeah. Before we could even begin, there were what were
17 called protective orders that were thrown back and forth by
18 both sides, mainly you. You were the one worried about
19 keeping that confidential, from my recollection of that. And
20 we couldn't even get started. We couldn't even get started
21 with depositions or anything until that was all nailed down.

22 And absolutely I thought that was confidential and
23 absolutely I thought that was an employment proceeding, which
24 would make it part of my employee record.

25 Q. Which part of it was confidential?

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1 A. I thought the whole thing was confidential.

2 Q. The whole thing?

3 A. Why would it not be? Yeah.

4 Q. Do you believe you have a right to confidentiality with
5 respect to everything that happened in the arbitration?

6 A. I had an expectation of confidentiality with respect to
7 everything that happened in the arbitration. I'm not a
8 lawyer.

9 Q. You have indicated that -- that the social media --
10 LinkedIn, Facebook, other social media accounts -- have in the
11 last two years compromised your ability to engage in social
12 media interactions? Is that a fair statement?

13 A. Sure it is.

14 Q. What about prior to the time the blog was written?
15 Would -- no LinkedIn account, no Facebook account, nothing in
16 evidence that you had anything of that nature prior to the
17 time the blog was written?

18 A. As I say, I think I've spoken to some of the things. I
19 used to use my real name in multiple forums. And, yes, I did
20 use my real name on the Internet, and I used real e-mail
21 addresses out in the world that reflected my real name. I no
22 longer do that is what I said.

23 So, yes, it has -- I'm not sure what you're asking
24 there, but it changed my behavior.

25 Q. Let me make it more specific. Do you have a LinkedIn

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1 account now?

2 A. No, I don't.

3 Q. Have you ever, at any time, had a LinkedIn account?

4 A. Yes, I have.

5 Q. When did you stop?

6 A. I don't remember exactly when it was. It was a --

7 somewhere around a couple years ago.

8 Q. Somewhere around a couple years ago?

9 A. Contemporaneous, yes, with you putting up the blog, I took
10 down --

11 Q. You took down your LinkedIn account?

12 A. Yes, sir.

13 Q. Did you have a Facebook account?

14 A. I think I still do have a Facebook account. I keep no
15 content on it.

16 Q. No content.

17 Any other social media accounts?

18 A. Not that I'm aware of, no.

19 Q. You -- The computer that you used while an employee,
20 returned on your last day, was that a 60-gig hard drive, do
21 you recall?

22 A. I don't remember.

23 Q. There was also one that crashed in May 2003. Was that the
24 120-gig hard drive?

25 A. I don't remember.

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1 Q. You don't remember that either?

2 A. No, sir.

3 Q. You had mentioned to -- in your cross -- in your direct
4 examination that there were 96 chapters, 97 chapters of the
5 blog. I did the same thing, I think, in my opening. But what
6 of these chapters were directly related to the arbitration?

7 A. Many of them. I don't have a calculation of that.

8 Q. You don't know how many?

9 A. I don't know how many. But I know that you have a chapter
10 that clearly says, "Why Am I Blogging?" And it pretty clearly
11 states that you're doing this because of the arbitration.

12 Q. In your direct testimony you indicated that you were
13 not -- did not organize a competing company. Do you recall
14 the name of that company?

15 A. That was a company that Paul tried to organize, and it was
16 called something Results. It was S Results.

17 Q. Superior Results Marketing perhaps?

18 A. Sure.

19 Q. And it's your testimony that you were not a -- you were
20 not an organizer of that company?

21 A. No. It was Paul Bauer (ph).

22 Q. It was Paul Bauer?

23 A. Uh-huh.

24 Again, this is -- this is arbitration, things that
25 have already been decided.

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1 Q. Nonetheless, if --

2 A. And this is -- are you -- so you're speaking about the
3 company. This is company business, right?

4 Q. Well, Superior Results Marketing is what you testified
5 about. I'm just curious as to what your testimony was.

6 A. Okay.

7 Q. On your Exhibit 18, Chapter 90, with respect to perjury,
8 Plaintiff's Exhibit 18 --

9 A. (Pause) Got it.

10 Q. You refute committing any acts of perjury in and during
11 the arbitration?

12 A. Sir, I don't remember my testimony during the arbitration.

13 Q. You --

14 A. I'm not going to knowingly commit perjury anywhere.

15 Q. You indicated in an exhibit raised here, with respect to
16 Chris Cox, an e-mail you received. Do you recall -- and he
17 made a specific reference in that e-mail. You have that now
18 in evidence about the fact of a shutdown that happened after
19 your last day with the company.

20 A. Do you have a question?

21 Q. The question is: Do you recall a shutdown of the company
22 after the last day?

23 A. After my last day --

24 Q. Yes.

25 A. -- do I recall a shutdown of the company?

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1 Q. Yes.

2 THE COURT: You have to make sure that you let him
3 finish his question before you start responding.

4 Similarly, if he starts responding, you need to stop
5 speaking. Otherwise my reporter can't make an accurate record
6 of what's happening.

7 Can you ask your question again, please.

8 MR. ROTE: Sure.

9 I'm going to -- I'd like to get Chapter 86, "The
10 Shutdown," in right now, Your Honor.

11 MR. CHRISTIANSEN: Objection, Your Honor. This is
12 published again.

13 THE COURT: You shouldn't publish it until it's been
14 received into evidence.

15 And you were asking a question about whether he
16 recalls the shutdown. Do you want to ask that question again?

17 MR. ROTE: I do.

18 BY MR. ROTE: (continuing)

19 Q. In the blog, I write quite a bit about the shutdown. Do
20 you recall a shutdown post-employment, after your last day of
21 employment in 2003?

22 A. Sir, I did not keep tabs on your company after my last day
23 of employment. I don't recall anything one way or the other
24 about it.

25 Q. There were a lot -- excuse me. There were a lot of this

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1 type of data discussed in the arbitration itself. You don't
2 recall any evidence being put on about the shutdown?

3 A. Okay. You didn't ask me that.

4 Yeah, I recall evidence being put on about the
5 shutdown. I believe at one point you mentioned it was a
6 week-long shutdown. At another point you mentioned it was a
7 10-day shutdown. Somewhere you mentioned that it was for a
8 few days. You've been all over the map on this shutdown.

9 Q. Can you tell me -- You are a FoxPro programmer expert.
10 You are doing other than that today?

11 A. Yes.

12 Q. And tell us -- tell me a little bit more about what you're
13 doing in terms of your programming skills.

14 A. I'm a systems analyst and a programmer.

15 Q. What database programming are you using today?

16 A. JavaScript, FoxPro.

17 Q. FoxPro still?

18 A. Sure.

19 Q. Are you offering your services as an independent
20 consultant or are you an employee?

21 A. I'm an employee.

22 Q. Can you identify the employer?

23 MR. CHRISTIANSEN: Objection.

24 THE COURT: Overruled.

25 THE WITNESS: Everybody that you come in contact with

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1 that I know, you hurt. I am not asking you for economic
2 damages. And I am going to ask you, sir -- You have mentioned
3 on your website that you have emotional control issues. So
4 I'm going to ask you --

5 MR. ROTE: Objection.

6 THE COURT: Sustained.

7 THE WITNESS: Please withdraw the -- would you please
8 withdraw the question?

9 THE COURT: Just a minute. Just a minute.

10 When I say "sustained," you must stop talking.

11 THE WITNESS: I apologize.

12 THE COURT: We'll just leave it at that.

13 You can ask your question.

14 BY MR. ROTE: (continuing)

15 Q. Please identify your employer.

16 THE WITNESS: It's my belief that if I do that, that
17 Mr. Rote is going to do something to interfere with that
18 employment, Your Honor.

19 THE COURT: Okay. We'll take that up during the
20 recess.

21 You can go on to another area.

22 THE WITNESS: Thank you.

23 BY MR. ROTE: (continuing)

24 Q. During the course of the arbitration, there was a lot of
25 forensic reports provided and forensic testimony. I'm not

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1 attempting to get that in. I just want to ask if that is your
2 recollection.

3 A. It's my recollection, along with the component that I did
4 not get to examine everything you got to examine.

5 Q. That's not what I asked.

6 A. That's my recollection.

7 Q. You hired a forensic expert by the name of Justin McCann
8 (ph)?

9 A. Yeah. I do -- I feel like we're relitigating the
10 arbitration.

11 THE COURT REPORTER: I'm sorry. I couldn't hear you.

12 THE WITNESS: I feel like we're relitigating the
13 arbitration with the company, Northwest.

14 BY MR. ROTE: (continuing)

15 Q. Your attorney can object for you.

16 A. Okay.

17 Q. So there was a lot of testimony about that, correct?

18 A. There was testimony about that. The amount, I don't know.
19 There was a lot of testimony about a lot of things, sure. I
20 mean, okay.

21 Q. Did the arbitrator, in his opinion and award, contemplate
22 the forensic evidence?

23 MR. CHRISTIANSEN: Objection.

24 THE COURT: Sustained.

25

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1 BY MR. ROTE: (continuing)

2 Q. The arbitrator's opinion and award is one of the issues
3 that I raise significantly here in this blog. And can you
4 tell me -- I want to focus on -- let me just focus on
5 components of the arbitration after the evidence was issued
6 and considered.

7 Do you recall Arbitrator Crow recusing himself?

8 A. Yeah. There was definitely something that happened with
9 that, yes.

10 Q. Do you recall that he was -- he was challenged because he
11 didn't disclose his relationship with Linda Marshall?

12 A. Yeah. You did that. I think people professionally work
13 together. But you chose to do that, sure.

14 Q. And after the recusal, then he re -- he agreed to continue
15 as the arbitrator. Is that also accurate?

16 A. He did. He consulted the rules, consulted the law, and
17 found there were no grounds for what you were saying and
18 continued.

19 MR. ROTE: Your Honor, I'm struggling with the
20 arbitration opinion and how I can cross-examine on this.

21 THE COURT: The opinion is in evidence.

22 MR. ROTE: Yeah.

23 THE COURT: Trying to figure out why an arbitrator
24 ruled, beyond what's in an opinion, he's not going to be able
25 to tell you that.

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1 MR. ROTE: I'm trying to direct a specific piece.

2 BY MR. ROTE: (continuing)

3 Q. The arbitrator, in the opinion and award, for example,
4 decided not to admit that evidence, not to consider that
5 evidence. Is that your memory?

6 A. I don't know how to answer that.

7 Look, there's an opinion and award. We had a case.
8 It's done. It's many years ago. What he wanted to consider
9 in there or what he did -- I agree with the judge.

10 Q. Over the last 10, 12 years, have you been actively engaged
11 in IT services, employment services?

12 A. Yes, sir.

13 Q. You've worked for multiple employers? Even though you
14 don't want to tell us who they are, you've worked for multiple
15 employers?

16 A. I've worked for multiple employers. I don't want to tell
17 you who they are.

18 Q. The industries in which these employers exist?

19 A. Teleservices, some.

20 Q. Teleservices?

21 A. Uh-huh.

22 Q. What else besides teleservices?

23 A. Health care.

24 Q. Okay. We have -- I'd like to refer you to an exhibit.

25 MR. ROTE: I don't know if I offered 86 as an

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1 exhibit, Your Honor.

2 THE COURT: 86?

3 MR. ROTE: 86.

4 Excuse me, 593, "The Shutdown," Defendant's
5 Exhibit 593.

6 THE COURT: You did not offer that. That's part of
7 the blog?

8 MR. ROTE: That is part of the blog.

9 THE COURT: Any objection?

10 MR. CHRISTIANSEN: No.

11 THE COURT: Received.

12 You can now publish it to the jury.

13 MR. ROTE: Exhibit -- Defendant's Exhibit 595, is
14 that accidentally published already?

15 THE COURT: That has not been received yet.

16 MR. ROTE: Okay.

17 THE COURT: Are you offering 595?

18 MR. ROTE: I'd like to just cross him first on it,
19 Your Honor.

20 BY MR. ROTE: (continuing)

21 Q. I'd like you to refer to the Defendant's Exhibit 595. Do
22 you have it?

23 A. I have it in front of me. I have part of it in front of
24 me here.

25 Q. Can you tell us what that says, what -- the first

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1 paragraph from me to you.

2 THE WITNESS: Okay. I don't know the rule on this.
3 Am I allowed to see the whole exhibit or -- as he shows me a
4 piece of that? When do I address that?

5 THE COURT: You're allowed to look at the whole
6 thing.

7 THE WITNESS: Okay. I would like to see the whole
8 exhibit if we're going to present -- Can everybody see the
9 whole exhibit?

10 THE COURT: No. You get to see the whole exhibit.

11 THE WITNESS: Okay.

12 THE COURT: I assume you have it in your notebook
13 there. That will make it easier for you.

14 THE WITNESS: Yes. Sorry. I forgot about this.

15 (Pause) I do not see 595 listed in the books. What
16 I have on my screen is a small part. It says 595.

17 THE COURT: It's apparently in a notebook. It's kind
18 of hard to navigate. Look through there and see if you can
19 find it.

20 Can you help him, Jen? He's looking for 595.

21 THE CLERK: (Indicating).

22 THE WITNESS: Thank you.

23 May I have a minute to look at it?

24 THE COURT: Yes.

25 THE WITNESS: I'm sorry. I thought it was more

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1 pages.

2 Okay. I see it. It's a piece of an e-mail. It's
3 incomplete. It's an incomplete e-mail exchange.

4 BY MR. ROTE: (continuing)

5 Q. Would you please describe what -- First of all, let's
6 confirm, this is an e-mail between -- from me to you?

7 A. It is. This is also talking about -- this is discussing
8 reasons for termination. It's in here.

9 I mean, that's something that's been decided.

10 Q. I'm asking a specific question.

11 A. I understand that. But you're giving me evidence that we,
12 I believe, have already gone over in the arbitration; and
13 these matters have been decided.

14 THE COURT: Mr. Zweizig, I want you just to listen to
15 his question and answer his question and trust that your
16 lawyer will do his job.

17 THE WITNESS: Okay. Thank you. Sorry.

18 BY MR. ROTE: (continuing)

19 Q. The e-mail from me to you, this is document 595. You see
20 that, the top of 595?

21 A. I see it, yes.

22 Q. Do you see that it's representing that "I'm sure that we
23 can work out some kind of public statement for public
24 consumption"?

25 MR. CHRISTIANSEN: Objection, relevance. It's an

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1 e-mail from 2003.

2 THE COURT: The objection is sustained.

3 BY MR. ROTE: (continuing)

4 Q. All right. This particular document was after you filed a
5 complaint with the Department of Justice?

6 MR. CHRISTIANSEN: Objection, relevance.

7 THE COURT: Sustained.

8 This was way before the blog ever took place,
9 correct?

10 MR. ROTE: Way before the blog, but after he had
11 already filed his complaint with the Department of Justice.

12 THE COURT: The objection is sustained.

13 BY MR. ROTE: (continuing)

14 Q. I want to ask you about one of the chapters in the blog
15 that is in evidence here, Plaintiff's Exhibit -- I believe
16 Plaintiff's Exhibit 12. This would have been on page --
17 starting at page 25, Chapter 7, "The 120-Gig Hard Drive."

18 MR. CHRISTIANSEN: What page?

19 MR. ROTE: I have it as page 25.

20 THE WITNESS: I see it.

21 BY MR. ROTE: (continuing)

22 Q. Are you there?

23 A. Yes.

24 Q. So "The 120-Gig Hard Drive" goes into great detail about a
25 hard drive recovered from you in 2003, right after your

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1 termination, right after your last day, just before your last
2 day. "The 120-Gig Hard Drive," does this refresh your
3 recollection as to the hard drive that crashed in May 2003?

4 A. I don't remember which hard drive crashed. I know that
5 you didn't produce one of these hard drives, so if you're
6 about to go talking about the content of this hard drive --

7 Q. That's not what I asked you. I --

8 A. -- that's --

9 THE COURT REPORTER: I'm sorry. One at a time,
10 please.

11 THE WITNESS: I spoke out of turn. I'm sorry.

12 THE COURT: Go ahead and ask your question.

13 BY MR. ROTE: (continuing)

14 Q. You referenced during your examination that the
15 information in this hard drive was -- that you did not, in
16 fact, download porn; you did not, in fact, engage in any of
17 these activities?

18 A. I did not download porn.

19 Q. This hard drive was cross-referenced through a forensic
20 report that identified you as only -- the only user.

21 MR. CHRISTIANSEN: Objection.

22 THE COURT: Sustained.

23 BY MR. ROTE: (continuing)

24 Q. Can you tell me, Mr. Zweizig, why the 120-gig hard drive
25 would have had all of this information on it? Is it your

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1 position that you didn't have exclusive possession?

2 MR. CHRISTIANSEN: Objection.

3 THE COURT: Sustained.

4 BY MR. ROTE: (continuing)

5 Q. Are you taking issue in your plaintiff's -- in your
6 testimony with the content of this blog chapter, "The 120-Gig
7 Hard Drive," in its entirety?

8 A. Can you say that question again?

9 Q. Are you taking issue with the content of the blog post in
10 its entirety?

11 A. Anything disgusting that you found on any hard drive that
12 you go and post on the Internet, I am taking issue with.

13 Q. Every one?

14 A. Yes. Any disgusting thing, yes.

15 Q. The 120-gig hard drive -- Let me just ask you this
16 question. There were some 1900 Fox profiles found that had
17 been reformatted. Do you recall reformatting?

18 MR. CHRISTIANSEN: Objection.

19 THE COURT: Overruled.

20 You can answer the question, the last part of the
21 question.

22 THE WITNESS: It was our -- okay. I need to -- I
23 will answer that question. But I don't remember which hard
24 drive you didn't turn over, which means I also don't remember
25 which hard drive was reformatted.

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1 It was the policy of our company, if a hard drive
2 crashed, you did something to reformat or destroy it or
3 something. It had client data on it.

4 So, yes, there was a reformatted hard drive. When
5 you picked it up at my house, I told you it was reformatted.
6 A hard drive was reformatted. I don't know if that refers to
7 this hard drive.

8 BY MR. ROTE: (continuing)

9 Q. You don't know if it was a 120-gig hard drive or a 60-gig
10 hard drive?

11 A. No. I don't remember.

12 Q. But you do agree that you reformatted it?

13 A. You keep saying "it." There was a hard drive reformatted.

14 Q. That's -- The hard drive was reformatted. You reformatted
15 a hard drive?

16 A. I reformatted a hard drive, yes.

17 Q. And it's your -- Why did you do so?

18 A. Because the hard drive crashed, as far as being able to be
19 used. And I reformatted it. You knew -- it was our policy.
20 You reformat something so that the credit card information --
21 we didn't keep numbers. If we did, they were encrypted. But
22 any credit cards or personal information on a hard drive would
23 not be available to anyone.

24 Q. On that reformatted hard drive, there were, as you just
25 indicated, some 500,000 --

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1 A. No, I did not indicate that.

2 Q. Did you indicate that --

3 THE COURT: Wait. Wait. Wait for the question.

4 THE WITNESS: Sorry, sir.

5 THE COURT: Go ahead.

6 BY MR. ROTE: (continuing)

7 Q. Did you just testify that there was confidential customer
8 information on that hard drive?

9 A. No, I did not. I said that it was our policy to do that,
10 and I gave you the reasons why.

11 Q. You had mentioned in your testimony now that there was
12 data that was -- or files that were unencrypted, and that
13 was -- did I misunderstand?

14 A. I said if we got credit card numbers, they were encrypted
15 is what I said. I don't know if any of that information was
16 on any of your hard drives.

17 Q. The programming that you did for the company, can you
18 describe it in any detail?

19 A. Today? Not really.

20 Q. You would agree that programming was necessary to process
21 the amount of data that we had daily?

22 A. Yes.

23 Q. And that in the -- in the absence of that programming, the
24 company might have to shut down until it recreated it?

25 A. I gave you your programming. You sent me back an e-mail

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1 that said, "Thanks." You got it.

2 This was -- we've been through this.

3 Q. I'm asking you a direct question. You agree that if that
4 programming was not there, that the company would have to shut
5 down to re-create it?

6 A. I absolutely do not agree.

7 Q. You do not?

8 A. No, I don't. I was in a similar situation when I started
9 for your company. There was nothing. There was not a thing.
10 It was a running train. We were doing calls, we were doing
11 everything. And I used my skill, without programming, to get
12 your files out and get everything done. It depends on the
13 skill of your workers.

14 Q. Tell me how you did that.

15 A. Tell you how I got your files out?

16 Q. Tell me how you did that, yes.

17 A. Okay. Your data was there. I'm familiar with data.
18 There is an incoming layout. There is our dialer layout that
19 we had at the time, at Northwest. And then there is a
20 fulfillment layout back to the client and perhaps some
21 reporting files necessary.

22 I came to your Dyersville facility, and I worked
23 nonstop for two days to make sure that you had no slowdown,
24 that you were able to do work, and telemarketers were able to
25 come to work. As I was going through that, while I was

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1 looking at the state that everything was in -- Again, this is
2 when I started. This is kind of the same situation you're
3 talking about, but this is when I started. I want to be clear
4 about when this was.

5 You know, it was hard. It wasn't easy. You had
6 nothing. You had no programming. Whoever left -- the person
7 I didn't meet was a friend of yours. You said that. I never
8 met that person. They're gone. They left no programming.
9 They left no way to do anything. It was up to me to get it
10 done.

11 And I'm telling you, at one time I pushed back in my
12 chair for a minute, and I asked your center coordinator, I
13 said, "What was your plan B if I didn't come aboard?" And she
14 said you had already had a meeting with them, and Dyersville
15 would have shut down.

16 So can it shut down? It can. But I'm not going to
17 agree that it has to. It depends on the skill of the people
18 you bring on board.

19 Q. Again, you were using Visual FoxPro?

20 A. I'm sorry?

21 Q. Visual FoxPro was the database reporting program?

22 A. Yes. Yes, that's what I used to do that job, yeah.

23 Q. The servers for the dialers and switch, that was a
24 Unix-based system, do you recall?

25 A. Yeah, I think it was. I think everything was.

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1 Q. So that data had to be imported into tables in order to be
2 processed; is that an accurate statement?

3 A. The data needed to come from the Windows environment and
4 then be in -- yeah, and the dialer had an import feature that
5 you would import.

6 Q. The data had to be imported to a Windows-based system; is
7 that accurate?

8 A. Well, you asked me about the dialers. Dialers are Unix,
9 so it had to be imported into Unix for that process.

10 Q. So the FoxPro programming was not taking the -- was not
11 importing the data from the dialer to a Windows-based server
12 or computer?

13 A. I believe you asked me about putting the records on the
14 dialer. For that, for later, after the dialing, sure, it
15 needs to come off of there, and the opposite of that happens.

16 Q. It would be more accurate to call that exporting, then, as
17 opposed to importing, then, right?

18 A. Sure. Importing, exporting, right.

19 Q. So exporting from the Unix dialer to a Windows-based
20 machine so that FoxPro can be used to generate those reports?

21 A. Or anything, sure, yeah.

22 Q. Anything.

23 A. Excel.

24 Q. Excel, yeah, anything at all.

25 And so those programs, then -- Do you recall where

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1 you would have done that work?

2 A. I worked for you for about a year and a half. The
3 situation we were just talking about, I flew to Dyersville,
4 Iowa to accomplish that work.

5 Q. You worked from your home remotely in New Jersey?

6 A. I did.

7 Q. For -- it was about a year or so?

8 A. I'll take your word for that. I don't remember. But
9 fine.

10 Q. You would process -- You were the lead programmer; is that
11 accurate?

12 A. I was IT director for your company.

13 Q. And would you say you were the lead programmer as well?

14 A. Yeah.

15 Q. And based on the document we see with respect to your
16 contract, you were making \$90,000 back then?

17 A. That's correct.

18 Q. And today's dollars, it's maybe \$150,000?

19 A. I don't know.

20 Q. Would you agree with that?

21 A. I would have to look that up. I don't know. I would not
22 agree that \$90,000 ten years ago is \$150,000 today. I don't
23 think that's the case.

24 Q. So if we had correspondence that said there was no
25 transfer of programs, you would disagree with that conclusion,

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1 that you hadn't --

2 A. We went through this, had an arbitration. During that
3 arbitration, there was evidence. Part of the evidence was I
4 sent you an e-mail with a zip file of your programs. You
5 acknowledged it and said, "Thanks."

6 You didn't acknowledge it and say, "Hey, there's no
7 programming here" or "What do I do with this?" or anything.
8 You knew that those were your programs.

9 Q. No such evidence here today.

10 A. I don't know. I don't know what you're talking about. I
11 know I gave you your programs. I know you asked me for
12 programming on certain other things, and I told you, "I just
13 do the work."

14 It's not all -- you know, you seem to have this
15 mind -- and again, we're going back into another case here.
16 But you seem to have a mind-set that, you know, there's a
17 button to push and a program, you know, and it just does
18 everything. There's -- you know, if that were true, you
19 wouldn't have to hire skilled and specialized people to do
20 these tasks.

21 Q. The reporting programs back then were not automated?

22 A. I don't remember.

23 Q. The references you made to my LinkedIn account, most of
24 those are -- Tell me what concerns you about the chapters that
25 are disputing issues with respect to the bar. How does that

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1 affect you?

2 A. Well, one of the ways it does affect me is if people look
3 up things regarding those chapters, subject matter in those
4 chapters, is yet another way where they're going to find the
5 chapters about me. So there are non-targeted things also out
6 there on your website that might bring people there, and
7 there's my name; and, you know, it's going to be smeared up.

8 Q. Do you agree that your name is not included in most of
9 those chapters?

10 A. I don't know if it's most.

11 Q. The chapters that I referred to in the LinkedIn account
12 your attorney brought up, those chapters were about attorneys
13 as opposed to you.

14 A. Okay. Great. You're delineating your website as some
15 chapters are this, some chapters are that. I don't know if
16 I'm going to join you in that, because as people go to a
17 website, they go to a website and they go to the whole thing.
18 You know, I mean, that's our computer experience. You know, I
19 might Google something about programming, and then I know way
20 more than I want to know about koala bears in 10 minutes
21 because it takes you somewhere else.

22 So, I mean, you're trying to make this separation
23 that, you know, okay, they're only going to see this. That's
24 part of my concern. Look at what I'm sitting with
25 (indicating). This is a lot of volume, you know. So I don't

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1 know what part that somebody is going to go to. I don't know,
2 you know, the bottom of that thing. It would go to random
3 chapters. It wouldn't go to sequential chapters. I don't
4 know how you set that up, but it would go to random chapters.

5 So when they're done reading whatever they want to
6 read about the bar, PLF, you know, "Arbiters Be Damned," or
7 whatever you have up there, you know, then the chapter, "Our
8 History With Max Zweizig," pops up, and then there is
9 something prominently for them to click for.

10 So, yeah, I do have a problem with how your LinkedIn
11 chapter is related to chapters not related to me. I think
12 there's a pretty small path between -- you know, how that
13 could affect me.

14 MR. ROTE: Your Honor, I'm kind of at that point
15 when --

16 THE COURT: You don't have anything else other than
17 the things we need to talk about?

18 All right. Members of the jury, we'll call this our
19 afternoon recess. We'll be in recess for about 15 minutes.
20 The lawyers and I will do some work while you're in your room,
21 okay?

22 (The jury leaves the courtroom.)

23 THE COURT: Mr. Zweizig, you can step down.

24 THE WITNESS: I guess I'll just leave this.

25 THE COURT: Yeah. You're not done testifying yet,

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1 but you can step down for now. It's okay. Step down.

2 Okay. Mr. Rote, I have some notes down here, but why
3 don't you remind me of those things that you wanted to
4 introduce and I said we need to talk about this outside the
5 presence of the jury.

6 MR. ROTE: Yeah. I think we're at -- we'll soon be
7 at a point here where I have some impeachment testimony with
8 respect to Mr. Zweizig, but one of those -- multiple of those
9 are still forensic reports, so we're -- like the 120-gig
10 forensic report, they've introduced evidence that I have
11 submitted components of that or discussed components of that,
12 for which he has denied any existence of, but that forensic
13 report was, in fact -- is, in fact, impeachment evidence.

14 So I'm just asking this question, whether or not we
15 have at this stage --

16 THE COURT: Is your notion that you can simply
17 introduce as an exhibit a forensic report?

18 MR. ROTE: No. I would do it in conjunction with my
19 blog, which the plaintiff has examined him on.

20 THE COURT: So when you testify, that would be your
21 exhibit when you testify?

22 MR. ROTE: It is correct, although he has refuted the
23 existence of that information on a chapter.

24 THE COURT: But he's not someone that can
25 authenticate that forensic report. I don't even know if you

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1 can, but -- I don't know if you can, but he can't. It doesn't
2 come in through him. It might come in through you.

3 Do you understand?

4 MR. ROTE: Yeah, I think I understand. But some of
5 this was -- Well, okay. So --

6 THE COURT: Let me interrupt you for just a moment,
7 if I might. If it's something that's in the blog, the whole
8 blog is in. But if it's something that is not part of the
9 blog, then I need to look at it separately.

10 If it's not part of the blog, you're saying you want
11 him to identify and authenticate a forensic report. I'm just
12 guessing here, but I'm thinking that's not his -- that's not
13 his -- he's not a forensic expert. He doesn't get to do that.

14 MR. ROTE: Yeah. So -- so the issue is he's denied
15 the existence of this material that I've included in my blog.
16 And the source of that material, even the attachment from the
17 Judge Kugler letter and the reference in that paragraph, comes
18 from that forensic report.

19 THE COURT: I know. Again, if you want to get into
20 evidence the rest of Judge Kugler's letter, I will consider
21 that, because part of the letter is in. You want the rest of
22 it. I will consider letting the rest of it in. That's
23 different, however, than a forensic report itself.

24 Do you understand what I'm saying?

25 MR. ROTE: Yeah, okay.

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1 So if I'm kind of following this correctly, at some
2 point in time during my direct testimony on Chapter 7, on "The
3 120-Gig Hard Drive," I'm going to be outlining all of this
4 evidence, the source of which I'm going to reference to a
5 forensic report.

6 THE COURT: Yeah. I told you that you get to explain
7 why you wrote things on the blog, and I will let you explain
8 why you wrote things on the blog.

9 Does that mean you get to automatically introduce a
10 forensic report? No. There's more to it than that, and you
11 know that.

12 MR. ROTE: Yeah. I'm trying to understand how I
13 accomplish that, I guess.

14 THE COURT: Yeah. You may not be able to do that.
15 Sometimes that happens.

16 MR. ROTE: Yeah.

17 THE COURT: Sometimes what happens is you don't have
18 a forensic expert that can authenticate this report and what
19 it means because you weren't particularly offering it for what
20 it says, and that is that "Our report shows that he did
21 certain things." You may not be able to do that. I don't
22 know, but you may not be able to do that.

23 On the other hand, if you want to say, "This is what
24 my blog said, and this is why I said it," have at it. I told
25 you you would be able to do that.

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1 MR. ROTE: Yeah.

2 THE COURT: Okay? Do we understand each other?

3 MR. ROTE: We do. I'm still struggling with how to
4 impeach some of his testimony in the absence of getting that
5 in.

6 THE COURT: Sometimes the impeachment is your
7 testimony.

8 MR. ROTE: Yeah, okay.

9 THE COURT: And then the jury is left with trying to
10 figure out how to weigh witness testimony. That's their job.
11 That's what they do.

12 There was another exhibit I think that you had
13 referenced that we had put on hold, and I don't want to forget
14 that. I want to make sure you had an opportunity to be heard
15 about that one as well.

16 MR. ROTE: I think there was an Exhibit 5 --

17 THE COURT: 540? No?

18 MR. ROTE: 560, maybe, e-mail to modify.

19 THE CLERK: You said you were going to take up 37
20 later, and 594.

21 THE COURT: I'm sorry. Say it again, Jennifer.

22 THE CLERK: Exhibit 37 you said you'd take up later,
23 and then 594 is what I wrote down later.

24 THE COURT: So 37 would be a plaintiff's exhibit.

25 THE CLERK: Right. You started going there and said

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1 you'd take it up later.

2 THE COURT: And 594 would be a defense exhibit.

3 THE CLERK: Correct.

4 THE COURT: So let's talk about defense exhibits.

5 594, is that the document that showed all the

6 different entities?

7 MR. ROTE: No. That was 525.

8 THE COURT: Okay. So what's 594?

9 MR. ROTE: I think it was 595. I think it was 560
10 and 595, Your Honor.

11 THE COURT: I don't have those exhibits anymore,
12 Jennifer.

13 MR. ROTE: But I think you ruled on 595. It was an
14 e-mail that was sent to him, to Mr. Zweizig, in November 2003,
15 offering --

16 THE COURT: Oh, yeah. So what was the other one you
17 wanted?

18 MR. ROTE: 560.

19 THE COURT: (Pause) Oh, my goodness.

20 MR. CHRISTIANSEN: I have no objection to this.

21 That's fine.

22 THE COURT: So 560 you don't have any objection to?

23 MR. CHRISTIANSEN: The letter, no, I don't. E-mails,
24 two e-mails, no objection.

25 THE COURT: Is that the one we were waiting on was

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1 560, Mr. Rote?

2 MR. CHRISTIANSEN: I don't have copies of exhibits.
3 Can you pull it up, so we can make sure we're looking at the
4 same thing?

5 I think it's 595, right?

6 MR. ROTE: 595 was ruled on.

7 560 has to do with the offer to compromise the --
8 modify the blog.

9 MR. CHRISTIANSEN: Can you pull it up so I can see
10 it?

11 THE COURT: This one is from December 16th of 2016.

12 MR. CHRISTIANSEN: 560? No objection.

13 THE COURT: Does that resolve your problem, Mr. Rote?

14 MR. ROTE: It resolves the problems I can think about
15 at this time.

16 THE COURT: Okay. So 560 will be received.

17 MR. ROTE: Excuse me, Your Honor. Did we make a
18 decision about 590 --

19 THE COURT: 594?

20 THE CLERK: 594 was prior to the blog, you said, and
21 then you didn't rule.

22 THE COURT: Yeah. No. I told him that wasn't coming
23 in, the one prior to the blog.

24 THE CLERK: Okay.

25 MR. ROTE: 599, did we previously discuss that, the

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1 Secretary of State? It was part of my direct.

2 THE COURT: I don't think you offered 599.

3 MR. ROTE: 599, I did not, during Mr. Zweizig's. I
4 think we touched on it this morning. I just want to make sure
5 I can --

6 THE COURT: You can offer it in your case in chief.
7 He's not going to be able to identify this. That's outside
8 his testimony.

9 MR. ROTE: Right. I think that is, by and large, it.
10 I think 602 has to do with forensic reports already
11 in the public domain, but I think that is a neutralized point,
12 since they're not now going to argue that the media protective
13 order is -- they're not arguing now that the media protective
14 order precludes the publishing of forensic reports, so -- at
15 least, I think that's correct, is it not?

16 MR. CHRISTIANSEN: We have not offered that exhibit.

17 THE COURT: The exhibit would be the protective
18 order. That was not offered into evidence.

19 MR. ROTE: Right.

20 THE COURT: Okay.

21 MR. ROTE: Yeah.

22 THE COURT: Does that solve all of the issues that
23 you were worried about and I said, "Let's take a break and
24 we'll take them up at that point"?

25 MR. ROTE: Yes.

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1 THE COURT: Okay. Do you have any other --
2 (The Court and the clerk confer off the record.)

3 THE COURT: So 37 has not been offered yet?

4 MR. ROTE: 37 is the e-mail to Carol Bernick.

5 MR. CHRISTIANSEN: It's your e-mail to 50 people with
6 a long description.

7 MR. ROTE: So the issue there, in my mind, is that
8 the e-mail itself was an exhibit that I wanted to put on with
9 respect to -- or --

10 THE COURT: Hang on a second.

11 MR. ROTE: Yeah.

12 THE COURT: I think we're talking about your 37. Do
13 you have any objection to your 37?

14 MR. CHRISTIANSEN: What's that?

15 THE CLERK: We don't have it. We never got it from
16 you.

17 THE COURT: That's okay. My question is: Do you
18 have an objection to your 37 coming in?

19 MR. CHRISTIANSEN: My own?

20 THE COURT: Yes.

21 MR. CHRISTIANSEN: No.

22 THE CLERK: We do not have them.

23 THE COURT: That's another issue.

24 Were you offering 37?

25 MR. ROTE: No. I was objecting to it because it was

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1 correspondence from Carol Bernick sent over to
2 Mr. Christiansen. That's a line of -- a topic that you had
3 already ruled that we were not going to --

4 THE COURT: All right. So now let me take a look at
5 it.

6 (Pause) Had you offered this?

7 MR. CHRISTIANSEN: Yes.

8 THE COURT: (Pause) Mr. Rote, you're objecting to
9 this? Have you seen it?

10 MR. ROTE: Yeah. I wrote it.

11 So my objection is only that -- I withdraw my
12 objection.

13 THE COURT: Okay. 37 will be received.

14 Do you have further questions in your
15 cross-examination or are you finished?

16 MR. ROTE: I think I'm done, Your Honor.

17 THE COURT: All right. So when the jury comes back,
18 just say, "I have no further questions."

19 I'll give you an opportunity for redirect. And then
20 we'll be done with plaintiff's case. All right?

21 Let's take a break. How about -- let's give
22 ourselves about 10 minutes.

23 (A recess is then taken.)

24 (The Court, counsel, and the parties reconvene.)

25 THE CLERK: Court is back in session.

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1 THE COURT: Mr. Rote, I want to remind you about
2 something that we began to talk about, and you forgot and I
3 forgot to mention; and that is you wanted to cross-examine
4 about who the plaintiff's present employers were, and that was
5 one of the things I said we would take up during the break.
6 And I forgot to give you a chance to talk about that and for
7 me to think about it.

8 But I've now thought about it. Is there anything
9 else you want to tell me about that?

10 Do you remember the question?

11 MR. ROTE: Yeah, I think I remember the question.
12 He didn't want to answer the question, who the employers were,
13 who the employers were over the last 12 years. And I
14 understand his concern. But by the same token, to the extent
15 he's going to argue that it's interrupted his business life, I
16 think we have a right to know who those employers are.

17 THE COURT: So here's what I'm thinking about that.

18 But before I tell you that, is there anything,
19 Mr. Christiansen, you want to tell me on on that?

20 MR. CHRISTIANSEN: He's not going to say directly
21 that it's impacted his -- this particular job, no.

22 THE COURT: And you're not asking for economic
23 damages. I get that. You're only asking for pain and
24 suffering damages.

25 So to the extent that you want to ask about former

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1 employers, I'm not going to let you ask him to identify them
2 for you.

3 On the other hand, if you want to explore, "How long
4 have you worked there?," you know, "Were you by and large
5 successful at working there? You got to go to work each day?
6 You were successful with that particular employer?," I think
7 that is relevant to whether or not there was emotional
8 distress, because somebody who is incapable of getting to work
9 each day is in a different position than someone who is able
10 to go to work each day, notwithstanding this blog that was
11 deeply troubling to the plaintiff as an employee or as an
12 independent contractor.

13 So I will let you ask those kinds of questions if
14 you're interested, but I will not let you ask questions
15 identifying who the employer was or anything around the edges
16 that would lead you to know who the employer was.

17 MR. ROTE: Got it.

18 THE COURT: Do you understand?

19 MR. ROTE: I do.

20 THE COURT: And with that, do you want to ask those
21 kinds of questions?

22 MR. ROTE: I do.

23 THE COURT: So then I'll let you finish up with that.
24 Then we'll do redirect, and then we'll proceed.

25 Go ahead, Mr. Zweizig.

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1 (The witness retakes the witness stand.)

2 (The jury enters the courtroom.)

3 THE COURT: Mr. Rote, you may proceed.

4 BY MR. ROTE: (continuing)

5 Q. Mr. Zweizig, I want to go back to this question of your
6 employment, and I want to have you explain to us how many
7 employers you've had in the last -- let's just call it the
8 last five or six years.

9 A. That would be two.

10 Q. Two employers?

11 A. Yes.

12 Q. And your -- Do you go to work every day? Is it a remote
13 job? What is it?

14 A. One was a combination. One wasn't.

15 Q. Currently your employment is which one?

16 A. Go to work.

17 Q. It is go to work.

18 And you're able to continue to work through the
19 blogging activity, the blog posts, without any difficulty?

20 A. It affects my concentration, and it affects, like I said,
21 how I set up e-mail addresses and things like that. But I'm
22 able to do my job, yes.

23 Q. You haven't lost work because of it?

24 A. I've not lost any wages because of it.

25 MR. ROTE: That's all, Your Honor.