No. 23-35292

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Timothy C. 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 OPENING BRIEF

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I. INTRODUCTION

This is an appeal of the US District Court of Oregon's intractable decision to use and abuse the Federal Judiciary to support child predation in the name and false cover of an employee retaliation action arising 15 years after that employee was terminated. The decisions made before and during the 2018 trial in this case were raised as Constitutional Violations for Defendant's public critiques of the judicial Defendants named in that separate lawsuit, now appealed to the 9th Circuit.

Max Zweizig ("Zweizig") engaged in perjury during a January 2018 trial in this case. That perjury was suborned by his attorney Joel Christiansen ("Christiansen"). That perjury was sponsored by Federal Judges Marco Hernandez ("Hernandez"), Michael Mosman ("Mosman") and Robert Kugler ("Kugler"), all closeted members (until recently) of the LGB community. The 9th Circuit is no doubt aware that Appellant filed ethics complaints against both Kugler and Mosman.

The sponsorship of that perjury, and Fraud Upon the Court, was materially the suppression of forensic reports by Judge Hernandez from three computer forensic experts and law enforcement agencies that unanimously found Zweizig downloaded, possessed and distributed child pornography from his home in New Jersey while using a computer and 120 gig hard-drive issued to Zweizig by his employer.

Recent admissions by Zweizig on the record in other cases make this Motion to Vacate necessary and timely. Zweizig admitted in the other cases to committing perjury in this case during the 2018 trial. That evidence is explored herein.

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 recent public label to such a person is a Minor Attracted Person ("MAP").

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 is the credible evidence for Appellant's Motion to Vacate.

Defendant offers two groups of material statements in state cases 19cv01547 and 19cv00824. Zweizig's deposition in case 19cv01547 confirms he and counsel knew they were taking advantage of a *pro se* litigant when successfully suppressing the forensic reports, which gave Zweizig the opportunity lie about the content of the forensic reports. That record also confirms that Zweizig's collection attorney resigned no longer wanting to be associated with Zweizig and the raping of minors. Zweizig then sought to suppress from the public space that very deposition.

Also in case 19cv00824, Plaintiff Zweizig filed a Motion with Deschutes County Court to have Defendant Rote imprisoned for opposing 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 Zweizig, wherein Zweizig denied being a pedophile and child predator but did not deny downloading, possessing and distributing child pornography (**Motion Exhibit 2, page 2**).

Zweizig's Declarations may be interpreted reasonably as an admission that when taken together with Zweizig's testimony in trial 3:15-cv-2401, 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), in all the history of these collective acts paint again a very clear picture of Zweizig's criminal conduct that should no longer be ignored nor endorsed by any Court.

There is no remaining rock for the USDCOR to hide behind. Nor is there room to deny that the USDCOR engaged in Zweizig's support in order to sponsor his activities. To take no action to vacate the judgment is tantamount to supporting child pornography, child molestation and child trafficking.

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 and New Jersey have similar criminal statutes.

An sample of the videos (and file names) Zweizig maintained on his computer 120 gig hard drive, which he used from his home in New Jersey, are:

1. "young teen fucks two guys" (**Excerpt page 393**);

2. "older sisters gets lesbian with little sister" (**Excerpt page 394**);

3. "older man fucking young twink" (**Excerpt page 394**);

4. "teen 16 years young" (**Excerpt page 394**);

5. "older muscle guy fucks young twink" (**Excerpt page 395**); and

6. "older teen kisses, sucks and fucks hairless brother" (**Excerpt page 395).**

The list goes on. All of this material was made available to the public on Zweizig's D:\shared drive, where a program was installed to allow peer to peer sharing of these programs. The names of the mg and avi files were those placed or accepted by Zweizig.

If this Court can comfortably conclude that references to a young twink or little sister or little brother are not references to underage minors, please explain how. Zweizig reformatted that hard drive and no one but Zweizig ever used it again.

Defendant asks this Circuit to not allow our Court's to conflate support for the LGB community with support for child porn.

II. JURISDICTION

This is an action for relief from Judgment pursuant to FRCP 60 (d) (3). The District Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal) as this action arises under the laws of the United States.

The District Court also has jurisdiction over the Tort and Oregon actions under 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between citizens of different states.

The District Court has jurisdiction pursuant to 28 U.S.C. § 1291.

III. STATEMENT OF ISSUES

A. MOTION TO VACATE JUDGMENT

Whether the District Court of Oregon committed reversible error by refusing to vacate the Plaintiff's judgment of $1 Million, based partially on post-trial testimony of Plaintiff confirming perjury and subornation of perjury during the 2018 trial? The Court denied the Motion arguing that the FTCP 60 (d) (3) Motion was untimely, claiming the Defendant needed to bring the Motion within a year of the judgment. There is no statute of limitations for a FRCP 60 (d) (3) Motion.

B. RECUSAL OF HERNANDEZ AND MOSMAN

Whether Judge Hernandez and/or Mosman could decide the Motion to Vacate, lacking partiality and independence?

IV. STATEMENT OF THE CASE

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. Zweizig now openly celebrates in his victory in his deposition of December 21, 2020 (Clackamas Court case 19cv01547) and declaration of September 15, 2022 (Deschutes County case 19cv00824), wherein he admits to perjury and of being a child predator.

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.

The Court's leading precedent, *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238 (1944), makes it clear that Rule 60(d)(3) motions are not limited solely to after-discovered fraud. The trail and history of this case comfortably shows that Zweizig believes the forensic reports confirming his child predation needed to be suppressed in order for him to receive what he then believed would be a fair trial, primarily then because he could commit perjury in denying the

existence of the computer forensic reports. Zweizig accomplished that suppression in this case at trial. He was not successful in doing so in State Court.

A. STATEMENT OF HISTORICAL FACTS

Over the past 20 years the Judges and other actors identified in multiple complaints filed by Defendant have shown a collective commitment to aiding and abetting a litigant by the name of Max Zweizig, a New Jersey resident who as early as 2003 downloaded, possessed and distributed child pornography, engaged in cybercrime, participated in an identity theft ring and otherwise engaged in a host of other criminal acts. He continues to do so today.

In 2003, Zweizig, while head of the IT department for one of Rote's controlled companies, removed key programming (owned by his employer) from his employer's servers and back-up tapes. Once Zweizig had accomplished that removal he attempted to extort a raise from his employer. That extortion effort was rebuffed and Zweizig was terminated on October 2, 2003, via email and phone conversation. Zweizig's employer believed that Zweizig had suffered an emotional breakdown and offered to pay form Zweizig to get the help he needed. Zweizig refused. Three weeks later Zweizig made a public statement via email that his employer was overbilling clients and sent that email to Rote mandating that his employer stop that alleged overbilling. The evidence provided by Zweizig was a spreadsheet that showed frequent hours adjustments in October 2003 to unnamed

client projects, totaling about $400. Rote denied that there was any scheme to overbill clients and denied the existence of the spreadsheet, on multiple grounds including that clients were not billed by the hour, invoiced had not been billed for that month and a number of other salient reasons challenging the efficacy of the spreadsheet. That month Zweizig's employer billed $450,000.

Zweizig's employer had immediately determined that none of the members of Zweizig's IT department knew how to use the employer owned programming to process and report daily more than 100,000 bits of data generated each workday. The programming could not be found on any of the company owned servers or backup tapes. Zweizig denied the existence of those programs. Soon after Zweizig's last day, his employer shut down for 10 days while an outside IT contractor regenerated the programming and documentation.

Although bound by an employment agreement mandating mediation and arbitration, Zweizig filed an employment retaliation lawsuit in New Jersey in March of 2004. Zweizig's employer transferred the case to Federal Court Camden NJ based on diversity. Soon thereafter, then Magistrate Kugler remanded that case back to NJ state court.

Zweizig's fiancée of most of the last 20 years is a New Jersey attorney by the name of Sandra Ware, who received her law degree from Rutgers School of Law, Camden, and maintains a personal relationship with Judge Robert Kugler

(both alums of Rutgers, Camden, where they met). Ware leveraged her relationship with Kugler for the benefit of Zweizig by asking Kugler to intervene and remand the case back to State Court. Kugler did intervene, only to eventually realize that Zweizig is a producer, packager and distributor of child pornography.

More than a year later, Zweizig's former employer and Rote, both named defendants, filed a Motion to Compel arbitration under the terms of the employment agreement. The New Jersey state court granted the Motion to Compel arbitration as the employment mandated, to Portland Oregon (the state of residence of Zweizig's employer and Rote). That arbitration began in 2006 and was completed in 2011.

During the course of the arbitration, Zweizig lost his legal counsel four times, that resulted in substantial delays. Late in the arbitration and after the resignation of the fourth attorney, arbitrator William Crow referred Zweizig to his former Miller Nash partner Linda Marshall. Crow and Marshall did not disclose their prior 14 year working relationship.

With Kugler and Michael Mosman's help, Zweizig won an arbitration award from Crow. Mosman and Crow were former partners at Miller Nash. Subsequent to the arbitration award, Crow admitted to a number of conversations with Mosman about the arbitration status, wherein he was asked to punish Rote for publicly humiliating Kugler when Ware's ex-parte contact with Kugler was disclosed.

It was during that arbitration proceeding in 2010, where three computer forensic experts (one of whom was hired by Zweizig) opined on the record, as follows:

1. Contrary to Zweizig testimony, Zweizig was terminated by Rote's email of October 2, 2003, more than three weeks before Zweizig filed his complaint of overbilling;
2. Zweizig used the 120 gig hard drive and computer (issued to him by his employer) exclusively from his NJ home and office in Delaware, that it was password protected, and that there was no use of that hard drive after Zweizig reformatted the hard drive on November 12, 2003;
3. Contrary to Zweizig's testimony, the 120 gig hard drive was used by Zweizig to download, possess and distribute a variety of pirated movies, music, porn and child porn;
4. Contrary to Zweizig's testimony, Zweizig created a separate drive (d:\ drive), where he maintained his pirated music, videos, porn and child porn, and made that material available to the public with a peer to peer program called Winmx (which was registered to Zweizig);
5. Contrary to Zweizig's testimony, Zweizig had created, edited and possessed hundreds of programs (using Foxpro) owned by his employer, which were found on the reformatted 120 gig hard drive;

6. Contrary to Zweizig's testimony, the programs found on the 120 gig hard drive could not be recovered and used by Zweizig's employer after the hard drive had been reformatted;
7. Contrary to Zweizig's testimony, there were no program found on employer's servers and back-up tapes (such as Foxpro), used by Zweizig or others, to process the daily data and produce client files and reports;
8. The experts confirmed that Zweizig used the 120 gig hard drive to send and receive emails;
9. The experts confirmed that Zweizig had replaced the reformatted 120 gig hard drive in May 2003, on the same May date Zweizig falsely alleged the 120 gig hard drive had failed, and continued to use the 60 gig hard drive to engage in his employment responsibilities through November 13, 2003;
10. Contrary to Zweizig's testimony, Zweizig did not subsequently use that 60 gig hard drive to send and receive emails and that the hard drive used by Zweizig for email was never produced by Zweizig for forensic examination (even though hard copies of emails were produced);

11. Contrary to Zweizig's testimony, there were no programs or data files used in the daily processing of client data, found on the 60 gig hard drive; and

12. Contrary to Zweizig's testimony, Zweizig did upload to the 60 gig hard drive a photo of an erect penis.

Subsequent to the arbitration, Crow met with Defendant Rote a number of times and signed a declaration for Rote's use. Unfortunately that Declaration was provided after the 2018 trial and will be published if necessary

In 2015 Appellant published a number of blog posts critical of the arbitration, the arbitrator's failure to disclose his personal relationship with Linda Marshall, an evaluation of the evidence and about Kugler's relationship with Zweizig, attaching therein summaries of the forensic reports and testimony generated during the arbitration. Plaintiff Zweizig objected to the publications. Rote offered anonymity to Zweizig, which Zweizig refused. Rote nonetheless redacted Zweizig's name until the January 2018 trial.

On December 25, 2015 Max Zweizig filed an employee retaliation lawsuit against Defendant Timothy Rote and a number of his controlled corporations, alleging therein that Defendant Rote had published critiques of Zweizig and made defamatory statements about Zweizig because he was pursuing a fraudulent

transfer action to collect an arbitration judgment against Zweizig's former employer. Zweizig had not worked for that employer since November 2003.

Appellant would have the Court note that Linda Marshall represented Zweizig in his fraudulent transfer case against Rote, case 3:14-cv-0406. Rote prevailed in that case.

Just before the 2018 trial, Judge Hernandez granted Zweizig's Motion in Limine to suppress from the jury the forensic reports and testimony identified in Rote's blog. Early in the case, Judge Hernandez had denied Rote's Motion to Compel arbitration on the same ORS 659A claims brought by Zweizig in arbitration. Those prior decisions denying arbitration violated the American Arbitration Act, the Rooker-Feldman Doctrine, United Supreme Court dicta directly on point. Defendant alleges this case was used by the federal court to support child predation, attack critiques of child porn and to oppose employment arbitration.

During the trial, Zweizig denied the existence of the computer forensic reports and testimony of his expert and the other two experts, which as outlined above addresses identity theft, cyber-crime, pirating and distributing music and videos, and download, possession of child porn. All of this activity implicates criminal conduct.

B. BODY OF NEW EVIDENCE

Appellant alleges herein that Plaintiff Zweizig was so emboldened by the support he received from Hernandez, Mosman, Kugler and Crow that he made statements on the record in multiple cases that admitted to his perjury in the 2018 case and to the subornation of that perjury.

(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 (**Motion 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 collection of 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. **Motion 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 **Motion 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. **Motion 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.

Motion 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.

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 un-refuted. 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 **Motion 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 November12, 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.

Motion 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 (**Motion 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

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 Motion 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 Motion Exhibit 6**. Clackamas Court refused to suppress his deposition testimony. See **Motion Exhibit 6, pages 18-20**. The Court denied Plaintiff Zweizig Motion for a Pretrial Order (**Motion 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 **Motion 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 **Motion Exhibit 3**, **pgs 7, 9, 68, 103, 104, 123 and 172**.

(4) Defendant's Email to Ward Greene

Motion 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 Motion 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 (**Motion 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.

C. BODY OF CORROBORATING EVIDENCE

(1) The Forensic Reports

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

Motion 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.

Motion 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.

Motion 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.

Motion 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

Motion 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.

Motion 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.

Motion 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.

Motion 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.

Motion for Reconsideration Exhibits 1-3 are relevant sections of the 2010 arbitration transcripts supporting Appellant's Motion.

D. RELEVANT PROCEDURAL HISTORY

On November 15, 2022 Defendant filed an Amended Motion to Vacate, Declaration and Exhibits (**Doc#365**).The District Court denied Defendant's Motion to Vacate Judgment on March 27, 2023 (**Doc #366**).

Defendant filed a timely Motion for Reconsideration, Declaration and Exhibits on March 31, 2023 (**Doc #367**). The Court denied Defendant's Motion for Reconsideration on April 5, 2023 (**Doc #369**).

Defendant-appellant filed timely a Notice of Appeal on April 26, 2023 (**Doc #370**).

V. SUMMARY OF ARGUMENT

Defendant-Appellant respectfully appeals the District Court's denial of Defendant's Motion to Vacate the Judgment and Dismiss the Plaintiff's the Judgment for Fraud upon the Court under FRCP 60 (d) (3), based on Plaintiff's suborned perjury during the January 2018 Trial, wherein Zweizig denied downloading, possessing and distributing child pornography, porn, pirated music and videos and the theft of 500,000 identity records.

Appellant filed a Motion to Vacate Plaintiff's judgment for Fraud Upon the Court, following the analysis and United States Supreme Court precedent of *Hazel-Atlas Co. v. Hartford-Empire Co* ("Hazel-Atlas"), 322 U.S. 248 (1944). Appellant's Motion to Vacate follows that analysis and introduces additional after judgment evidence implicating a scheme of Fraud Upon the Court by Plaintiff, his attorney and Judges Mosman and Kugler. That Motion is provided herein as **Excerpt pages 6-31**. Appellant's Declaration and 11 Exhibits are provided herein at **Excerpt pages 32-659**.

After the Court denied Appellant's Motion on statute of limitations grounds, Defendant Rote filed a Motion for Reconsideration noting for the Court there was no such statute of limitations and offering further evidence of perjury by Plaintiff dating back to arbitration between the same parties in 2010.

The new evidence offered through the Motion to Vacate are (1) Zweizig's deposition and admissions dated December 21, 2020 (**Motion Exhibit 1**) in Clackamas case 19cv01547; (2) Zweizig's Motion to suppress that same deposition; and (3) a declaration filed by Zweizig in Deschutes case 19cv00824 on September 15, 2022 (**Motion Exhibit 2**). The Deschutes County declaration by Zweizig specifically denies being a pedophile but does not deny that he downloaded, possessed and distributed child pornography using a peer to peer program registered to him.

The assistance offered to child predator Max Zweizig by the USDCOR and state courts in multiple other cases shows a consistent pattern of support in favor of child predation. As alleged in this case, the Court in case 3:15-cv-2401 took what should have been a criminal indictment against Zweizig into a protected exploitation of the employee retaliation statutes, namely ORS 659A.030 claims.

Zweizig has not been an employee of a company owned by Appellant Rote for almost 20 years. It is abundantly clear that the Court conspired to retaliate against Defendant Rote, specifically for Rote's public critiques of the Court and for

opposing the distribution of child pornography. It is particularly noteworthy now that Zweizig has now admitted to that perjury in and during the January 2018 trial in this case. There is no statute of limitation for this action.

Appellant offers the following paragraphs on Josh Duggar to show the contrast of results in similar cases. The Duggar case is a criminal case. Zweizig was a civil case, but the evidence before the jury in the criminal case was the exact same body of evidence suppressed and denied to Rote while a defendant in this case (3:15-cv-2401). It's the same body of forensic reports that show criminal possession of child pornography. That evidence submitted in case 3:15-cv-2401 was suppressed by the Court. While the jury did not see the forensic reports, that does mean Zweizig is free to lie about it to a jury, nor is attorney Joel Christiansen free from his role in suborning that perjury.

Former reality TV star Josh Duggar was sentenced on Wednesday May 24, 2022 to about 12 1/2 years in prison after he was convicted of receiving child pornography. Duggar was also convicted of possessing child pornography in December 2021, but U.S. District Judge Timothy Brooks dismissed that conviction after ruling that, under federal law, it was an included offense in the receiving child pornography count. Prosecutors had asked U.S. District Judge Timothy Brooks to give the maximum term of 20 years to Duggar, whose large family was the focus

of TLC's "19 Kids and Counting." They argued in a pre-sentencing court filing that Duggar has a "deep-seated, pervasive and violent sexual interest in children." Duggar was arrested in April 2021 after a Little Rock police detective found child porn files were being shared by a computer traced to Duggar. Investigators testified that images depicting the sexual abuse of children, including toddlers, were downloaded in 2019 onto Duggar's controlled computer at a car dealership Duggar owned.

The record of the Duggar trial showed that Duggar had bi-furcated his office computer into two sectors, a C drive and a D drive. Dugger maintained his office business activities on the C drive and his child pornography on the D drive. Duggar had on the D drive a peer to peer program allowing others to download and upload their porn. It was a software program similar to what Zweizig used to make his child porn available, as far back as August 2001.

Zweizig engaged in precisely the same criminal conduct as Duggar did. In Arkansas Duggar was convicted by a jury. In Portland and with the Court's help in suppressing the computer forensic reports and testimony, Zweizig secured a $1 Million judgment. Zweizig argued that Rote's critique of the Judicial actors such as Kugler had the effect of retaliation against him.

Defendant Rote has made this argument for some time, but the difference is that Zweizig is now generating sworn testimony confirming his perjury in this case

and then seeking to suppress that testimony, even arguing he could not get a fair trial in a fraudulent transfer case if his perjury and criminal conduct were to come to light.

VI. LAW & ARGUMENT

A. THE COURT COMMITTED REVERSIBLE ERROR WHEN REFUSING TO VACATE PLAINTIFF'S JUDGMENT SECURED BY FRAUD UPON THE COURT

1. Standard of Review

"In the context of Rule 60(d)(3), [the court] review[s] denials of motions to vacate for abuse of discretion." *United States v. Sierra Pac. Indus., Inc*., 862 F.3d 1157, 1166 (9th Cir. 2017).

2. 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 (**Motion Exhibit 1, page 1**0)., "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 **Motion 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, namely that he did not download and disseminate child porn, porn, pirated 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 necessary or viable. Zweizig concedes in his Motion to suppress his deposition testimony that no jury would find in his favor if his admission now comes to light.

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. **Motion 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…more specifically that Zweizig is a child predator. Zweizig's attorney in Clackamas Court case 19cv01547 sought to suppress that December 21, 2020 deposition (**Motion 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 believes his child porn activities would make it hard to find a jury that would want to support his effort to steal Tanya Rote's Sunriver property, the gravamen of the 19cv01547 case. Williams Kastner filed an earlier version of the same Motion to suppress the forensic reports early on in their representation of Zweizig in case 19cv01547, in fact intimating on the record of having difficulty finding staff who wanted to work on the Zweizig account (**Motion 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 child porn or porn of any kind.

Defendant is also 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 (**Motion 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, and pirated music and videos. He also lied about removing and destroying programs owned by his employer in an effort to extort a raise. 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, also helped craft the declaration to suborn the perjury in that Deschutes County case, an act consistent with what Christiansen did in 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 was repeated in Defendant’s Motion to Vacate.

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

(i) 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."

(ii) 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 (**Motion Exhibit 1, page 47**), the Motion to restrict statements to attorneys with copies of **Motion 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 **Motion 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.

Motion 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. **Motion 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.

Motion 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. **Motion Exhibits 3-11** corroborate Defendant Rote's position in this case.

(iii) 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, **Motion Exhibit 1 and 2** reflect recent and brazen admissions by Zweizig that he lied to the jury in this case. **Motion 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 Zwezig 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 (**Motion Exhibit 4**) intentionally misled the court into believing that the interpretation of the forensic reports had already been adjudicated in the arbitration in 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 vitiated the defendant's defense, but its absence was likely critical in the plaintiff's case because they alleged

defendants 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 also contends 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 **Motion 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, in the arbitration, and there was no allegation that the forensic reports provided in **Motion Exhibit 5** were not also in the record in multiple cases. Because discovery was not provided, plaintiff Zweizig 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, but rather to cover up and or destroy evidence such as digital email files, programming, identity records, child porn, movies, etc. **Motion 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 Defendant's wife 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 sell Tanya Rote's Sunriver property, Zweizig was nonetheless unrepentant in his belief that he could convince a jury even with no evidence (**Motion 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 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.

///

(iv) 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.

B. JUDGES HERNANDEZ AND MOSMAN WERE BOTH INELIGIBLE TO DISMISS DEFENDANT'S MOTION TO VACATE

1. Standard of Review

The United States Supreme Court has opined that recusal is required when the probability of actual bias on the part of the Judge is too high to be conscionably

tolerable. See *Michael Damon Rippo, Petitioner V. Renee Baker, Warden*, No. 16–6316, March 2017.

2. Argument

The judicial disqualification statute provides that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. §455(a). Congress adopted this standard in 1974 "to clarify and broaden the grounds for judicial disqualification and to conform with the recently adopted Code of Judicial Conduct, Canon 3C." *Liljeberg v. Health Servs. Acquisition Corp*., 486 U.S. 847, 858 n.7 (1988); see also Code of Conduct for United States Judges, Canon 3C(1) (2014) ("A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned."). As this Court has explained, "[t]he very purpose of §455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *Liljeberg*, 486 U.S. at 865 (citing S. Rep. No. 93-419, at 5 (1973); H.R. Rep. No. 93-1453, at 5 (1974)). Accordingly, it does not matter whether a judge has actual prejudice or bias against a party. *Id. at 860*; 13D Wright & Miller, Federal Practice & Procedure, §3549. Rather, the question is whether "the public might reasonably believe" the judge was partial or biased. *Liljeberg*, 486 U.S. at 860. In conducting

that inquiry, "all the circumstances" must be taken into account. *Sao Paulo State Federative Republic of Braz. v. Am. Tobacco Co*, 535 U.S. 229, 232 (2002).

Both Judges Hernandez and Mosman of the US District Court of Oregon are defendants in a Civil Rights lawsuit brought by defendant Rote. Judge Mosman was already reversed when he kept and dismissed state law claims, including a malpractice claim against attorney Andrew Brandsness, a claim which arose in this case.

While defendant appreciates that no other judge of this district wants to touch this filthy case, it is clear that Judge Hernandez may not touch this case further. Hernandez then citing statute of limitations on Defendants FRCP 60 (d) (3) Motion, as he did, speaks to Hernandez' intent to take advantage of Defendant's *pro se* status, which implicates his bias in this case.

VII. CONCLUSION

For the reasons outlined above, Defendant asks this Court for one of several remedies. Defendant asks the Court to vacate the judgment of $1,000,000, to preserve the credibility and integrity of the Court.

Plaintiff has a standing Motion to Disqualify Judge Richard Paez.

Date: June 26, 2023

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

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 11,237 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word Times New Roman 14-point font.

Date: June 26, 2023

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

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2023 I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: June 26, 2023

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