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5 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
6 FOR THE COUNTY OF CLACKAMAS  
7

9 MAX ZWEIZIG,

10 Plaintiff,

11 vs.

12 TIMOTHY ROTE, TANYA ROTE,

13 Defendants  
14

Case No.: 23CV28582

DEFENDANT TIMOTHY ROTE’S ANTI-SLAPP MOTION TO STRIKE AND, IN THE ALTERNATIVE, MOTION TO DISMISS

MOTION FOR SANCTIONS

HEARING REQUESTED

15  
16 **SPECIAL MOTION TO STRIKE**

17 Defendant Timothy Rote (“Rote”) moves the Court for an order pursuant to ORS  
18 31.150 (Oregon's anti-Strategic Lawsuits Against Public Participation or “anti-SLAPP” statute)  
19 dismissing Plaintiff Max Zweizig’s Complaint. In the Alternative, Defendant also moves this  
20 Court to Dismiss that portion of the Complaint, if any, not squarely in line with the anti-  
21 SLAPP. Rote’s Motions are supported by the following Memorandum of Points and  
22 Authorities, the Declaration of Timothy Rote and accompanying exhibits, and the other  
23 pleadings in the Court’s file.

24 Timothy Rote also seeks his costs and attorney fees in accordance with ORS 31.152(3)  
25 and, in the alternative, under ORS 20.105 because Plaintiff’s Complaint is objectively  
26 unreasonable. The Plaintiff’s claims have been or should have been litigated in case 19cv01547,

DEFENDANT TIMOTHY ROTE’S ANTI-SLAPP MOTION TO STRIKE AND, IN THE ALTERNATIVE,  
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1 wherein Plaintiff Zweizig lost. Defendant will submit an attorney fee statement pursuant to  
2 ORCP 68 if this Court grants this Motion.

3 Defendant Timothy Rote also seeks sanctions against The Cauble Firm for not  
4 supervising Chase Beguin appropriately and in a manner consistent with Oregon State Bar's  
5 code of conduct. Beguin, out of law school only one year, has taken this meritless action  
6 against Defendant Rote and Rote's family for one reason only and that is to use it as leverage  
7 to suppress Timothy Rote's blog critical of Zweizig and the numerous other issues of public  
8 concern addressed therein.

### 9 MEMORANDUM OF POINTS AND AUTHORITIES

#### 10 I. Background.

11 This is the latest chapter in Plaintiff Max Zweizig's dispute with parties, judges,  
12 attorneys and others, who have opposed him in multiple cases over the last 20 years or so.  
13 Zweizig lost Clackamas County Case 19cv01547, wherein he sued Timothy Rote and Tanya  
14 Rote in a fraudulent transfer action, seeking Tanya Rote's property even though she was not a  
15 debtor to Zweizig. *See Zweizig v. Rote, et al.*, Case 19cv01547 (**Rote Dec, Ex 1**). Zweizig lost  
16 that case in Clackamas Court and on appeal to the Oregon Court of Appeals (**Rote Dec, Ex 2**).

17 The 19cv01547 case was preceded by a Federal Lawsuit (the "Federal Action"), in  
18 which Zweizig acquired a \$1 Million judgment against Timothy Rote. The federal lawsuit  
19 involved Timothy Rote, his controlled corporations and Zweizig, and the allegations included  
20 blog posts written by Defendant Timothy Rote, some of the more recent of which have been  
21 cited by Zweizig in this case. *See Zweizig v. Rote, et al.*, U.S. District of Oregon, Case No.  
22 3:15-cv-02401 (the "Federal Action") (**Rote Dec, Ex 3**). Plaintiff took no action in that federal  
23 case to suppress the blog, although his Complaint asked for declaratory relief. He did take  
24 action to suppress from the jury the evidence cited by blog, which of course included the  
25 opinions and testimony of many three computer forensic experts who all testified against  
26 Zweizig.

1 Subsequent to the judgment in the federal action, Zweizig made numerous admissions  
2 in a deposition in case 19cv01547 (dated December 21, 2020) that implicate Zweizig for  
3 perjury during the Federal action trial (January 2018) and implicate his attorney for  
4 subornation of that perjury. (**Rote Dec, Ex 4**).

5 Timothy Rote then filed a Motion to Vacate Zweizig's judgment in the Federal Action.  
6 (**Rote Dec, Ex 5**). The Exhibits provided with that Motion for Fraud Upon the Court are listed  
7 herein. (**Rote Dec, Ex 6**) and provided as necessary at this stage of litigation. Rote's Motion to  
8 Vacate for Fraud Upon the Court is now on appeal to the 9<sup>th</sup> Circuit, which Plaintiff cites in his  
9 complaint as something that is actionable. (**Plaintiff, Ex 2**). The 9<sup>th</sup> Circuit Excerpts of Record  
10 may be provided subsequently and contain much of what has been provided. (**Rote Dec, Ex 6**).

11 During the pendency of the Federal Action, Zweizig did not seek to have the blog  
12 suppressed from the public space, for obvious reasons (because it is a free speech product).  
13 Shortly after December 2015 when the federal action was filed, Rote offered Zweizig redaction  
14 of Zweizig's name in the blog. Zweizig refused that accommodation. At no time until this  
15 recent complaint has Zweizig alleged that Rote's blog was written by anyone but Defendant  
16 Timothy Rote.

17 During the pendency of Clackamas case 19cv01547, Zweizig did seek to have his  
18 deposition in that case suppressed from Timothy Rote's blog and even took a swipe at  
19 suppressing Rote's free speech product, namely the blog. (**Rote Dec, Ex. 7**). Zweizig was  
20 denied his Motion to have Zweizig's deposition or the blog and its content suppressed from the  
21 public space. (**Rote Dec, Ex. 8**). Zweizig did not appeal that ruling.

22 All of the Plaintiff's claims against Timothy. Rote, on their face, implicate the anti-  
23 SLAPP statute. This shifts the burden of production to Max Zweizig to produce substantial  
24 evidence that shows a prima facie case for these claims. ORS 31.150(3). As was the case in the  
25 previous litigation between these parties, Zweizig cannot satisfy his burden.

26 Contrary to Plaintiff's assertion, there are well over 1,000 pages of evidence filed in the  
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1 public space (court documents and Rote's blog) that clearly show Zweizig downloaded,  
2 possessed and distributed a variety of pornography and pirated movies and videos. Some of  
3 that pornography is child pornography. The computer forensic reports and testimony of three  
4 computer forensic experts found unanimously that the material heretofore described and  
5 identified to Zweizig was downloaded, possessed and distributed using a peer to peer sharing  
6 program registered to Zweizig. That material was placed on Zweizig's employer issued  
7 computer and 120 gig hard drive by Zweizig during a period of time when Zweizig admitted to  
8 having full control of the computer. Much of that time the computer was used by him from his  
9 home in Woodbury New Jersey. Zweizig admitted to reformatting the hard drive (spoliating  
10 evidence) and all three forensic experts opined that the hard drive was fully operational when  
11 Zweizig reformatted the hard drive. All three experts opined that no one else but Zweizig used  
12 that 120 gig hard drive. **(See Rote Dec, Exhibit 12, a sample of the forensic reports).**

13 Let us also once and for all dispel this notice that Zweizig is a whistle blower.  
14 Defendant Timothy Rote hired Zweizig in August 2001 to be the IT Director for a Northwest  
15 Direct, a company owned by Rote. Within a year of his hiring, Zweizig and three others  
16 conspired to breach their employment contracts and state a competing company, with the intent  
17 of stealing their employer's clients. Zweizig and Paul Bower organized a Delaware company  
18 called Superior Results Marketing. Zweizig owned a 49.5% interest in that company. Once  
19 Timothy Rote was informed of the scheme, Rote confronted Zweizig and Bower and took  
20 control of Superior Results. Bower was removed a short time after that. Zweizig was allowed  
21 to stay.

22 Approximately six months after Zweizig was allowed to stay, Zweizig launched  
23 another attack.

24 The first part of the plan was to remove all of the programming owned by Northwest  
25 Direct, which he did.

26 The second part was to feign the failure of his 120 gig hard drive, which he carried out

1 in May 2003, in order to hide the programming he had been using up to that time.

2 The third part of his plan was then to stop processing data, returning that data to clients  
3 and not filing monthly client reports with a few key clients, which he carried out starting in  
4 May 2003. Rote was then made aware of that portion of the plan in September 2003, when a  
5 client called him.

6 The fourth part of the Zweizig plan was then to attempt to use the risk of losing a few  
7 key clients to extort a raise and new title. Rote refused the extortion attempt. Under threat of a  
8 criminal complaint, Zweizig then processed and transmitted data and reports to those same  
9 clients that were due from May through August 2003. He completed that work on September  
10 30, 2003.

11 Zweizig was terminated on October 2, 2003, but given 45 days to bring his team up to  
12 speed on his programming. He refused to do so then claiming that there was no such  
13 programming. On October 25, 2003 Zweizig made allegations that his employer had overbilled  
14 clients. The evidence he provided was fabricated by him in collusion with a member of the his  
15 IT department. Zweizig alleged his employer has overbilled an unnamed client by \$400 in a  
16 month in which his employer billed had billed \$450,000.

17 In November 13, 2003, Zweizig's final day with the company, he returned his computer,  
18 the reformatted 120 gig hard drive and his current 60 gig hard drive. The company's critical  
19 programming could not be found on that 60 gig hard drive, nor was found on any of the other  
20 servers in Oregon or Iowa and was not found on back-up tapes. Zweizig had removed all of the  
21 programming.

22 During the arbitration in 2010, the arbitrator determined that employer Northwest  
23 Direct did not overbill clients and did nothing wrong. (**Rote Dec, Ex 14**). He nonetheless also  
24 concluded that Zweizig believed Northwest Direct had done something wrong. The arbitrator  
25 then ignored Zweizig's termination date (the forensic reports confirming the 10.2.2003  
26 termination date and testimony of six witnesses) and all of the acts of cybercrime perpetrated

1 by Zweizig against his employer including the removal and destruction of company owned  
2 programming. Northwest shut down after Zweizig's last day so that an outside programming  
3 company could re-create the programming Zweizig destroyed. More than 100 employees were  
4 laid-off during that time. All three forensic experts opined that the programming Zweizig  
5 claimed did not exist was found on the 120 gig hard drive which Zweizig re-formatted.

6 Zweizig's plan, hatched with his girlfriend Sandra Ware (NJ attorney), was to have  
7 Northwest's clients terminate their relationships with Northwest so that Zweizig and his new  
8 partners could compete with Northwest and avoid the non-compete mandates of their  
9 employment agreements.

### 10 **B. The Allegations in the Complaint**

11 The Plaintiff's *malformed* Complaint appears in part to be for defamation, which under  
12 Oregon Law must be commenced within one year (ORS 12.120). The latest publication date of  
13 the material referenced by Plaintiff Zweizig (**Plaintiff Ex 1**) was published on February 3,  
14 2022, more than 18 months ago. Most of the publications referenced in Plaintiff Exhibit 1 are  
15 critiques of the Court.

16 The Complaint also appears to seek an award for Intentional Infliction of Emotional  
17 Distress, derived predominantly from Zweizig filing his collection of lawsuits in Federal,  
18 Clackamas and Deschutes County Courts. Those actions of defense taken by Defendants is  
19 immune from this kind of action and Zweixig cannot satisfy any of the elements necessary to  
20 bring this claim, let alone bring it for actions that enjoy absolute immunity—such as Court  
21 filings. For example, Complaint references Defendant Timothy Rote's Opening Brief to the 9<sup>th</sup>  
22 Circuit (**Plaintiff Exhibit 2**) in which Rote is attempting to vacate Zweizig's judgment, is a  
23 Court filing and immune from any civil action stemming from Zweizig's theory related to his  
24 bruised ego and embarrassment for being identified as promoting child porn, engaging in  
25 pirating of copyright material, identity theft and cybercrime.

26 The forensic evidence, including the reports and testimony of the forensic experts is all

1 now in the public record and court documents, filed in the arbitration proceeding and filed in  
2 the public space as a court filing during the affirmation of the arbitration award in 2011.  
3 Defendant has the right to republish the documents provided to the Court in 2011 and 2012.

4 One of the forensic experts in the arbitration case was hired by Zweizig (Justin McAnn)  
5 and like the other forensic experts also opined that the videos identified as child porn were  
6 downloaded, possessed and distributed during a time when Zweizig had sole possession of the  
7 120 gig hard drive. Defendant publishes herein Exhibit 2 of McAnn's July 1, 2009 report,  
8 which shows that on September 30, 2003 Zweizig uploaded the 60 gig hard drive a photo of a  
9 penis (**Rote Dec, Exhibit 17**). Zweizig did not reformat that hard drive; so image what was on  
10 the hard drive he did reformat. Again the unanimous testimony of all three forensic experts  
11 providing opinions and testimony during the arbitration from 2006-2010 was that downloaded,  
12 possessed and distributed porn, child porn, and pirated music and video's.

13 Defendant acknowledges that Zweizig was encouraged to take up this current action by  
14 Judge Leslie Roberts, which is why a new Civil Rights Complaint was filed against Judge  
15 Roberts and the Oregon State Bar Professional Liability Fund ("PLF", which continues to  
16 provide free legal services to Zweizig). This case is not exactly what Judge Roberts had in  
17 mind. Judge Roberts unconstitutional threat against Defendant Timothy Rote happened during  
18 a Summary Judgment hearing in Clackamas case 22cv17744. Roberts noted for the record that  
19 Court filings should not be published outside the cover of a judicial filing, focusing on  
20 however the public protests of Clackamas and Deschutes County Judges, those protests  
21 organized by Defendant Timothy Rote. Roberts went on to say that while she was granting  
22 summary judgment against Rote Malicious use claims in case 22cv17744, it should not be  
23 interpreted by Zweizig to then file his own malicious use of civil proceeding claim against  
24 Timothy Rote. (**Rote Dec, Ex 13**).

### 25 **C. Defendant's Motions to Strike and Dismiss**

26 **Motion 1 ORS 31.150:** Plaintiff's defamation and IIED claims must be dismissed

1 pursuant to Oregon’s anti-SLAPP statute, because the defamation and IIED allegations against  
2 Defendant stem from Court filings, actions and proceedings.

3 **Motion 2 ORCP 21 A(8):** Alternatively, Plaintiff’s defamation and IIED claims must  
4 be dismissed with prejudice because the Defendant enjoys absolute privilege and immunity  
5 from liability on the Plaintiff’s allegations stemming from Court filings, actions and  
6 proceedings.

7 **Motion 3 ORCP 21 A(9):** Alternatively, Plaintiff’s defamation and IIED claims must  
8 be dismissed with prejudice because they are time-barred.

9 **Motion 4 Doctrine of Claim Preclusion:** Plaintiff’s Fraudulent Transfer claim against  
10 Timothy Rote must be dismissed under the Doctrine of *claim* preclusion because Plaintiff  
11 already had an opportunity to pursue this claim and chose to not do so in case 19cv01547.

12 **Motion 5 Doctrine of Issue Preclusion:** Plaintiff’s Motion for Declaratory Relief must  
13 be dismissed under the Doctrine of *issue* preclusion because Plaintiff was already denied the  
14 same sought after declaratory relief against Timothy Rote and Timothy Rote’s blog in case  
15 19cv01547.

16 **Motion 6 Motion for Sanctions:** The Cauble Firm should be sanctioned for failing to  
17 supervise attorney Chase\_Beguin, counsel for Zweizig, in the now 7<sup>th</sup> lawsuit filed by Plaintiff  
18 Zweizig, an action intended to do nothing more than to harass, intimidate and hurt Defendants.

19 **Motion 1**  
20 **Motion to Strike Defamation and IIED Claims**  
21 **Immunity and Privilege of Judicial Filings**

22 Plaintiff alleges in his Complaint that he was “subject to multiple retaliatory lawsuits”  
23 (**Compl**, ¶5), but fails to mention that he is the one filing the lawsuits. Plaintiff is most  
24 certainly aware that he made an allegation in his lawsuit of 2004-2010 that his former  
25 employer overbilled unnamed clients some \$400 without providing a shred of substantiated  
26 evidence (in a month in which that employer billed \$450,000) after being terminated for  
attempting to extort his employer. The arbitrator found Zweizig’s claim of overbilling to be



1 meritless, as did the state agencies with which Zweizig filed a complaint. (**Rote Dec, Ex 14**).

2 Plaintiff alleges that Court filings are the primary source of his emotional distress.

3 Plaintiff, in November 2018, acquired a monetary judgment stemming from Timothy  
4 Rote's blog posts, which was started by Rote in September 2015 as a public critique of the  
5 evidence an arbitrator ignored and the substantial period of time it took (2004 to 2011) to  
6 complete the arbitration. That bundle of early critiques published the same material presented  
7 to the arbitrator and also raised admissions by the arbitrator that he had been compromised by  
8 his former Miller Nash partners, Linda Marshall (who was the 5<sup>th</sup> attorney to represent Zweizig  
9 in the arbitration) and Michael Mosman (Federal Judge).

10 Defendant Rote was also highly critical of the fraudulent transfer action taken in  
11 Federal Court (3:14-cv-0406) in 2014 by Zweizig, a case which Defendant Timothy Rote won  
12 in 2018; that litigation being used by Zweizig to acquire confidential business contracts of  
13 Zweizig's former employer.

14 At no time from the inception of the blog (September 2015) to now has the Plaintiff  
15 ever asserted that Timothy Rote was not the sole author and publisher of the blog.

16 Plaintiff alleges now however, in this his most recent complaint, that both Defendants  
17 wrote and published "When Justice Fails". (**Compl, ¶7**), attempting once again to hurt Tanya  
18 Rote simply because the blog describes legal acts taken by Zweizig against the "Rote's".  
19 Timothy Rote is the sole author and publisher of the When Justice Fails blog posts. (**Rote Dec,**  
20 **¶3**). *Plaintiff's Exhibit 1* references Timothy Rote as the sole author.

21 Plaintiff alleges the blog posts written by Timothy Rote are defamatory and also a  
22 limited and additional source of his emotional distress otherwise not severable from the  
23 documents filed in Court by Timothy Rote.

24 Defendant considers the blog posts a treatise on public corruption and the Courts have  
25 determined the blog is a free speech product.

26 At no time in the last almost eight years has Plaintiff attempted to assert that Tanya

1 Rote has anything to do with the blog. For example, Plaintiff did not assert that in the Federal  
2 action (**Rote Dec, Ex. 3**). He is doing so now for blatantly obvious reasons, doing so without  
3 probable cause and with malice, to again try to hurt a member of Rote’s family, an act he  
4 claims would be outrageous and actionable for anyone but him.

5 **The anti-SLAPP Statute**

6 The purpose of a special motion to strike is to permit a “defendant who is sued over  
7 certain actions taken in the public arena to have a questionable case dismissed at an early stage.”  
8 *Mullen v. Meredith Corp.*, 271 Or App 698, 700 (2015). The goal is to “weed out meritless  
9 claims meant to harass or intimidate.” *Young v. Davis*, 259 Or App 497, 508 (2013); see also  
10 *Handy v. Lane County*, 274 Or App 644, 650 (2015) (anti-SLAPP statute provides an  
11 “inexpensive and quick process by which claims that might infringe on the right to petition and  
12 free speech on public issues could be evaluated to determine if they were frivolous”), reversed  
13 on other grounds, 360 Or 605 (2016).

14 There are two steps to an anti-SLAPP motion. ORS 31.150(3). Defendants first must  
15 establish that the claims arise out of protected rights of expression, i.e., statements, documents  
16 or conduct described in ORS 31.150(2)(a)-(d). The burden then shifts to plaintiff to show  
17 “there is a probability that [plaintiff] will prevail on the claim by presenting substantial  
18 evidence to support a prima facie case.” ORS 31.150(3).

19 The protected rights of expression described in ORS 31.150(2) are as follows: A special  
20 motion to strike may be made under this section against any claim in a civil action that arises  
21 out of:

- 22 (a) Any oral statement made, or written statement or other document submitted, in a  
23 legislative, executive or judicial proceeding or other proceeding authorized by law;
- 24 (b) Any oral statement made, or written statement or other document submitted, in  
25 connection with an issue under consideration or review by a legislative, executive  
26 or judicial body or other proceeding authorized by law;

1 (c) Any oral statement made, or written statement or other document presented, in a  
2 place open to the public or a public forum in connection with an issue of public  
3 interest; or

4 (d) Any other conduct in furtherance of the exercise of the constitutional right of  
5 petition or the constitutional right of free speech in connection with a public issue  
6 or an issue of public interest.

7 Here, the Plaintiff's claims arise out of all four sections of ORS 31.150.

8 **The Plaintiff's Claims Fall Squarely Under the Anti-SLAPP Statute**  
9 **Court Documents**

10 The Defamation, IIED and, if there is a similar interpretation of the other claims (such  
11 as abuse of process/malicious prosecution claim) are based on the litigation of the 19cv01547  
12 action. By definition it concerns documents submitted in a judicial proceeding, ORS  
13 31.150(2)(a), written statements made to a judicial body, ORS 31.150(2)(b), and statements in  
14 a public forum on a matter of public interest, ORS 31.150(2)(c). *Baldwin v. Seida*, 297 Or App  
15 67, 74 (2019) ("The plain meaning of statements 'submitted in a judicial proceeding' means  
16 statements that are sent for consideration or presented for use in a court proceeding or a  
17 proceeding initiated to procure an order, decree, judgment, or similar action."). The documents  
18 filed in connection with this action also were submitted in furtherance of the constitutional  
19 right of free speech in connection with a matter of public interest, i.e., the defense of a  
20 fraudulent transfer claim. ORS 31.150(2)(d). Whether a person makes a fraudulent transfer of  
21 property to avoid a judgment is in the public interest because should a person be allowed to  
22 avoid a jury verdict through a fraudulent transfer, the public's interest in the enforceability of  
23 jury verdicts and a functioning civil justice system is affected. The Plaintiff's claims implicate  
24 all four subsections of ORS 31.150(2).

25 Further, **Plaintiff Exhibit 2** is Defendant Rote's Opening Brief to the 9<sup>th</sup> Circuit Court  
26 of Appeals. This is absolutely a filing in a judicial proceeding, but has a broader implication.

1 Plaintiff is represented by counsel hired by the PLF. There is absolutely no deference given to  
2 an attorney for not understanding the anti-SLAPP statutes and the unconstitutional actions  
3 taken by Plaintiff to suppress free speech even when acting for the benefit of the PLF. The  
4 broad application of Plaintiff's complaint, the gravamen of the Plaintiff's complaint, is that he  
5 wants to be compensated for having to litigate even when he loses.

6 Moreover, Defendant Rote's public critique of the actions of the Court and/or Zweizig  
7 as supplied on **Plaintiff's Exhibit 1**, are absolutely protected rights of free speech all of which  
8 has been litigated before in case 19cv01547, where Zweizig lost on his efforts to suppress not  
9 only his deposition but also all blog posts published by Defendant Timothy Rote up to that  
10 time. For example, In Chapter 209 (**Plaintiff Exhibit 1, page 1-2**) Defendant Rote critiques the  
11 Deschutes County Sheriff's Office of a sale of a stock not owned by Timothy Rote and of a  
12 company that does not exist. Eventually, Defendant prevailed in overturning that Sheriff Sale.  
13 The blog cites evidence from the judicial proceeding and arguments defendant made in those  
14 proceedings. These posts are absolutely a matter of public interest and published in a public  
15 forum, which implicated the anti-SLAPP statutes.

#### 16 **Child Predation is an Issue of Public Interest**

17 Public outrage over the exploitation of children is real and a matter of public interest.  
18 As outlined in **Plaintiff Exhibit 1, pages 3-5**, there are cognizable similarities and even  
19 identical steps taken by both Zweizig and Josh Duggar to hide their child porn from family  
20 members. The forensic data and evidence found on Zweizig's computer, with references, to  
21 what was found on Josh Duggar's office computer was frankly almost identical, like a  
22 playbook. Public personality Josh Duggar was convicted of downloading, possessing and  
23 distributing child porn using a peer to peer program registered to him...just like Zweizig. Both  
24 used business computers. Both separated their office hard drive into multiple sectors, where the  
25 child porn was saved to a hidden sector. In Zweizig's case is was to a D:\shared drive. Both  
26 had separate login Id's and passwords. Both used peer to peer programs to share and acquire

1 child porn on the dark web. This is generally regarded as the computer use footprint of a child  
2 predator's hard drive. One of computer forensic experts who testified against Zweizig in 2010  
3 is a Eugene police officer.

4 News agencies report in child porn investigations and it is considered a matter of public  
5 interest. On July 31, 2023 Heavy.com published a news report about "Stephanie Weir, who is a  
6 Collierville, Tennessee, woman accused of sexually abusing a dog and possessing child  
7 pornography, according to police. Weir, 33, was arrested by the Memphis Police Department.  
8 The arrest ticket, obtained by Heavy, accuses her of sexual exploitation of a minor, especially  
9 aggravated sexual exploitation of a minor, aggravated unlawful photographing of a minor, and  
10 criminal offenses against animals.

11 According to the affidavit of complaint against Weir, obtained by Heavy, the Memphis  
12 Police Department Internet Crimes Against Children Taskforce received a complaint from the  
13 National Center for Missing and Exploited Children on May 18, 2023, regarding an individual  
14 in the Memphis area having a stored file that they categorized as "apparent child pornography"  
15 in an online cloud account. An image of a "child in a lascivious pose nude" on Weir's online  
16 storage cloud was reported to the authorities by Synchronoss Technologies Inc, a software  
17 company based in New Jersey. Upon investigation, police discovered that Weir was in  
18 possession of videos depicting children engaged in sexual acts with other children, as well as a  
19 disturbing clip of Weir "having her pet dog perform a sex act on her."

20 Weir, a data specialist at United Auto Recovery according to her LinkedIn profile, is  
21 currently being held in the Shelby County Jail on a \$100,000 bond. The arrest has sent  
22 shockwaves throughout the community.

23 Like Synchronoss, Defendant Rote filed a criminal complaint with law enforcement  
24 and included copy of the forensic reports from the 120 gig hard drive Zweizig used from his  
25 home while employed by Northwest Direct (August 2002 to November 13, 2003). The child  
26

1 porn was not discovered until 2005 and by that time the chain of custody had been broker,  
2 making prosecution of Zweizig difficult.

3         Zweizig's former girlfriend during this same period of time (2001 to 2015) is Attorney  
4 Sandra Weir. Once Zweizig determined that his termination was imminent he faked the failure  
5 of the 120 gig hard drive in May 2003, which he then used as cause to reformat that hard drive.  
6 That is undisputed. Zweizig then used a new 60 gig hard drive for his employer activity and  
7 continued to use and store the 120 gig hard drive for his porn, child porn and pirated movies  
8 and videos. This too is un-refuted.

9         From May 2003 through parts of September 2003, Zweizig removed all of the  
10 programming owned and used by his employer to process and report daily on 100,000 bits of  
11 information from his employer's call centers. Upon accomplishing that he attempted to extort a  
12 raise, bonus and vice-president title. Zweizig was terminated on October 2, 2003, by email and  
13 certified mail. Shortly thereafter Defendant Rote discovered that Zweizig had tampered with  
14 the servers in multiple locations and back-up tapes. Ultimately Zweizig denied the existence of  
15 the employer owned programing and refused to provide and restore the programming he  
16 removed. Zweizig refused and his employer NW Direct shut down for 10 days while an outside  
17 firm regenerated the programming. This statement of facts is also un-refuted.

18         Although Zweizig denied the existence of the employer owned programing, it was  
19 found on the 120 gig hard drive Zweizig reformatted first and then turned over on November  
20 12, 2003. Looking for those programs is how the child porn, porn and pirated movies and  
21 videos were found. Defendant Rote has publicly accused Zweizig of cybercrime, identity theft,  
22 destruction of evidence, theft not to forget the child porn, porn and pirated material found on  
23 the 120 gig hard drive. All three forensic experts agree that there were some 1,900 programs on  
24 the 120 gig hard drive (and not on the 60 gig hard drive) and data files destroyed by Zweizig,  
25 files and data owned by his employer NW Direct. Had those files been turned over the 10 day  
26

1 shut-down would not have been necessary. Zweizig had pre-emptively removed all of those  
2 programs from employer owned servers and back-up tapes.

3 Blog authors like Defendant Rote are protected under the journalist umbrella. Courts  
4 have applied this law to protect journalists who are sued in connection with their reporting.  
5 *Mullen v. Meredith Corp.*, 353 P.3d 598, 608 (Or. Ct. App. 2015). See also ORS 44.510 to  
6 ORS 44.540.

### 7 **The Plaintiff Cannot Satisfy the Second Prong of the Anti-SLAPP Statute**

8 Because the conduct that give rise to the Plaintiff’s claims are protected by ORS  
9 31.150(2)(a)-(d), the burden shifts to them to “establish that there is a probability that [they]  
10 will prevail on the claim by presenting substantial evidence to support a prima facie case.”  
11 ORS 31.150(3). Therefore, the Plaintiff must show that: (1) their claims are legally cognizable  
12 and (2) produce substantial evidence on each element of each of the claims. That means that  
13 the Plaintiff will have to present evidence that Timothy Rote not only acted as alleged – he did  
14 not – but also that he acted with the alleged intent. The evidence must also overcome the  
15 privileges held by litigants for conduct taken in furtherance of litigation, which have been cited  
16 to Plaintiff over and over. In fact Plaintiff prevailed on an anti-SLAPP in case 19cv01547. If  
17 the Plaintiff cannot meet their burden, and they cannot, their claims must be dismissed.

18 Plaintiff’s Defamation claims are also time-barred. A defamation claim must be  
19 brought within one year. ORS 12.120. The date Timothy Rote published Chapter 206, was  
20 January 13, 2022, more than eighteen (18) months ago.

### 21 **Defendant is Entitled to His Attorney Fees**

22 If this Court grants this Motion, it must award Christiansen his attorney fees under ORS  
23 31.152(3). Defendant will submit an attorney fee statement pursuant to ORCP 68 if this Court  
24 grants this motion.

## 25 **Motion 2** 26 **Motion to Dismiss Defamation and IIED Claims** **(Privilege and Immunity)**

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Zweizig’s defamation and IIED claims against the Defendants must be dismissed under ORCP 21 A(8) because they are subject to privileges and immunities for litigants who litigate under Oregon and Federal law. Plaintiff certainly knows that by now. Plaintiff’s attorney Chase Beguin knows that by now. This is another event in a long history of harassment and Zweizig pleading emotionally with the Court to solicit the abuse of due process.

More fundamentally, because the possible defamation and IIED claims are based on the Defendants’ or Attorney Defendants’ purported litigation activity, their conduct is absolutely privileged from liability for defamation or IIED under Oregon law. See *Mantia v. Hanson*, 190 Or App 412, 417 (“Oregon courts have long recognized, and enforced, an absolute privilege for statements in the course of or incident to judicial and quasi-judicial proceedings. That privilege applies equally to parties to such proceedings and to their attorneys.”); *Troutman v. Erlandson*, 286 Or 3, 8 (1979) (“The absolute privilege accorded attorneys and litigants for communications made in connection with judicial proceedings generally concern statements made in the proceeding itself” and includes statements made “in affidavits” and “in pleadings”); *Franson v. Radich*, 84 Or App 715, 719 (1987) (the “absolute privilege is applicable to the intentional infliction of emotional distress claim”).

While theoretically Plaintiff could bring a wrongful initiation or related claim if he can make allegations to support one (he cannot), the absolute privilege bars Zweizig from stating a claim for defamation or IIED, when those allegations are based only on filing or defending a lawsuit. If it were otherwise, then the litigation privilege would be meaningless, and every lawsuit that went to trial necessarily would result in a subsequent defamation/IIED action. The litigation privilege is specifically designed to prevent this. It ensures that citizens and their attorneys have access to a functioning civil justice system, and it protects the fundamental right to petition the government for redress. See Restatement (second) of Torts, § 586, cmt a. (“The privilege stated in this Section is based upon a public policy of securing to attorneys as officers





1                    **IIED**

2                    Zweizig’s IIED claim is also time-barred. IIED is not subject to a specific statute of  
3 limitations identified in Chapter 12, therefore the court must determine the appropriate  
4 limitation period by looking to the nature of the conduct complained of, i.e., “the predominant  
5 characteristic of the action” and not the label provided by plaintiff. See *Bradbury v. Teacher*  
6 *Standards & Practices Comm'n*, 328 Or 391, 398 (1999). Zweizig’s IIED claim is his  
7 defamation claim in different clothing. Zweizig alleges: “***As a direct result of Defendants’***  
8 ***malicious use of civil proceedings and defamatory statements, Plaintiff has suffered extreme***  
9 ***emotional distress \* \* \*.***” (*Cmplt.*) Under Oregon law, Zweizig cannot procure a longer  
10 limitation period by characterizing his defamation claim as IIED. *Coe v. Statesman-Journal*  
11 *Co.*, 277 Or 117, 120 (1977) (claim barred by one-year defamation limitation period despite  
12 plaintiff labelling it as negligence); *Magenis v. Fisher Broad., Inc.*, 103 Or App 555, 560  
13 (1990) (claim barred by one-year defamation period because to “hold otherwise would permit a  
14 plaintiff to elect the longer limitation period of ORS 12.110(1) simply by characterizing a  
15 defamation claim as one for false light”); *Stacy v Koin-TV*, No. 0506-05987, 2006 WL  
16 5106114 (Or Cir Jan. 27, 2006) (“Because the predominant characteristic of Plaintiff’s  
17 complaint is defamation, the one year statute of limitations controls his claim for intentional  
18 infliction of emotional distress and therefore, this claim is time-barred.”)

19                    Thus, Zweizig’s IIED claim is time-barred. Even if the IIED claim is two years, it is  
20 still time-barred because it forms from the litigation he commenced in 2019 in case 19cv01547.  
21 Zweizig’s claim accrued when he knew or should have known of a substantial possibility of all  
22 the elements of his claim. *Gaston v. Parsons*, 318 Or 247, 259 (1994). Zweizig did not need to  
23 know all of the details of his claim for it to accrue; rather, the IIED claim accrued when he  
24 should have known of the possibility that he suffered some harm due to defendant’s conduct.  
25 *Widing v. Schwabe, Williamson & Wyatt*, 154 Or App 276, 283-84 (1998).

26                    On information and belief the amount of the prayer Plaintiff is seeking is equal to the  
DEFENDANT TIMOTHY ROTE’S ANTI-SLAPP MOTION TO STRIKE AND, IN THE ALTERNATIVE,  
MOTION TO DISMISSMOTION FOR SANCTIONSHEARING REQUESTED - 18

1 amount assigned to his Sheriff sale of the stock in Northwest Direct Homes, Inc. Zweizig's  
2 strategy was to take a property worth more than \$1 Million and only offset \$1,000 against the  
3 judgment owed him, a strategy devised by his former attorney Anthony Albertazzi. Believing  
4 now that he is empowered to collect more than the original judgment plus interest, Zweizig has  
5 conspired to continue to litigate until another Court is inclined to go along.

6 The first Sheriff sale was reversed in large part because the public notice was deficient.  
7 The second Sheriff sale, which was allowed to proceed even though Rote did not own the stock  
8 of Northwest Direct Homes, Inc., had but one bidder, namely Zweizig, on a shell company.  
9 Defendant assigned a value to Zweizig based on the his admitted public value of \$750,000, a  
10 value to him and other child predators of taking the asset as opposed to accepting a transfer in  
11 full or partial satisfaction on a more valuable alternative asset.

12 Zweizig was issued a 1099-Misc for \$750,000 (**Rote Dec, Ex. 11**). The IRS was also  
13 put on notice that Zweizig received \$200,000 in free legal services from the PLF as well as the  
14 tax consequences of the stock sale.

15 An IRS whistleblower claim was filed against Zweizig for failing to recognize the value  
16 of the legal services provided to him and in large measure this case is a retaliatory act by him  
17 for that tax fraud.

18 Now Zweizig again wants to pursue Tanya Rote for something that Tanya Rote had  
19 nothing to do with, a repeated action that the Court should take notice of in issuing sanctions  
20 against Zweizig and his attorney.

21 **Defendant is Entitled to His Attorney Fees**

22 Defendant intends to seek recovery of his attorney fees and costs under ORS 20.105 on  
23 grounds that there was no objectively reasonable basis for Plaintiff asserting this claim.

24 **Motion 4**  
25 **Motion to Dismiss Fraudulent Transfer Claim**  
26 **(Claim Preclusion)**

Plaintiff's asserts that Defendant Timothy Rote transferred significant assets into both a  
DEFENDANT TIMOTHY ROTE'S ANTI-SLAPP MOTION TO STRIKE AND, IN THE ALTERNATIVE,  
MOTION TO DISMISS MOTION FOR SANCTIONS HEARING REQUESTED - 19

1 trust and to his wife Tanya Rote. (**Compl, ¶ 14-15**). Although Defendant Timothy Rote denies  
2 transferring any assets to Tanya Rote, there is a more relevant point here, namely that these  
3 unsubstantiated and false allegations of a fraudulent transfer have already been adjudicated to  
4 the Defendants favor. (**Rote Dec, Exs 1 and 2**).

5 In 2019, Plaintiff filed a fraudulent transfer action (case 19cv01547) against the same  
6 Defendants, making the same broad and unsubstantiated claims in an attempt to (1) take a  
7 rental property, located in Klamath Falls and owned at all times by non-debtor Tanya Rote; (2)  
8 disgorge somehow amounts used by Timothy Rote from Timothy Rote's home equity line  
9 (from 2006-2018); and (3) reverse a transfer and take a Sunriver property owned by Tanya  
10 Rote. The complaint (**Rote Dec, Ex 1**) attempted to conflate Klamath property owned by  
11 Northwest Direct Homes, Inc. (the stock of which was owned by the Timothy Rote Irrevocable  
12 Trust) with different property owned by Tanya Rote, those 2 (two) properties about 2 (two)  
13 miles apart. The Defendants were granted summary judgment against the first two properties  
14 within a few months of the litigation, in March 2019, which Plaintiff did not appeal. The  
15 Defendants were granted summary judgment against the Sunriver property in March 2021,  
16 which Plaintiff appealed and lost on appeal. (**Rote Dec, Ex 2**).

17 As stated herein, in 2019 and thereafter in case 19cv01547, Plaintiff was offered  
18 property owned by Northwest Direct Homes, Inc. (which in turn was owned by the Timothy  
19 Rote Trust), a property worth more than his judgment. Plaintiff refused to accept that property,  
20 referencing from the Plaintiff's deposition in that case (**Rote Dec, Ex 4, pages 16-17**). Plaintiff  
21 completed discovery and was well informed that the Klamath Property was not owned directly  
22 by Timothy Rote, but rather by Northwest Direct Homes, Inc., which was owned by the  
23 Timothy Rote Irrevocable Trust. The parcel was acquired by Northwest Direct Homes, Inc. in  
24 2006. Tanya Rote has no interest in Northwest Direct Homes, Inc., nor in the Trust, and plays  
25 no role in its management. Northwest Direct Homes, Inc. and the Trust are not debtors to  
26 Zweizig.

1 Plaintiff was in fact offered that 7.5 acre parcel property (valued in excess of his  
2 judgment) on three separate occasions, and rejected it every time. Plaintiff was required to  
3 pursue his fraudulent transfer against that property in case 19cv01547 when he had the  
4 opportunity to do so, from 2019 to 2022. He chose to not pursue the property owned by the  
5 Trust and it is too late to file a fraudulent transfer claim on that property now.

6 Claim preclusion applies when "a plaintiff who has prosecuted one action against a  
7 defendant through to a final judgment binding on the parties" has brought "another action  
8 against the same defendant" and the claim in the second action "is based on the same factual  
9 transaction that was at issue in the first, seeks a remedy additional or alternative to the one  
10 sought earlier, and is of such a nature as could have been joined in the first action." *Rennie v.*  
11 *Freeway Transport*, 294 Or. 319, 323, 656 P.2d 919 (1982). The purposes of claim preclusion  
12 include preventing "harassment of defendants by successive legal proceedings," "economy of  
13 judicial resources," and keeping claimants "from having two bites at the apple." *Dean v. Exotic*  
14 *Veneers, Inc.*, 271 Or. 188, 192, 194, 531 P.2d 266 (1975). Similarly, the purposes of ORCP 21  
15 A(3) are "to provide finality to the conclusion of a dispute," "prevent splitting a single dispute  
16 into separate controversies," and not require "a party to litigate the same claim twice on the  
17 merits." *Webb v. Underhill*, 174 Or. App. 592, 597, 27 P.3d 148 (2001).

18 In determining whether the judgment in a first action will have preclusive effect on the  
19 claims in a second action, "our focus is on the transaction at issue in the plaintiff's claim, with  
20 claim preclusion applying to all claims against the defendant that were available to the plaintiff  
21 arising from that transaction, whether or not the plaintiff actually asserted them." *Eli*, 194 Or.  
22 App. at 285, 94 P.3d 170 (internal quotation marks omitted). "A `transaction,' for claim  
23 preclusion purposes, is a group of facts that entitles the plaintiff to relief, with its precise  
24 boundaries determined pragmatically in the particular case, emphasizing considerations of  
25 practical trial convenience." *Lee*, 152 Or. App. at 166, 953 P.2d 414; see also *Eli*, 194 Or. App.  
26 at 285-86, 94 P.3d 170 ("Whether a constellation of factual circumstances constitutes a single

1 'factual transaction' is determined pragmatically, by giving weight to considerations that  
2 include time, space, origin, motivation, the similarity of the acts, and whether the events form a  
3 convenient trial unit."). Whether claim preclusion applies in any situation is a fact-intensive  
4 question. *Krisor v. Lake County Fair Board*, 256 Or. App. 190, 196, 302 P.3d 455, rev. den.,  
5 354 Or. 61, 308 P.3d 205 (2013).

6 As noted heretofore, Plaintiff first pursued a separate Klamath Falls rental property  
7 owned by Tanya Rote, a property first acquired by her in 2006 (12 years before Plaintiff's  
8 judgment in case 3:15-cv-2401). Plaintiff then attempted to take a Sunriver property transferred  
9 in 2012 to a holding company owned by the Rote's (six years before the judgment), a transfer  
10 that was adjudicated as having been transferred for full, reasonable and valuable consideration  
11 in 2012. Plaintiff appealed that Clackamas case decision and lost. (**Rote Dec, Ex. 2**).

12 Plaintiff was not interested in the 7.5 acres of land owned by Northwest Direct Homes,  
13 Inc. (the stock of which was owned by the Timothy Rote Trust), until well after he lost the  
14 appeal in case 19cv01547, but had every opportunity to pursue that property. Zweizig's  
15 reticence to accept the property at a value equal to or greater than his judgment is perhaps one  
16 of the stimuli to Zweizig's pursuit now. Now it is too late.

17 **Defendant is Entitled to His Attorney Fees**

18 Defendant intends to seek recovery of his attorney fees and costs under ORS 20.105 on  
19 grounds that there was no objectively reasonable basis for Plaintiff asserting this or any other  
20 claim in this lawsuit.

21 **Motion 5**  
22 **Motion to Dismiss Re Request for Declaratory Relief**  
23 **(Issue Preclusion)**

24 There is no authority for seeking declaratory relief of the blog. Even if there was  
25 Plaintiff has been defeated on this issue in March 2021 and that decision has preclusive effect.

26 Under the doctrine of issue preclusion, "[i]f one tribunal has decided an issue, the  
decision on that issue may preclude re-litigation of the issue in another proceeding if five

1 requirements are met: (1) “[t]he issue in the two proceedings is identical”; (2) “[t]he issue was  
2 actually litigated and was essential to a final decision on the merits in the prior proceeding”;  
3 (3) “[t]he party sought to be precluded has had a full and fair opportunity to be heard on that  
4 issue”; (4) “[t]he party sought to be precluded was a party or was in privity with a party to the  
5 prior proceeding”; and (5) “[t]he prior proceeding was the type of proceeding to which this  
6 court will give preclusive effect.” *Nelson v. Emerald People’s Utility Dist.*, 318 Or 99, 104,  
7 862 P2d 1293 (1993).

8 On February 19, 2021, Plaintiff filed two Motions for a similar pre-trial order or  
9 declaratory judgment in case 19cv01547, the last of which stated as follows:

10 “Plaintiff moves the Court for an order prohibiting the parties from posting on Twitter  
11 or other social media platforms regarding the following topics:

12 (a) association of Plaintiff, his past counsel, or his present counsel with pedophilia or  
13 child pornography...” (**Rote Dec, Ex. 7, page 1**).

14 The above was adjudicated and denied on March 9, 2021, as follows:

15 **Rote Dec, Ex.8, pg 5, starting at line 16:**

16 THE COURT: Okay. Well, Mr. Albertazzi, I have  
17 17 to tell you that I was pretty surprised by the petition.  
18 18 What it appears you're seeking is a, some sort of  
19 19 injunction or restraining order. But that's not what  
20 20 you've requested as outlined. It's titled Petition for  
21 21 Pretrial Order, and I really was not able to find any legal  
22 22 support for that under any statute or case law or anything  
23 23 that I’m aware of. And so unfortunately, while I  
24 24 understand how distressing the allegations or the stuff  
25 25 that's posted on social media may be, Mr. Zweizig, and I’m

26 Continuing at page 6

1 not trying to diminish how that may affect you or how it  
2 makes you feel, there really isn't a legal basis for this  
3 Court to basically, I don't know, muzzle Mr. Rote. There's  
4 no legal support for this petition for pretrial order. And  
5 the Court is bound by the law.  
6 So Mr. Rote's denial is correct. He has a First  
7 Amendment right, and there really isn't any evidence that  
8 he is affecting any potential juror. And those are issues  
9 that we will deal with when we start to select our jury.  
10 We in fact, ask them questions, do you know any of the  
11 parties? Do any of the parties look familiar? Do you know  
12 any of the witnesses? Have you read anything about this  
13 case? Do you have any particular feelings about this case?  
14 Do you have any biases that would prevent you from being a  
15 juror in this case? And we kind of examine all of those  
16 things during the voir dire process. And we screen jurors.  
17 Who admit now? I mean, obviously there are some jurors  
18 that will never reveal their bias, but that's the role of a  
19 good lawyer, is to dig into jurors and to find out, like  
20 who is the most appropriate juror for this case and why,  
21 and to reveal and uncover any particular bias or issue that  
22 may make a potential juror not appropriate to sit on our  
23 jury and weed them out. And you get to exclude so many  
24 jurors through challenges.  
25 So the petition for pretrial order is denied.

26 Plaintiff also raised but then did not pursue the same tactic in his 3:15-cv-2401 case,



1 filed December 24, 2015 (**Rote Dec, Ex. 3, ¶36 and others**).

2 Plaintiff and counsel have engaged in classic re-litigation of an adjudicated issue. As  
3 outlined above, Plaintiff was denied an attempt to suppress the blog in case 19cv01547, after  
4 two attempts (one adjudicated) to do so.

5 The computer forensic reports are so damaging to Zweizig that he asked the federal  
6 court to suppress them from the jury. When the Court suppressed the forensic reports from the  
7 jury, that allowed Zweizig to commit perjury and deny that he downloaded, possessed and  
8 distributed pirated music and videos, porn and child porn, as well as destroyed programing  
9 owned by his employer to carry out his extortion plan..

10 These violations of due process were outlined in great detail in Defendant's Motion to  
11 Vacate and it worthy of raising them again here because of the substantial harm to the public  
12 should this information ever be suppressed.

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

- 15 1. young teen fucks two guys (**Excerpt page 393, Ex 12, page 12**);
- 16 2. older sisters gets lesbian with little sister (**Excerpt page 394, Ex 12, page 13**);
- 17 3. older man fucking young twink (**Excerpt page 394, Ex 12, page 13**);
- 18 4. teen 16 years young (**Excerpt page 394, Ex 12, page 13**);
- 19 5. older muscle guy fucks young twink (**Excerpt page 395, Ex 12, page 14**); and
- 20 6. older teen kisses, sucks and fucks hairless brother (**Excerpt page 395, Ex 12, page**  
21 **14**).

22 That Excerpt references above is provided herein. (**Rote Dec, Ex. 9**). Note that in spite  
23 of the fact that Plaintiff Filed as Exhibit 2 Timothy Rote's Opening 9<sup>th</sup> Circuit Court Brief, he  
24 did not provide the referenced evidence. The Table of Contents of Excerpts I and III are also  
25 provided herein. (**Rote Dec, Ex. 10**). The computer forensic reports are also provided herein.  
26 (**Rote Dec, Ex. 12**).

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

8 Federal law prohibits the production, distribution, reception, and possession of an  
9 image of child pornography using or affecting any means or facility of interstate or foreign  
10 commerce (18 U.S.C. § 2251; 18 U.S.C. § 2252; 18 U.S.C. § 2252A). Specifically, Section  
11 2251 makes it illegal to persuade, induce, entice, or coerce a minor to engage in sexually  
12 explicit conduct for purposes of producing visual depictions of that conduct. Any individual  
13 who attempts or conspires to commit a child pornography offense is also subject to prosecution  
14 under federal law.

15 The Oregon Age of Consent is 18 years old. In the United States, the age of consent is  
16 the minimum age at which an individual is considered legally old enough to consent to  
17 participation in sexual activity. Individuals aged 17 or younger in Oregon are not legally able  
18 to consent to sexual activity, and such activity may result in prosecution for statutory rape.  
19 Oregon statutory rape law is violated when a person has consensual sexual intercourse with an  
20 individual under age 18. The age of the offender affects the severity of the punishment. (**Rote**  
21 **Dec, Ex. 15**).

22 Because there is no such "Romeo and Juliet law" in Oregon, it is possible for two  
23 individuals both under the age of 18 who willingly engage in intercourse to both be prosecuted  
24 for statutory rape, although this is rare. Similarly, no protections are reserved for sexual  
25 relations in which one participant is a 17 year old and the second is an 18 or 19 year old.

26 The video with a title of "teen 16 years young" is under Oregon Law considered child

1 pornography and as outlined below, since Zweizig admitted to spoliating the evidence  
2 contained on the 120 gig hard drive, inferences may be drawn against Zweizig on the age of  
3 children in the videos he maintained on the 120 gig hard drive and whether those videos are  
4 child pornography. Defendant maintains they are.

5 Zweizig admitted to reformatting the 120 gig hard drive on which the porn, child porn,  
6 music and video were found by computer forensic experts with the skill and expertise to  
7 determine what was on the hard drive before it was reformatted and/or otherwise destroyed.  
8 Criminals like Zweizig who store child porn on password protected hard drives rarely admit to  
9 the allegations against them, which is why computer forensic experts are called on to outline  
10 what was found on those hard drives. The experts in the Zweizig arbitration (including the  
11 expert hired by Zweizig) opined that no one but Zweizig used the 120 gig hard drive. (**Rote**  
12 **Dec, Ex 12, page 47**).

13 Zweizig maintained that there were not programs to process and report daily on  
14 100,000 bits of data. (**Rote Dec, Ex 16, pages 2-6**). All of the forensic experts opined that  
15 there were programs owned by employer NDT on the reformatted 120 gig hard drive (for  
16 example, **Ex 16, pages 7-10 of Justin McAnn and Ex 12**).

17 Spoliation comes with an inference against the party that destroyed the evidence:  
18 Oregon has a statutory provision allowing that willful suppression of evidence raises an  
19 unfavorable presumption against the party who suppressed it. O.R.S. § 40.135, Rule 311(1)(c);  
20 *Stephens v. Bohlman*, 909 P.2d 208, 211 (Or. Ct. App. 1996). It is un-refuted that **Zweizig**  
21 **reformatted the hard drive**.

22 According to the Mayo Clinic of the US, studies and case reports indicate that 30% to  
23 80% of individuals who viewed child pornography and 76% of individuals who were arrested  
24 for internet child pornography had molested a child; however, they state that it is difficult to  
25 know how many people progress from computerized child pornography to physical acts against  
26 children and how many would have progressed to physical acts without the computer being

1 involved. See Ryan C. W. Hall; Richard C. W. Hall (April 2007). "A Profile of Pedophilia:  
2 Definition, Characteristics of Offenders, Recidivism, Treatment Outcomes, and Forensic  
3 Issues".

4 Oregon ranks first among the states with the most sex offenders per capita.

5 **Defendant is Entitled to His Attorney Fees**

6 Defendant intends to seek recovery of his attorney fees and costs under ORS 20.105 on  
7 grounds that there was no objectively reasonable basis for Plaintiff asserting this or any other  
8 claim in this lawsuit.

9 **Motion 6**  
10 **Motion for Sanctions**  
11 **(Failure to Supervise)**

12 Defendant is seeking joint and several liability of the Cauble Firm of the attorney fees  
13 that will be sought in this action, if awarded, as well as a sanction for knowingly using this  
14 action to harass and intimidate the Defendants for engaging in the lawful and protected defense  
15 of the claims brought against them by Plaintiff Zweizig.

16 Rule 5.1 American Bar Associations Model of Professional Conduct provides as  
17 follows:

18 a) A partner in a law firm, and a lawyer who individually or together with other lawyers  
19 possesses comparable managerial authority in a law firm, shall make reasonable efforts  
20 to ensure that the firm has in effect measures giving reasonable assurance that all  
21 lawyers in the firm conform to the Rules of Professional Conduct.

22 (b) A lawyer having direct supervisory authority over another lawyer shall make  
23 reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional  
24 Conduct.

25 (c) A lawyer shall be responsible for another lawyer's violation of the Rules of  
26 Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct

1 involved; or

2 (2) the lawyer is a partner or has comparable managerial authority in the law firm in  
3 which the other lawyer practices, or has direct supervisory authority over the other  
4 lawyer, and knows of the conduct at a time when its consequences can be avoided or  
5 mitigated but fails to take reasonable remedial action.

6 ORS 20.105 (1) provides that “In any civil action, suit or other proceeding in a circuit  
7 court or in the regular division or the magistrate division of the Oregon Tax Court, or in any  
8 civil appeal to or review by the Court of Appeals or Supreme Court, the court shall award  
9 reasonable attorney fees to a party against whom a claim, defense or ground for appeal or  
10 review is asserted, if that party is a prevailing party in the proceeding and to be paid by the  
11 party asserting the claim, defense or ground, upon a finding by the court that the party willfully  
12 disobeyed a court order or that there was no objectively reasonable basis for asserting the claim,  
13 defense or ground for appeal.”

14 ORCP 17 (d) (1) provides “The court may impose sanctions against a person or party  
15 who is found to have made a false certification under section C of this rule, or who is found to  
16 be responsible for a false certification under section C of this rule. A sanction may be imposed  
17 under this section only after notice and an opportunity to be heard are provided to the party or  
18 attorney. A law firm is jointly liable for any sanction imposed against a partner, associate or  
19 employee of the firm, unless the court determines that joint liability would be unjust under the  
20 circumstances.

21 In this new case, it is abundantly clear that Zweizig is engaging in vexatious litigation  
22 with the support of his attorney Chase Beguin and the fault of this abuse is on the Cauble firm  
23 for failing to supervise Beguin and on the PLF for sponsoring financially this abuse. On  
24 information and belief, the Cauble Firm was hired by the PLF to represent Zweizig and it is the  
25 intent of Defendant to determine if there is insurance coverage for this bad act. Even if covered,  
26 Defendant would ask the Court to hold the Cauble Firm liable for sanctions.

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CONCLUSION

For the reasons outlined above, Defendant moves this Court to grant Defendant's anti-SLAPP Motion to Strike on the Plaintiff's defamation and IIED claims.

Defendant moves this Court to grant Dismissal of the Fraudulent Transfer Claim under the Doctrine of Claim Preclusion.

Defendant moves this Court to grant Dismissal of Declaratory Relief alleged to be sought by Plaintiff under the Doctrine of Issue Preclusion.

Defendant moves this Court for a finding that the Plaintiff's claims were objectively unreasonable and award Defendant his reasonable attorney fees and costs and to further award damages to Defendant against the Cauble Firm as appropriate and including for failure to supervise Chase Beguin.

Dated this 14<sup>th</sup> day of August, 2023

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

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## CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing on:

The Cauble Firm  
Attn: Chase Beguin,  
111 S.E. Sixth St.  
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541.476.8825  
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Of Counsel for Max Zweizig

Chenoweth Law Group  
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Portland, OR 97204  
[foster@chenowethlaw.com](mailto:foster@chenowethlaw.com)  
Of Counsel for Tanya Rote

Via First Class Mail

Via Email

Via OECF Notification

DATED: August 14, 2023

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