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* * *

1 (Wednesday, April 5, 2023, 2:28 p.m.)

2 P R O C E E D I N G S

3 (Whereupon, the following proceedings were
4 held in open court:)

5 (*TRANSCRIBER'S NOTE:* The audio record
6 begins midsentence.)

7 THE COURT: -- the judgment motion in the
8 case of Rote versus Zweizig, Case No. 22CV17744. I'll
9 ask to -- each to simply state your name and who
10 you're appearing for.

11 And we'll start with plaintiff, Mr. Rote.

12 MR. ROTE: Timothy Rote, Your Honor.

13 THE COURT: And, Mr. -- oh. Okay.

14 Mr. Beguin. Unmute yourself and state your name. I'm
15 not hearing you. Can you unmute? I'm sorry, even
16 when you're unmuted, I'm not getting a sound. Make
17 sure that your computer isn't -- the sound on your
18 computer isn't muted.

19 THE DEFENDANT: This is Max, Your Honor. I
20 have to use the button at the bottom. The icon on the
21 screen does not work. So it just might be -- you have
22 to use that button at the bottom of the screen for
23 unmute. My interface may be different.

24 THE COURT: Mr. Beguin, do you see at the
25 bottom of the screen the mute and unmute button?

1 It's -- it's green if it's working and it's red if
2 it's muted. Yeah, I still can't -- I can't quite read
3 your lips, but I can't hear you. Make sure that your
4 microphone on your computer is not --

5 THE DEFENDANT: I also see a hotkey of
6 control-M that you might try. It says control-M on
7 the tool tip. And make sure you're on the right
8 microphone.

9 (Pause in proceedings, 2:31 p.m. -
10 2:32 p.m.)

11 THE COURT: Okay.

12 THE CLERK: And, Judge, this is Elliott
13 (phonetic). I have a suggestion. If Mr. Beguin wants
14 to e-mail me his cell phone number, I can call him
15 through Webex and then we can get the audio from him
16 that way.

17 THE COURT: Okay.

18 THE CLERK: He'll just need to put his
19 computer sound on off so we don't get feedback.

20 THE COURT: I don't think we'll have a
21 problem with his computer sound.

22 THE CLERK: Okay. I'm calling now. It
23 should be a (408) area code.

24 MR. BEGUIN: Can you guys hear me now?

25 THE COURT: Yes.

1 MR. BEGUIN: Sorry about that. I have no
2 idea why my audio has decided to stop working all of
3 a sudden.

4 THE CLERK: And, now, you need to turn the
5 sound off of your computer since the audio from your
6 computer is making the feedback loop.

7 MR. BEGUIN: Okay. I -- I've got it down
8 and I'll -- I'll leave it up for when I'm not speaking
9 and turn it back on for when it's my turn if that's
10 okay with Your Honor.

11 THE COURT: That -- that'll be fine.
12 That'll work.

13 All right. Now, for Mr. Rote's benefit in
14 particular, I'll go over quickly how we are going to
15 proceed. We have a period of time set for this motion
16 and we're going to use it in this way. The moving
17 party, which in this case is defense, will go first.

18 While he is speaking, we'll have no
19 interruptions from anybody other than me. I get to
20 interrupt, but otherwise we'll finish his argument.
21 Then we will hear from the plaintiff's response and,
22 similarly, we will not have interruptions during that.

23 And then, finally, we'll hear from the
24 movant for a brief reply. That is how we conduct
25 these hearings and that's how we will conduct this

1 hearing. As long as we are in this -- these
2 proceedings, we will observe decorum, which includes
3 not relying upon any evidence which has not been
4 submitted and also not engaging in anything that is
5 irrelevant to the issues here or derogatory toward
6 other persons. You can disagree without invectives.

7 So with that said, I will -- I'll hear from
8 the moving party.

9 MR. BEGUIN: Thank you, Your Honor.

10 Can everybody still hear me clearly?

11 THE COURT: I can hear you.

12 MR. ROTE: (Indiscernible).

13 MR. BEGUIN: Thank you. Your Honor, here
14 this is clearly a case of retaliatory suit by the
15 plaintiff in an attempt to distract the Court and
16 defendant, Mr. Zweizig, from the \$1.2 million punitive
17 judgment that my client has against the plaintiff from
18 previous between -- proceedings between the parties.

19 My client has been the victim of the
20 plaintiffs, weaponized this information for years,
21 as evident in the pleadings filed by the plaintiff
22 in this case, which themselves make unsubstantiated
23 claims in the public record and don't even have
24 basis on a claim for wrongful initiation of civil
25 proceeding, which is before the Court today.

1 Regarding the standard for summary judgment
2 before us today, ORCP 47 requires that summary
3 judgment be granted in favor of the moving party if
4 the pleadings, depositions, affidavits and admissions
5 on file show that there are no genuine issues as to
6 any material facts and the moving party is entitled to
7 judgment as a matter of law.

8 In determining whether a -- a material fact
9 exists, ORCP 47 provides no genuine issue as to a
10 material fact exists if, based upon the record before
11 the Court, viewed in the manner most favorable to the
12 adverse party, no objectively reasonable juror could
13 return a verdict for the adverse party on that matter
14 that is subject to the motion. This is citing Jones
15 v. General Motor Corp.

16 THE COURT: Yeah, you're pretty much --

17 MR. BEGUIN: The phrase "genuine issue" --

18 THE COURT: Just a second.

19 MR. BEGUIN: Yes.

20 THE COURT: You can assume that I am very
21 familiar with the rule and the authorities for it.

22 MR. BEGUIN: That is entirely fine. I'll
23 skip past all procedural arguments, Your Honor. As
24 Your Honor and the opposing side is well aware, the
25 requirements for the wrongful initiation of civil

1 proceedings are commenced in a prosecution of a
2 judicial proceeding, termination of the proceeding
3 in plaintiff's favor, absence of probable cause,
4 existence of malice and damages.

5 In the current matter before the Court,
6 plaintiff has not presented any evidence such to
7 establish that there are any genuine issues of
8 material fact regarding whether defendant underwent
9 any litigation against the plaintiff with the
10 existence of malice or without probable cause.

11 This failure to present supporting evidence
12 cannot lead an objectively reasonable juror to
13 possibly return a favor -- a favorable verdict for the
14 plaintiff in this matter. In fact, plaintiff has not
15 even attempted to put forth any substantial evidence
16 for either of these claims so far in the proceeding.

17 Regarding probable cause requirement, the
18 Court requires that for purposes of a claim for
19 wrongful initiation of civil proceeding, probable
20 cause means that the person initiating the civil
21 action reasonably believes that he or she had a good
22 chance of prevailing or that she had -- meaning that
23 he or she had the objective -- excuse me -- that he or
24 she subjectively has that belief and that belief is
25 objectively reasonable.

1 Defendant's previous actions brought against
2 plaintiff here meet this element fully. As stated in
3 defendant's declaration, Mr. Zweizig has always acted
4 within his legal rights and within reasonable belief
5 to attempt to enforce a judgment against the plaintiff
6 that defendant had acquired in a previous lawsuit.

7 Defendant Zweizig, who was represented in
8 the previous proceedings against Mr. Rote, had no
9 reason to believe that he would not be successful in
10 any of the lawsuits against him at the outset. The
11 Court in Perry (phonetic) further established that
12 probable cause to file civil litigation requires a
13 reasonable belief before the claim is filed.

14 Again, the plaintiff has failed to present
15 evidence that defendant not have reason to believe
16 that he would not be successful in a lawsuit between
17 the parties before the claim was filed, as Mr. Zweizig
18 had already procured the judgment against Mr. Rote
19 and had been attempting to collect on that judgment
20 for years.

21 Regarding the malice prong, which is
22 otherwise referred to in this light as the existence
23 of a primary purpose of (indiscernible) securing
24 adjudication of the claim, the lack of malice is clear
25 in this instance.

1 Defendant had no other agenda when filing
2 the action against the plaintiff (indiscernible)
3 making a reasonable and rational attempt to enforce
4 this judgment against the plaintiff.

5 In the plaintiff's initial complaint in this
6 proceeding, in Paragraph 7 and 13, Mr. Rote references
7 the case 19CV01547, which is the judgment and
8 collection matter regarding my client's million-dollar
9 judgment against the defendant.

10 While there was an award of summary judgment
11 to Mr. Rote on part of the claim in that case,
12 Mr. Rote has failed to present evidence or statements
13 from the Court that establish that Mr. Zweizig had
14 either no probable cause to bring the claim or that
15 the claim was brought with malice in that time.

16 The plaintiff has also failed to identify
17 that Mr. Zweizig satisfied his judgment on Mr. Rote's
18 property in the same case on November 15th, 2022 after
19 the Court allowed him to do so.

20 Excuse me. The plaintiff has used this
21 lawsuit in a continuing effort to put incorrect and
22 defamatory information into the public record in an
23 attempt to damage my client's reputation and has
24 presented no substantiated information to support or
25 even suggest that there are issues of material fact

1 present in this case regarding the existence of malice
2 or lack of probable cause.

3 It is, in fact, the plaintiff who is
4 continuously engaging in frivolous litigation simply
5 to harass my client. In short, plaintiff has failed
6 to establish to any reasonable degree evidence to
7 support his current claims against the defendant in
8 this matter.

9 Defendant has acted fully in accordance with
10 the legal rights to attempt to enforce his judgment
11 against the plaintiff that defendant had acquired in
12 a previous lawsuit. And plaintiff brought this claim
13 in an attempt to delay or distract from said judgment
14 collection.

15 The decision of the plaintiff in the
16 collection matter to force the defendant to go after
17 his assets as opposed to just paying the judgment was
18 the decision of the plaintiff and was not a decision
19 of my client in that event. That is all, Your Honor.

20 THE COURT: Okay. Mr. Rote.

21 MR. ROTE: (Indiscernible).

22 THE COURT: Make sure that you're -- yeah,
23 go ahead.

24 MR. ROTE: I believe it's clear that -- that
25 Mr. Zweizig did bring an action in 19CV01547 and it's

1 equally clear that I prevailed on that at summary
2 judgment. He brought that action on three properties:
3 First, my wife's rental property she acquired in 2003.

4 Mr. Zweizig's judgment was November 2018.
5 You're aware the fraudulent statutes have a look-back
6 period of about four years and the transfers have to
7 be made without reasonably equivalent value.

8 Also he attempted to unravel the use of an
9 equity line in my home. And, finally, a Sunriver
10 property that my wife owns, he pursued that. Those
11 first two properties, the rental and the home equity
12 line, were defeated in summary judgment in the first
13 four months after he filed the complaint.

14 The Sunriver property, the Court permitted
15 discovery to see if there was any fraudulent transfer
16 on that Sunriver property. Then we proceeded to a
17 hearing on summary judgment where the Court gave
18 Mr. Zweizig a lot of opportunity to try to establish
19 that there was any credible evidence to show on his
20 part that the property was fraudulently transferred in
21 2012, a full six -- at least six years before his --
22 his -- his judgment and a full six-plus years after
23 he -- before hearing brought his claim.

24 We prevailed on summary judgment on the
25 Sunriver property in March of 2021. He appealed

1 through the Oregon Court of Appeals. He was --
2 summary judgment was sustained. He asked for a
3 motion for reconsideration of the petition and we
4 sustained that.

5 The Oregon Court of Appeals denied that
6 reconsideration. He has acted out in multiple cases
7 with the thinnest of evidence that, even after he was
8 presented credible evidence of a tax return within
9 the first three months and contracts, he refused to
10 withdraw this case.

11 And he required us to hire legal counsel and
12 incur substantial damages over that period of time
13 and, again, did not get past summary judgment on any
14 of these properties, although the Sunriver property he
15 was permitted discovery on.

16 My questions of probable cause, I recognize
17 that there's an affirmative defense of having legal
18 counsel. But I have argued in my brief that the
19 reliance on legal counsel -- that there must be
20 evidence that he brings forward that his reliance of
21 counsel was in good faith and whether or not the
22 reliance was preceded by a full and frank disclosure
23 of the pertinent facts.

24 And he has not provided a declaration from
25 counsel that any of that is true based on my research

1 that this is a question of fact for the jury, citing
2 Lampos v. Bazar and SPS of Oregon, Inc.

3 I've also cited multiple retaliatory actions
4 he took in addition and in this case and in another
5 case where he sought to sheriff sell my home when it
6 was already sold and going through the process of
7 closing, refused to remove liens when he had no
8 ability to collect against that house or --

9 THE COURT: I thought -- just a second.
10 I -- I -- I wonder if we're not getting a little
11 beyond what has been submitted on summary judgment.
12 Is that -- I -- I recall the arguments about the --
13 the two cases, the one -- the summary -- summary
14 judgment -- or the two instances that went to
15 summary judgment.

16 And I understand that you would -- that
17 there was a -- a lis pendens filed when you were
18 trying to sell the house. The house doesn't get
19 sold until title passes, so lis pendens is a way
20 of preserving an interest while a -- an action is
21 going on.

22 But I -- I want to really direct your
23 comments to the issue of malice because that's where
24 the -- the problem lies. The fact that the other
25 action has been resolved in your favor is an element,

1 but that's not the hardest element.

2 The -- the evidence of some proof, some
3 interest other than the desire to collect on an
4 outstanding judgment is the point that I want you
5 to -- to direct your comments on.

6 MR. ROTE: I'm trying to do that. In fact,
7 what I outlined in the brief was these multiple events
8 that I think implicate malice. And those events
9 included his efforts to interfere with the sale of the
10 home, interfere with the Sunriver property --

11 THE COURT: So those are the -- the actions,
12 themselves, aren't they, that you're complaining on.
13 You can't -- I -- I don't think that it's proof of
14 malice -- I know it isn't proof of malice -- merely --

15 MR. ROTE: (Indiscernible) --

16 THE COURT: -- to show the same thing again,
17 which was that actions were undertaken, legal actions
18 were undertaken. So the question is, what proof is
19 there of an interest other than the collection of the
20 outstanding judgment?

21 MR. ROTE: (Indiscernible) to the record
22 where he consistently refers to and acknowledges
23 that -- that he's identified me as a rich person and,
24 therefore, that's one of his motivating pack factors.

25 THE COURT: I'm sorry, I -- I -- it -- I'm

1 sorry. I -- I just couldn't hear what your comment
2 was. I didn't hear what you said and I want to hear
3 what you said.

4 MR. ROTE: (Indiscernible) to the record
5 that he specifically identified one of his motivations
6 as the -- given the fact that I was a rich person,
7 that he identified me as a rich and that I thought I
8 was getting away with something.

9 THE COURT: Is -- is that something --

10 MR. ROTE: (Indiscernible) --

11 THE COURT: -- is that something in the
12 record here --

13 MR. ROTE: It's something (indiscernible) --

14 THE COURT: -- in this motion?

15 MR. ROTE: Summary judgment (indiscernible).

16 THE COURT: You're going to have to lean
17 forward when you speak because when you lean back,
18 I notice that it -- your voice drops and I can't
19 hear it.

20 MR. ROTE: My voice is low anyway,
21 Your Honor, so it is difficult. But, yes, he did make
22 reference to the fact that I was a rich person. He --
23 and was, therefore, motivated.

24 He's made -- simply refusing to -- and he
25 also acknowledged simply refusing to acknowledge

1 evidence that the Court found highly credible, like
2 tax returns of (indiscernible) --

3 THE COURT: I -- I'm sorry. When I refer to
4 the record, I am referring to materials that have been
5 submitted on this motion. So --

6 MR. ROTE: Those materials were submitted by
7 declaration, Your Honor.

8 THE COURT: I -- let me see. Let me see if
9 I can find it.

10 (Pause in proceedings, 2:50 p.m. -
11 2:51 p.m.)

12 MR. ROTE: Your Honor, I -- I identify
13 it as --

14 THE COURT: I'm sorry, it just takes me a
15 little while and I can only -- I -- I have to search
16 through the electronic record.

17 MR. ROTE: I identified it as Exhibit 4,
18 Page 55.

19 THE COURT: Can you -- well, I'll find it
20 eventually, I suppose. Here --

21 MR. ROTE: I'll also argue, though, that
22 malice is a question for the jury. This is a
23 pre-discovery --

24 THE COURT: Well, there's a question --
25 I'm sorry. I can't do two things at one time, so

1 if you --

2 MR. ROTE: Okay.

3 THE COURT: Okay. I'll go back to the -- to
4 this screen because I can't both look at that screen
5 and hear what you say. Now, on the -- on the issue of
6 questions for the jury, there are only issues for a
7 jury if the case passes summary judgment.

8 And in order to get past summary judgment on
9 issues raised by the motion, then the party who has
10 the burden of proof on those issues -- and that would
11 be you as to the specific -- as to the elements of
12 the claim, itself -- has to present some admissible
13 evidence to show that there is a triable issue on
14 the question.

15 Did you -- do you understand what I'm
16 saying there?

17 MR. ROTE: I do.

18 THE COURT: Okay. Well, perhaps if it is --
19 if I am mistaken about whether or not there is a -- a
20 declaration that includes the material that you've
21 mentioned, then perhaps Mr. Beguin will raise that
22 issue. But I will take your word for it that it's
23 somewhere in a declaration.

24 But, once again, evidence that there was an
25 objective other than the prosecution of the claims.

1 MR. ROTE: Yes. I think we've -- I have
2 attempted to provide evidence of consistent behavior,
3 including historical behavior on -- including citation
4 to a federal case where he also lost a fraudulent
5 transfer case and should have been well educated on
6 the rules.

7 And I included that also in the record. In
8 fact, I have 24 exhibits that I included.

9 THE COURT: There was a great deal in your
10 submission that I must say that I kind of zipped past
11 because I could not begin to understand the relevance
12 of some materials about scurrilous behavior that had
13 nothing to do with the questions raised by this
14 lawsuit.

15 So I may have overlooked that, but let me
16 tell you this. Malice, for this purpose, consists of
17 a purpose other than the pursuit of the claim. And
18 the argument that he should have known that he didn't
19 have a claim, that's not evidence of malice.

20 Argument that it was -- that he had other
21 unsuccessful claims in other cases is not proof of
22 malice. Malice would be proof that the individual
23 was, say, an estranged marital partner and simply
24 wanted to impose harm without rely -- without regard
25 to the lawsuit involved.

1 Malice would include, for instance, a
2 purpose merely to place on the record scurrilous
3 claims that weren't related to a legal right. That
4 might be malice. So what have you that shows that
5 there was a purpose here other than the purpose of an
6 outstanding judgment?

7 MR. ROTE: Acknowledgement on the record
8 that he had no evidence to prove his case, his
9 acknowledgement on the record that he was trying
10 to hold me accountable as a rich person. His -- I
11 think his behavior -- I've identified his behavior as
12 repeating acts of malice because of his general enmity
13 that he has towards me over (indiscernible).

14 THE COURT: It would be helpful to me if
15 I could understand -- when you simply say you have
16 shown acts of malice, that doesn't illuminate what
17 you're talking about as being an act of malice. He
18 doesn't -- it's not malice if he doesn't like you.

19 MR. ROTE: No, I understand.

20 THE COURT: It's not -- you know, it's
21 not -- that's not malice. Malice is a --

22 MR. ROTE: He's --

23 THE COURT: -- purpose other than the
24 pursuit of a legal claim. I'm sorry, I can't hear
25 you again.

1 MR. ROTE: I said understand you like
2 Mr. Zweizig's position. I understand. But
3 probable --

4 THE COURT: You understand what?

5 MR. ROTE: I said I understand that you like
6 Mr. Zweizig's position in this case. I appreciate the
7 fact that you do.

8 THE COURT: I did not say that. And a
9 comment of that sort is precisely the type of comment
10 which can result in a bad outcome, which includes
11 Contempt of Court. But it -- I -- that doesn't rise
12 to Contempt of Court. I -- I'm not saying it bothers
13 me that much.

14 But I want you to behave as if you were
15 a lawyer, which is to say with composure and with
16 dignity and without attacking the Court.

17 MR. ROTE: Okay. My arguments have included
18 that probable cause and the absence of probable cause
19 may implicate malice as well. And I believe the
20 record shows that he had no evidence to support his
21 positions in this case, in Case 19CV01547 and in other
22 actions he took.

23 THE COURT: Okay. Anything further?

24 All right. Mr. Beguin.

25 MR. BEGUIN: Thank you, Your Honor. Can you

1 hear me still?

2 THE COURT: Yes.

3 MR. BEGUIN: Awesome. I'll be quick.

4 First, to address the -- the defense that he brought
5 up of reliance of counsel and good faith, while
6 Mr. Rote has not given the Court any reason to believe
7 that Mr. Zweizig acted without probable cause on the
8 collection matters, even in the unlikely event that
9 Mr. Zweizig improperly collected on this judgment,
10 considering the information available to him at this
11 time, Mr. Zweizig was represented in all matters
12 against Mr. Rote and, therefore, acted with reasonable
13 reliance and in good faith that he had a valid claim
14 from the advice of his attorney.

15 While Mr. Rote argues the good-faith
16 requirement of this, he has also failed to present
17 evidence which shows that the defendant in this
18 case lacked that good faith when defendant got his
19 counsel's advice.

20 Regarding the statements of Mr. Zweizig --
21 and you'll have to excuse me. I couldn't find the --
22 the exact quote in the declaration in the interim
23 during the discussion. However, I remember it to a
24 certain extent.

25 And I believe Mr. Zweizig's statement was

1 taken out of context. Mr. Zweizig stated that
2 Mr. Rote was a rich person and was, therefore -- or
3 excuse me. Mr. Zweizig never stated that Mr. Rote was
4 a rich person -- rich person and was, therefore,
5 motivated to move forward.

6 All that Mr. Zweizig said was that Mr. Rote
7 is rich and, therefore, should not have an issue
8 paying the judgment which is owed to my client in
9 this -- at this current time.

10 Likewise, Mr. Rote has failed to present any
11 evidence to suggest that Mr. Zweizig could not have
12 reasonably relied on counsel in order to meet any of
13 the defenses to the claims that he's brought forth.
14 That is all, Your Honor.

15 THE COURT: Reliance on -- reliance on
16 counsel is, in fact, an -- an affirmative defense. So
17 as to that, you have the burden of -- of establishing
18 that there is a lack of an issue rely -- as to
19 reliance on counsel and that's a hard thing to claim
20 on summary judgment.

21 MR. BEGUIN: Of course.

22 THE COURT: Go -- go ahead. I didn't mean
23 to cut you off.

24 MR. BEGUIN: Oh, no -- no, you're fine,
25 Your Honor. That -- that's all I have on the

1 rebuttal, Your Honor.

2 THE COURT: Okay. Now, as -- as should not
3 come to any great surprise, the law does not look
4 particularly kindly on claims that make -- that --
5 that extend the dispute by making, first, the dispute
6 resolved and then the dispute over whether there
7 should have been the dispute and so on and so forth.

8 Cases in all but the most extraordinary
9 circumstances should conclude when they conclude. If
10 there is a -- a grounds for seeking attorney's fees in
11 that case, then they're claimed in that case, not in
12 the subsequent case.

13 And here what we have is a showing that
14 these claims in the collection actions were resolved
15 in -- in the plaintiff's favor -- that is to say
16 (indiscernible) favor -- and that -- and, arguably, we
17 can argue or someone can argue about probable cause.

18 But the requirement of a showing of malice,
19 legal malice, requires a showing of a purpose other
20 than the pursuit of the claims. And the fact that
21 that is a requirement of this cause of action reflects
22 the reluctance of the Court to extend litigation to
23 subsequent cases which are only about the initial
24 litigation. And that could, of course, go on
25 indefinitely.

1 It is necessary to show that there's a
2 purpose other than the pursuit of the litigation.
3 And on this record, there has not been evidence of a
4 purpose other than the collection of the outstanding
5 judgment.

6 And so summary judgment should enter in
7 favor of the defense on this -- on this -- on this
8 record. And I'll sign an order to that extent -- or
9 to that effect and I can submit that. Mr. Beguin can
10 submit that electronically and I can -- and I can sign
11 it. I do hope --

12 MR. BEGUIN: Yes, Your Honor.

13 THE COURT: Yes. I do hope that this will
14 conclude these kind of -- these -- these kind of
15 collateral litigations. I hope that we don't now have
16 a claim on behalf of the defendant here for malicious
17 initiation of civil litigation, that it -- that it can
18 end here.

19 And I certainly hope that statements that
20 are made in the pleadings which are personal about
21 various participants are never reflected outside of
22 absolutely privileged circumstances. If -- if some of
23 the -- the documents and -- and I -- I assume that you
24 know who I'm talking -- talking about.

25 If some of these documents were read on the

1 street corner, there would be a very successful claim
2 for defamation. And so with that, I hope this is the
3 end of this litigation. Thank you all.

4 MR. BEGUIN: Thank you, Your Honor.

5 THE CLERK: We're off record.

6 * * *

7 (Conclusion of Proceedings,

8 4-5-23 at 3:05 p.m.)

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TRANSCRIBER'S CERTIFICATE

I certify, by signing below, that the foregoing is a correct transcript, of the audio record in the above-entitled cause, as recorded on digital audio and transcribed to the best of my ability and in accordance to the quality of the audio recording.



BRIAN KEAST
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