No. 22-35261

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Timothy C. Rote,

Plaintiff-Appellant,

v.

Committee on Judicial Conduct and Disability, et. al.

Defendants-Appellees

On Appeal from the United States District Court
For the Portland District of Oregon
No. 3:19-cv-01988-SI
Hon. Michael Simon

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

Plaintiff's argument at its core alleges constitutional violations taking the form of judicial retaliation for Plaintiff exercising his right of free speech and of engineered substantive and procedural due process violations by the defendants to carry out those acts of retaliation. It will be abundantly clear from the allegations in this case that there were solicitations and action taken by the defendants to target Plaintiff. Those solicitations were made by most of the defendants. Those solicitations and in most cases the violations fall outside of judicial immunity.

This case was first dismissed with prejudice by the Hon. Michael Mosman, who dismissed the Plaintiff's Civil Rights Complaint (3:19-cv-01988) after the case was transferred from the U.S. District Court for the District of Columbia. Mosman was a defendant at the time of the dismissal. That dismissal was appealed to the 9th Circuit, case 20-35017, wherein Plaintiff prevailed. Because Mosman had based dismissal of 3:19-cv-01988 on the dismissal of 3:19-cv-00082, the 9th Circuit reversed and remanded this case for further action.

After remand, the defendants then immediately moved to dismiss on varying positions of immunity and/or inadequacy of the Plaintiff's pleadings. Judge Simon provided leave to amend, issued and opinion and order addressing many facets of the litigation but ultimately dismissed on a finding of lack of plausibility of Plaintiff's allegations. The defendants argued various forms of immunity,

essentially without denying Plaintiff's allegations. Although the Court specifically denounced the need for evidence at this stage of dismissal, the Court did then dismiss partially on grounds that Plaintiff's lack of provided evidence. Plaintiff alleges the trial court committed reversible error on all activities not reasonably with the jurisdiction of the judicial defendants and otherwise adequately pled as to all defendants.

Plaintiff identifies four groups of defendants, namely (1) group one (1) comprising the federal judicial actor defendants which include Mosman, Hernandez, Kugler, Papak, US Department of Justice and Williams; (2) group two (2) comprising the state judicial actor defendants which includes the Oregon Judicial Department, Egan, Steele and Herndon; (3) group three (3) comprising the Oregon State Professional Liability Fund defendants which includes the Oregon State Bar Professional Liability Fund and Carol Bernick; and (4) group four (4) comprising Nancy Walker.

Plaintiff also alleges that it is equally clear that an agency of the Oregon Judicial Department, namely the Oregon State Bar Professional Liability Fund ("PLF") acting with and through Bernick, solicited and participated in these violations of due process against plaintiff, inter alia for the purpose of retaliation at the request of the judicial actors named as defendants in this case and for Plaintiff

publishing his critiques of some of the other named defendants including the PLF Group.

Nancy Walker is named as a defendant for the unlawful editing and publishing of a false trial transcript in case 3:15-cv-2401. In the capacity of a court reporter producing the transcript of a trial, Walker is not a federal defendant, rather a private citizen who was solicited by one or more of the defendants to edit the transcript. The litigation history will show that the defendants went to great lengths to quash Plaintiff's subpoena of the digital recording of the trial and that the Court's separate trial recordings were destroyed by intent while under subpoena.

The complaint is adequately pled to survive dismissal at this early stage. The allegations include with specificity the actions, dates, actors and solicitations by the defendants, acknowledging that each of the allegations in the Complaint can be unpacked to reveal more specific allegations.

Defendants Judicial Committee, Oregon Judicial Department, Billy Williams, James Egan and Oregon State Bar were voluntarily dismissed by Plaintiff, as the record of the hearing on the Motions to Dismiss so indicates. The transcript of the December 7, 2021 hearing is provided herein **(ER 63-122)**.

II. JURISDICTION

This is an action for injunctive relief and damages pursuant to 42 U.S.C. § 1983 and 1985. The District Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question and Defendant United States), 28 U.S.C. § 2201 (creation of a remedy), and 28 U.S.C. § 2202 (further relief) 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.

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

On March 23, 2022, the District Court entered final judgment in favor of defendants (**Doc #90**). Plaintiff-appellant timely filed a Notice of Appeal on March 26, 2022 (**Doc #91**).

III. STATEMENT OF ISSUES

1. Whether the District Court committed reversible error by dismissing the Plaintiff's complaint with prejudice against all or anyone of the defendants?

2. Whether the District Court committed reversible error by dismissing the complaint with prejudice without providing the necessary guidance by the Court on

flaws of the Plaintiff's complaint or in the alternative finding collusion among the defendants implausible?

3. Whether the District Court committed reversible error by refusing to disqualify the Judges and Magistrates of the U.S. District Court of Oregon?

IV. STATEMENT OF THE CASE

A. STATEMENT OF FACTS

Plaintiff-Appellant filed a Civil Rights complaint in the U.S. District Court For The District of Columbia on May 2, 2019 alleging then more than 28 counts of violations of the First, Fifth and Fourteenth Amendments of the United States Constitution and Oregon Constitution, Conspiracy to commit those violations and Common Law Torts all resulting in identifiable Damages and mandating Injunctive Relief. The claims allege substantive and procedural violations of due process. The Fifth Amendment Claim was voluntarily dismissed, recently. The case was transferred to the US District Court of Oregon over the objection of Plaintiff. The counts of violations continued to rise during the pendency of this case as reflected in Plaintiff's Third Amended Complaint.

Over the past 18 years the Judges and other actors identified in the complaint 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 and distributed child pornography, engaged in cybercrime, participated in an identity

theft ring and otherwise engaged in a host of other criminal behavior. He continues to do so today. Zweizig's fiancée 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, a relationship that she leveraged for the benefit of Zweizig by asking Kugler to intervene. Kugler did intervene, only to eventually realize that Zweizig is a producer, packager and distributor of child pornography.

Plaintiff alleges facts as follows:

1. In a Deposition of December 21, 2020 associated with Clackamas County case 19cv01547 (**Ecf #61-1**), Plaintiff in that case Max Zweizig testified and critiqued Rote for Rote representing himself in federal case 3:15-cv-2401, admitting therein that he duped that Court and lied to jury about downloading and disseminating child porn. Zweizig did not at any time during the deposition deny that he is an active child predator. Zweizig admitted that his immediate past attorney Ward Greene evaluated the forensic reports Rote sent to him and decided to terminate Zweizig no longer wanting to be identified with the raping of children. Zweizig further admitted that the Oregon State Bar Professional Liability Fund hired counsel to represent him free of charge, admitted that he did not solicit the representation and would not disclose why he was represented by the PLF but did identify Nena Cook as representing him (**Comp ¶ 116**);

2. Soon thereafter Zweizig sought a pre-trail petition to suppress the December 21, 2020 deposition which Rote had published in his blog, and claimed in that petition, Plaintiff Rote interpreting the petition and testimony, that he would not receive a fair trial if the jurors found out that he had lied to the jury in case 3:15-cv-2401 and was an active child predator (**Ecf #72-5**). The Clackamas Court denied that petition. In that hearing, the transcript of which has been published in this case, Zweizig claimed Rote's Motion for Summary judgment should be denied because Rote has published critiques of the Court and that Zweizig was pursuing the property owned by Rote's wife to punish Timothy Rote because Rote was a rich person (**Ecf #72-6**). Zweizig's statements in that March 9, 2021 hearing are similar to the statements Nancy Walker removed from the Trial Transcript in case 3:15-cv-2401 before publishing it. The Clackamas Court granted the Rote's Motion for Summary Judgment, finding Zweizig's claims completely unsupported by evidence and objectively unreasonable. Oregon Court of Appeals upheld the MSJ;

3. Soon after the December 21, 2020 hearing transcript was received Plaintiff Rote moved to vacate the judgment in case 3:15-cv-2401 based on Zweizig's admissions of perjury. Judge Mosman, while not assigned to the case, but nonetheless as then Chief Judge, intercepted the Motion and using the pre-filing order in place then denied Rote's Motion to Vacate, even though it is

absolutely clear that Zweizig admitted in his deposition to perjury of his testimony in that 3:15-cv-2401 trial (**Ecf #66-8**). Mosman stepped down as Chief Judge ther very next day after denying the Motion to Vacate. The Court refusal to sua sponte implicates those judicial actors as having engineered the false testimony of Zweizig to punish Rote's publication of connections of the judicial actors to protecting the distribution of child pornography in Oregon and New Jersey;

4. Max Zweizig was terminated on October 1, 2003, more than three weeks before he filed his complaint on October 23, 2003. In 2003, Max Zweizig, an employee of a different company (owned by Rote) conspired with his girlfriend Sandra Ware (Rutgers Law School graduate) to perpetrate a fraudulent employment claim against Rote and the employer Northwest Direct ("NDT"). Zweizig engaged in multiple acts of criminal behavior but nonetheless filed an employment claim in New Jersey (**Comp ¶ 33-41**). Zweizig's employer moved to transfer the case to Federal Court;

5. The case was assigned to Judge Robert Kugler, who was a friend of Sandra Ware's and engaged in multiple acts of support of Zweizig, including refusing to transfer the case to the USDCOR, the many acts violating Rote's right of due process (**Comp ¶ 42-48**);

6. Rote sent a letter to Kugler after the case had been remanded to New Jersey State Court identifying therein Zweizig's associated criminal conduct and

stating concern over his clerks ex parte contact with Zweizig and Ware Concerned that Sandra Ware met with her former law school classmate ex parte while Kugler had jurisdiction, defendants in that case (Plaintiff in this case) sent a letter to Judge Kugler highlighting this concern. To this day, the law clerk and Ware have not denied the ex parte meeting. Zweizig and Ware subsequently confirmed meeting and knowing Kugler through an initial introduction at a Rutgers Law School alumni function. Kugler responded harshly to the letter sent to him and demanded Rote attend a show cause hearing to determine if Rote should be held in contempt for contacting the Court after the remand back to State Court. The US Attorney's office was told to appear at which time they made it clear that they would not be prosecuting Rote for his first amendment speech of writing a letter to Judge Kugler. Judge Kugler also noted that defendant Rote in that case filed a complaint with the Judicial Counsel for the Third District (**Comp ¶ 49**).

7. As a part of the record of that contempt hearing, defendant Rote's counsel made it clear that there was no compromise to the administration of justice in the case because the court did not retain jurisdiction, citing *Pennekamp v State of Florida*, 328 US 331, 66, Supreme Court 1029. Ultimately, Kugler did not refer the case for criminal contempt but it was clear that just as in that case there was going to be ongoing attacks for discovering the child porn and associating Zweizig with the federal court and Kugler (**Ecf #61-11**);

8. The employment retaliation case filed by Zweizig in 2004 then proceeded to state court, wherein that Court found that Zweizig was a subject to a contract that mandated arbitration. The contract was evaluated for conscionability and upheld. Zweizig filed the Jones and Kugler transcripts with New Jersey State Court asking the Court to retaliate and not compel arbitration; however, in this case the New Jersey State Court was not amused or persuaded by the Kugler Show Cause Order and compelled Zweizig to arbitration in Portland Oregon (**Comp ¶ 50**);

9. The arbitration was completed over a five year span, from 2005 to March of 2011. In 2009 opposing counsel Linda Marshall appeared on behalf of Zweizig, who was the Respondent in that arbitration. Marshall submitted to arbitrator William Crow both the Jones and Kugler transcripts asking the arbitrator to deny Rote and NDT their constitutional right of due process. The 2010 trial transcript in fact documents a cross examination of Rote's attorney on the Jones hearing in 2001, but even at that time did not disclose that Crow and opposing counsel Marshall had been partners for 14 years at Miller Nash (**Comp ¶ 52**);

10. Arbitrator Crow admitted on the record that show cause transcript compromised his ability to adjudicate the parties claims fairly and as late as 2009 had not disclosed that Zweizig's attorney Linda Marshall was his former partner of 14 years at Miller Nash. Crow would resign and then be reinstated. Upon

reinstatement he summarily ignored all of the evidence presented by Plaintiff Rote in that case including the forensic reports and issued a small award to Zweizig. He refused to award any noneconomic damages to Zweizig for Rote's letter to Kugler (**Comp ¶52-60**);

11. Judge Papak, being fully informed that Crow ignored Rote's evidence in the arbitration out of retaliatory animus for calling for Crow to recuse himself, among that evidence the forensic reports and testimony of 10 witnesses affirming Zweizig's extortion attempts on his employer and the termination of Zweizig before his complaint (which had a dispositive effect on Zweizig's claims), Papak affirmed the award. In February 2017 Crow met with Rote and confirmed that he had been compromised and did not have the stamina to have been the arbitrator (**Comp ¶ 66**).

12. The forensic reports on Zweizig's 120 gig hard drive showed many criminal acts by Zweizig. First, the reports showed Zweizig bi-furcated the hard drive into two sectors, sectors C and D. On the C sector he maintained his normal records associated with his employment by Rote's company, including programs, data, emails, etc.. On the D drive however, Zweizig maintained his ebay business records, movies and music he downloaded in violation of copyright laws, as well volumes of porn and child porn. He made that D drive material available to the public using a peer to peer program such as bittorrent, which was registered in his

name. To cover up these criminal acts Zweizig reformatted the hard drive on his last day of employment (**Ecf #61 ¶15 and #61-14**). During the arbitration hearing two other forensic experts testified. Mark Cox testified on behalf of Claimant Rote. Justin Mcann testified on behalf of Zweizig. Both of these forensic experts confirmed the forensic report finding of Steve Williams (**Ecf #61-14**) and also confirmed Zweizig was terminated well before his complaint of overbilling.

13. Plaintiff chooses to not recite the full measure of his complaint as facts in this case but by reference to the complaint alleges the following allegations of facts and acts by defendants:

a. Judge Kugler, **Comp ¶71**, and *inter alia* using his position to attack Plaintiff's first amendment speech and soliciting and colluding with Hernandez, Mossman and Crow in retaliation of Rote publications asserting therein their violations of due process and support for child porn, molestation and trafficking. These acts have the effect of aiding and abetting the distribution of child pornography (**Ecf #61-11, 61-15, 72-1, 72-3, 72-7, 72-8**);

b. Judge Hernandez, **Comp ¶76, 77, 91, 92** and *inter alia*, allowing Zweizig to use the 3:15cv action to in effect appeal a 2005 New Jersey Court decision compelling Zweizig to arbitrate his employment asserted noneconomic damage claims, ignoring Oregon law on third party rights to a contract to compel

arbitration, working in concert with Zweizig in granting Motion in limine suppressing the computer forensic reports from the trial and Jury, refusing to allow cross examination of Zweizig on the forensic reports, permitting the Kugler letter into the trial in 3:15-cv-2401 without the attendant forensic report, quashing a subpoena for Nancy Walker's trial recordings, ordering or aiding in the deletion of the Court's digital recordings of the 3:15 trial, an aiding and abetting of the publication of false transcript. These acts have the effect of aiding and abetting the distribution of child pornography (**Ecf #61-1, 61-10, 61-11, 61-14, 66-1, 66-2, 66-3, 66-4, 66-10, 66-11, 72-1, 72-3, 72-7, 72-8**);

c. Judge Mosman, **Comp ¶99** and *inter alia* soliciting the abuses of Marco Hernandez and Walker and further unlawfully exercising jurisdiction of state tort claims and dismissing those claims, ordering and/or supporting the deletion of court owned trial recordings of case 3:15cv, aiding and abetting in the publishing of a false transcript, using the power of the Court to send the US Marshals Service to attack Plaintiff and his family, unlawfully imposing a pre-filing order to control the information published about him in this federal case, unlawfully dismissing Plaintiff's Motion to Vacate judgment in favor of Zweizig upon Zweizig's admission of perjury on the content of the forensic reports showing Zweizig as a child predator, soliciting Crow to compromise the arbitration and aiding and abetting Kugler's acts of retaliation and other actions. These acts have

the effect of aiding and abetting the distribution of child pornography (**Ecf #61-1, 61-8, 61-10, 61-11, 61-14, 66-3, 66-4, 66-5, 66-6, 66-7, 66-8, 66-9, 66-10, 66-11, 72-1, 72-3, 72-7, 72-8**);

d. Nancy Walker **Comp ¶96-102**, alleging therein Walker's unlawful publication of an inaccurate transcript of case 3:15cv, removing from that transcript wherein among other things Plaintiff appealed to the jury to award a sizeable judgment against Rote for being rich, followed the demand by Hernandez or Mosman to destroy her digital recordings to eliminate the evidence of a false transcript, refused to comply with a Subpoena and in so doing aided and abetted the distribution of child pornography (**Ecf #66-2**, **66-3, 66-4, 66-5, 66-6, 66-7, 66-9, 66-10, 72-1, 72-3, 72-7, 72-8**);

e. Oregon Court of Appeals Judge James Egan. William Crow provided a Declaration in December 2018, a year before his death, wherein he conveyed that James Egan did not solicit him to award anything to Zweizig, unlike his assertions against Kugler and Mosman. Plaintiff wishes to dismiss James Egan;

f. Judge Kathie Steele, **Comp ¶ 107, 108 and 115**, in case 19cv14552 *inter alia* blocking Rote's Motion to Default against Zweizig, soliciting the Oregon State Bar PLF and Bernick to represent Zweizig free of charge and soliciting and assisting Ann Lininger in surviving an abuse of process appeal of her anti-SLAPP

award in Clackamas case 19cv01547. The PLF did represent Zweizig free of charge. Defendants did not address with specificity these allegations and Plaintiff will pursue the anti-SLAPP portion in case 3:22-cv-00985-SI, focusing entirely in the unlawful award of legal fees as an act of retaliation (**Ecf #61-5, 61-6, 61-7, 61-8, 61-11, 61-13, 61-14, 66-5, 66-5, 66-7, 66-9, 72-1, 72-3, 72-7, 72-8**);

g. Judge Robert Herndon. Defendants did not deny the allegations against Herndon. Since this issue involves the abusive and unlawful awards of attorney fees in several cases in Clackamas County and because Plaintiff has settled those claims with the defendants in this case, Plaintiff will not pursue any issue on appeal against Herndon;

h. The Committee on Judicial Conduct, Oregon State Bar, Billy Williams and United States Department of Justice have been dismissed. It is unclear as to what authority the Department of Justice had to resist demand by Judge Mosman to move the state court tort actions to federal court. It is clear the DOJ represented Walker in opposing the Subpoena of her digital recordings in case 3:15-cv-2401 and to that extend aided and abetted an unlawful destruction of those recordings and trial evidence. On information and belief the DOJ did not act unilaterally to destroy the trial recordings;

i. The Oregon State Bar Professional Liability Fund, **Comp¶ 110-114**, inter alia, conspiring and colluding with Judges Steele, Mosman, Kugler and Steele to provide free representation to Zweizig, quashing the representation agreement of Zweizig, tampering with Zweizig as a witness, promoting and endorsing perjury in federal court by a PLF hired attorney who filed a declaration claiming there was no written representation agreement with Brandsness to move Mosman to dismiss the $1 Million malpractice claim against Brandsness in case 3:15cv for failing to compel arbitration in that case. Plaintiff does not believe Brandsness knew or endorsed the PLF and Bernicks perjury in federal case 3:19-cv-00082, the case in which Mosman removed to federal court the state tort claims actions to dismiss Walker and then unlawfully retained the state tort actions to dismiss them (**Ecf #61-1, 61-2, 61-3, 61-6, 61-7, 61-8, 61-11, 61-12, 61-14, 61-15, 66-5, 66-6, 66-9, 72-1, 72-3, 72-7**);

j. Carol Bernick, **Comp ¶110-114**, as CEO hired counsel attorney Nena Cook to represent Zweizig in Clackamas case 19cv14552, refusing to explain how or why that representation was solicited by Bernick and PLF, using the litigation to retaliate against Plaintiff Rote, tapering with witness Zweizig, engaging in RICO predicate acts and using the public purse to support a producer of child porn, engaging in other crimes under Oregon's Civil Racketeering Statutes and including tax evasion, subornation of perjury, subornation of tax evasion, perjury, etc. (**Ecf**

61-1, 61-2, 61-3, 61-6, 61-7, 61-8, 61-11, 61-12, 61-14, 61-15, 66-5, 66-6, 66-9, 66-10, 66-11);

k. Colorado Judicial Department of Elizabeth Weishaupl. Defendants at an early stage claimed they were not served correctly and have made no appearance.

Not much after this case was dismissed by Judge Michael Simon, the State Judicial Defendants and the PLF Group of Defendants struck again by endorsing the award of unlawful attorney fees in anti-SLAPP litigation. The award of fees was unlawful because Oregon's anti-SLAPP mandatory award of fees only permits reasonable attorney fees that are directly related and/or otherwise reasonably connected to the anti-SLAPP proceedings. It does not for example give the prevailing party in an anti-SLAPP proceeding to petition for fee on matters unrelated to the anti-SLAPP, fees for activities like collection, discovery and the unsuccessful defense of early summary judgment Motions. Judge Simon precluded Plaintiff by order from adding any other counts or defendants in this case, requiring Plaintiff to file a new Civil Rights lawsuit, case 3:22-cv-00985 on the Constitution abuse by Oregon Judges and the PLF in unlawfully awarding attorney fees as an act of retaliation for First and Fourteenth Amendment pursuits. Plaintiff

is choosing to pursue the abuse of the anti-SLAPP award of legal fees in that new action and will not pursue it here.

As in this case, Defendants are attacking Plaintiff under the umbrella and color of state law to violate the Plaintiff First Amendment Right of critiquing the judiciary and other actors and to violate the Plaintiff's Fourteenth Amend Right to procedural and substantive due process. The tragedy, if there is one element more repulsively so than any other, is that the defendants knew very well that Max Zweizig was active in the dissemination of child pornography and the grooming and molestation of at least two of his guitar lesson students (taking lessons in a bedroom of Zweizig's home) over the last 20 years. Per raace.org, "most perpetrators will continue to abuse children if they are not reported and stopped. Nearly 70% of child sex offenders have between 1 and 9 victims; at least 20% have 10 to 40 victims. An average serial child molester may have as many as 400 victims in his lifetime."

B. RELEVANT PROCEDURAL HISTORY

Plaintiff filed his complaint on May 2, 2019 (**Doc #1**) after compiling a body of evidence on defendants' conspiracy to deny plaintiff due process as a punishment for plaintiff publishing critiques of the Federal and Oregon Judiciary. The United States and related United States Defendants (collectively "United States") filed a Motion to Transfer the case to the USDCOR (**Doc #13**) on July 12,

2019. Plaintiff Responded in Opposition (**Doc #16**). United State Replied (Doc **#17**). The Court granted that Motion (**Doc #26**) on November 6, 2019.

In the interim and before the Order transferring the case to Oregon **(#26**) the State of Oregon Defendants ("Oregon") filed a Motion to Dismiss For Lack of Jurisdiction (**Doc #18**) on August 20, 2019. Plaintiff Responded (**Doc #19**). Oregon Replied (**Doc #21**). The U.S. District Court of Columbia and Oregon did not address this Motion.

Also in the interim, Plaintiff filed a Motion of Default against the non-responding Colorado Defendants (**Doc #20 and #22**). The Court took no action on these Motions.

Also in the interim, Plaintiff filed a Motion to Disqualify a FISA Court Judge from adjudicating this case (**Doc #23**). That Motion was denied (**Doc #24**).

The case was transferred to the U.S. District Court of Oregon (**Doc #29**) on December 9, 2019.

Plaintiff filed a Motion to Disqualify the Judges and Magistrates of the U.S. District Court of Oregon (**Doc #35**) on December 16, 2019.

Plaintiff filed an Amended Complaint (**Doc #36**) on December 19, 2019 adding (example, Hon. Michael Mosman) and removing defendants (example, Hon. Susie Norby).

Judge Michael Mosman, though a named defendant, dismissed the Complaint (**Doc #37**) on December 20, 2019 and further issued his pre-review order (**Doc #38**) on the same day.

Plaintiff appealed (**Doc #40**) on January 9, 2020.

The 9th Circuit reversed in part and remanded the case on May 18, 2021. The Mandate was issued on July 19, 2021 (**Doc #45**).

The State Judicial Defendants filed their Motion to Dismiss (**Doc #55**) on September 10, 2021. The PLF Defendants filed their Motion to Dismiss (**Doc #56 and #57**) on September 10, 2021. The Federal Judicial Defendants filed their Motion to Dismiss on October 18, 2021 (**Doc #64**).

Plaintiff filed his Consolidated Response to the State and PLF Defendants on October 1, 2021 (**Doc #60 and #61**). Plaintiff filed his Response to the Federal Defendants on November 1, 2021 (**Doc #65 and #66**).

Defendants filed Replies at various times.

Defendant State of Oregon filed a Motion to Quash a subpoena issued by Plaintiff (**Doc #69 and #70**). Plaintiff filed a Response (**#71 and #72**). The Motion to Quash was granted on December 21, 2020.

A hearing on the Motions to Dismiss was held on December 7, 2021.

The Court issued various orders on the pending Motions on December 21, 2021 and December 30, 2021 (**Doc #75-#78**).

Plaintiff was granted leave to amend and did file and amended complaint on February 14, 2022. The parties filed respective Responses in Opposition. The Court granted leave to file the Plaintiff's Third Amended Complaint (**Doc #81**) and Plaintiff filed that Complaint.

The Court dismissed the case with prejudice on March 23, 2022 (**Doc #89**). Judgment was issued the same day (**Doc #90**).

Plaintiff appealed on March 26, 2022 (**Doc #91**).

The PLF defendants were denied legal fees on June 13, 2022 (**Doc #102**). The Federal and State Defendants did not file a petition for legal fees.

V. SUMMARY OF ARGUMENT

Plaintiff appeals the District Court's decisions and judgments in this case. The assistance offered to child predator Max Zweizig by the defendants in multiple other cases shows a consistent pattern of First and Fourteenth Amendment violation 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. Defendants accomplished support of child predation only by gaming the system which caused credible harm to Plaintiff and took its form as due process violations conceived or justified for a variety of reasons.

Zweizig has not been an employee of a company owned by Plaintiff for almost 20 years. It is abundantly clear that the defendants conspired to retaliate against Plaintiff specifically for Plaintiff's public critiques of the Court and for opposing the distribution of child pornography. Plaintiff 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 Plaintiff Rote while a defendant in 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. The jury did not see it.

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 the same software program Zweizig used to make his child porn available, as far back as May 2003. Zweizig did precisely what Duggar did. In Arkansas Duggar was convicted by a jury. In Portland and with the Court's help, Plaintiff's public critiques of an arbitrator, publications within which Zweizig's identity was removed by Rote, allowed Zweizig to secure a $1 Million judgment, by lying to a jury about the forensic reports and testimony of the witnesses corroborating Zweizig's criminal conduct. Zweizig argued that Rote's critique of the Judicial actor defendants in this case had the effect of retaliation against him. On information and belief, Zweizig's testimony in case 3:15-cv-2401 was engineered by Mosman, Hernandez and Kugler.

Plaintiff seeks a remedy for the Defendants' brazen acts and violations to Plaintiff's First and Fourteenth Amendment Rights, Plaintiff claiming that the defendants staged and supported the litigation by Zweizig to punish Plaintiff for disclosing the judicial actor's support of child pornography.

A. THE COURT COMMITTED REVERSIBLE ERROR BY DISMISSING THE COMPLAINT AGAINST ALL DEFENDANTS OR ANY DEFENDANT WITH PREJUDICE

Plaintiff alleges multiple violations by the federal group, including the un-refuted destruction of the trial recordings in case 3:15-cv-2401 by the trial court and Nancy Walker, solicited and aided and abetted by federal judicial actors, which forms as 14th Amendment due process violations. Walker is a private citizen who does not enjoy immunity for publishing a false transcript in case 3:15-cv-2401. Plaintiff alleges the U.S. District Court had ordered the court's trial digital recordings and the court reporter's digital recordings destroyed while under a subpoena and litigation hold issued by the plaintiff. Plaintiff showed the relevant evidence that the digital recordings of the trial court had been destroyed. Plaintiff presumes that there would be only two Judges that had authority to order the trial recording destroyed, namely Judge Hernandez and Judge Mosman. Judge Hernandez also denied Plaintiff's Subpoena of Walker's digital recording so that Rote could prove the transcript had been edited. The Federal defendants do not deny targeting Plaintiff and carrying out acts of retaliation for publishing critiques

of the judiciary including critiques of arbitrator Bill Crow. Defendants were not aware until recently that Crow provided a Declaration and prior testimony substantially corroborating Plaintiff's claims.

Plaintiff also alleges violation of procedural and substantive due process against State Judicial actors, who actively sought to interfere with Plaintiff's pursuit of remedies in State Court and allege that the acts were part of a collusion or conspiracy of acts by state and federal judicial actors targeting Plaintiff. An example of the due process violation was the blocking of a Motion for a default judgment in state case 19cv14552 against Zweizig by then presiding Judge Steele, until the PLF came to aid Zweizig with free legal services at the request of Steele. The State judicial actors do not deny any of the Plaintiff's allegations in the Complaint.

Plaintiff alleges that the Oregon State Bar Professional Liability Fund, acting as a state agency and working in concert with state and federal judicial actors, offered Zweizig free legal representation in a quid pro quo relationship. Zweizig admitted being offered free representation, something he did not solicit of the PLF, in his deposition of December 21, 2020. He refused to provide the reason he was offered free representation. The Oregon State Bar Professional Liability Fund refused to provide his representation agreement and successfully quashed a subpoena issued by Rote in Clackamas Court case 18cv45257.Plaintiff is entitled

to an interpretation of the PLF Groups action to quash the subpoena of the insurance contract. Defendant Brandsness in that action readily provided the requested insurance coverage documents, as Oregon law demands. The PLF Group of defendants do not deny any of the allegations against them.

Plaintiff sued the defendants for multiple counts of violations of Plaintiff's Civil Rights, Plaintiff alleging violations of First and Fourteenth Amendment rights. Many of the defendants sued on this case may have immunity for part, but not all, of the violations. Some of the violations clearly occurred during a proceeding wherein the judicial actor is immune. Some of the violations are for conspiracy to violate Plaintiff's rights and for acts wherein the defendant does not have jurisdiction, and in those cases then those actors and acts are not immune.

B. ALTERNATIVELY THE COURT COMMITTED REVERSIBLE ERROR BY DISMISSING THE COMPLAINT WITH PREJUDICE WITHOUT PROVIDING DETAILS OM HOW TO CURE DEFICIENCIES IN THE COMPLAINT

Plaintiff is a *pro se* litigant. On the one hand the Court was critical of the other defendants over use of post discovery standard of Summary Judgment in the this early stage of litigation but on the other appeared to base its decision on a subjective application of whether the alleged behaviors were plausible, ignoring the Plaintiff's evidence offered to date. Plaintiff alleges that the Court applied erroneously the pleading standard for 42 US 1983 and 1985 claims against some or all of the defendants and its opinion and order of December 2021 failed to address

specifically pleading weaknesses that Plaintiff could cure. The Opinion was demonstratively artful in skirting pleading deficiencies.

C. THE COURT COMMITTED REVERSIBLE ERROR BY REFUSING TO DISQUALIFY THE JUDGES AND MAGISTRATES OF THE U.S. DISTRICT COURT OF OREGON PORTLAND DIVISION

Plaintiff multiple requests to disqualify the Judges of the U.S. District Court of Oregon were ignored. Plaintiff argues that there is sufficient evidence to implicate broad bias within the Portland Division and that the Opinion and Order denying Plaintiff's Motion for Disqualification was in error.

VI. LAW & ARGUMENT

A. THE DISTRICT COURT ERRED WHEN IT DISMISSED THE COMPLAINT AGAINST ALL OR ANY DEFENDANTS WITH PREJUDICE

Plaintiff will address the errors by each of the four groups of defendants identified in the Complaint and opening statement in this brief.

1. Standard of Review

a. FRCP 12(b)(1)

The district court's decision to dismiss for lack of subject-matter jurisdiction is reviewed denovo. *United States ex rel. Hartpence v. Kinetic Concepts, Inc.*, 792 F.3d 1121, 1126 (9th Cir. 2015) (en banc). "Where the district court relied on findings of fact to draw its conclusions about subject-matter jurisdiction, we review those factual findings for clear error." Id. at 1126–27.

b. FRCP 12(b)(6)

A district court's order granting a motion to dismiss for failure to state a claim is reviewed denovo. *Dunn v. Castro*, 621 F.3d 1196, 1198 (9th Cir. 2010).

c. Immunity

A district court's order granting a motion to dismiss based on absolute immunity is reviewed denovo. *Garmon v. Cty. of Los Angeles*, 828 F.3d 837, 842 (9th Cir. 2016) (absolute immunity). Whether a judge is protected from suit by judicial immunity is a question of law reviewed de novo. See *Crooks v. Maynard*, 913 F.2d 699, 700 (9th Cir. 1990). The district court's conclusion that an individual is entitled to judicial immunity is also reviewed de novo. See *Bennett v. Williams*, 892 F.2d 822, 823 (9th Cir. 1989) (individual acting within judicially-conferred authority). A dismissal based on judicial immunity is reviewed de novo. See *Meek v. County of Riverside*, 183 F.3d 962 (9th Cir. 965 (9th Cir. 1999)

2. Elements of Plaintiff's Claims

a. Elements of Plaintiff's 42 U.S.C. § 1983 Claim

"Traditionally, the requirements for relief under [§] 1983 have been articulated as: (1) a violation of rights protected by the Constitution or created by federal statute, (2) proximately caused (3) by conduct of a 'person' (4) acting under color of state law." *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Or, more simply, courts have required plaintiffs to "plead that (1) the defendants acting under color of state law (2) deprived plaintiffs of rights secured by the

Constitution or federal statutes." *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986).

To bring a First Amendment retaliation claim, the plaintiff must allege that (1) it engaged in constitutionally protected activity; (2) the defendant's actions would 'chill a person of ordinary firmness' from continuing to engage in the protected activity; and (3) the protected activity was a substantial or motivating factor in the defendant's conduct—i.e., that there was a nexus between the defendant's actions and an intent to chill speech. *Mendocino Env'l Ctr.*, 192 F.3d at 1288; see also *Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824 F.3d 858, 867 (9th Cir. 2016) ("A plaintiff may bring a Section 1983 claim alleging that public officials, acting in their official capacity, took action with the intent to retaliate against, obstruct, or chill the plaintiff's First Amendment rights.

b. Elements of Plaintiff's 42 U.S.C. § 1985 Claim

In order to state a claim of conspiracy pursuant to 42 U.S.C. § 1985(3), plaintiff must allege that "racial, or otherwise class-based, invidiously discriminatory animus lay behind the defendants' actions," and must "set forth facts from which a conspiratorial agreement between the defendants can be inferred." *Parrott v. Abramsen*, 2006 U.S. App. LEXIS 25671, *5 (3d Cir. Oct. 16, 2006); see also *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971). A class on one is recognized under this statute.

c. Elements of Plaintiff's Biven's Claim

To plead a Bivens cause of action, the plaintiff must allege that: (1) he has a constitutionally protected right; (2) a federal officer acting under color of federal authority violated that right; (3) he lacks a statutory cause of action, or an available statutory cause of action does not provide a meaningful remedy; and (4) an appropriate remedy, namely damages, can be imposed. See *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) ("[A] plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution."); see also *Chavez v. United States*, 683 F.3d 1102, 1110 (9th Cir. 2013).

3. Defendant Walker

a. The Record

Defendant Nancy Walker is a court reporter for the U.S. District Court of Oregon and as an independent contractor produces trial transcripts for a fee. Walker published knowing false draft and final trial transcripts in 2018 and destroyed her digital recordings at the request of Mosman and perhaps other judicial actors while under subpoena and litigation hold notice. Plaintiff references the factual statement s made on page 14 of this brief **Comp ¶ 98-102** and **Ecf #66-2**, **66-3, 66-4, 66-5, 66-6, 66-7, 66-9, 66-10, 72-1, 72-3, 72-7, and 72-8**

Plaintiff alleges that Walker in conjunction with federal actors published a false transcript in retaliation for Rote publishing critiques of the federal and state judicial actors (Count I), **Comp ¶128**. Plaintiff alleged that this act of retaliation violates Oregon Constitution Article I, Section 8. Plaintiff alleges Walker by publishing a false transcript and destroying her digital recordings of that trial violated his rights of due process (Count II), **Comp ¶138**. Plaintiff alleges conspiracy among the defendants (Count III), **Comp ¶155**).

b. Argument

Plaintiff adequately alleged Walker falsified a transcript, a violation of Plaintiff's constitutional rights of Free Speech and Due Process, (2) the editing of the transcript proximately caused damage to Plaintiff , (3) that Walker is a 'person' under § 1983, § 1985 and Oregon Constitution, and that she acted under color of state law.

The record of case 3:19-cv-00082 (**Ecf #61-6**) shows that Walker was sued for editing of the transcript and publishing a false transcript under Oregon State law and that the federal court removed the action to federal court and immediately dismissed Walker. The record provided in this case shows that the DOJ successfully quashed the subpoena of Walker's digital recordings (**Ecf #61-3**) and confirmed that the federal trial courts records had already been destroyed while under subpoena (**Ecf #61-4**).

The case in which Walker committed a crime specifically aided and abetted child predator Max Zweizig who brought a state law claim under ORS 659A.030 against Timothy Rote, Zweizig securing a $1 Million judgment. Court Reporter Nancy Walker is certified to perform duties as a Court Reporter under Oregon Revised Statutes 8.415-8.455. The United States has maintained that Walker is a federal employee, was acting as a federal employee and has taken up her defense.

Court reporters – unlike other judicial officers who have been afforded absolute immunity – do not exercise discretion in fulfilling their official duties, but "are required by statute to 'record verbatim' court proceedings," they are not entitled to absolute immunity. *Antoine v. Byers & Anderson*, Inc., 508 U.S. 429, 436–37 (1993) (citation omitted); cf. *Duvall v. Cty. of Kitsap*, 260 F.3d 1124, 39 1134–35 (9th Cir. 2001) (concluding that there was a genuine issue concerning the amount of discretion in the job of the coordinator of accommodations for litigants and witnesses with disabilities).

Plaintiff has shown that edits to the Trial Transcript in case 3:15-cv-2401, wherein Zweizig claimed that Rote should be punished by the jury for being rich were repeated in Clackamas case 19cv01547, a hearing wherein Zweizig asks the court to assist him in attacking Rote, whom he claims is a Rich man (**Ecf #72-6**). Walker edited this information out to *aid* and *abet* child predator Zweizig, arguably

at the request of Hernandez and/or Mosman, and to take actions to minimize Rote's opportunity for reversal of the jury award.

Court reporters have been sued under the 42 U.S.C. § 1983 and § 1985 before. See *MASSEY COAL CO., INC. v. Meadows*, 476 F. Supp. 2d 578 (S.D.W. Va 2007), 476 F. Supp. 2d 578 (2007). Plaintiffs in that case alleged that this investigation revealed the cause of defendant's delay in completing the transcript to be "corrupt computer files, poor quality notes, faulty equipment," and "a practice of not recording or transcribing significant portions of the trial." (Id.) There are no Stenomask tapes from the trial, and the only audiotapes available for portions of the trial were recorded by a microphone situated such that parts of the recordings are inaudible. (*Id. at 4-5*.)That case was dismissed because Court reporters hired by the Supreme Court of W. Virginia corrected the record by filing revised transcripts. That is not the case here. Moreover, Plaintiff is entitled to an interpretation that the actions taken to destroy the trial court's digital recording (**Ecf 66-3 and 66-4**) were intended to cover up the fraudulent transcript prepared by Walker. Federal Defendants and Walker have not alleged that the trial recordings were destroyed in error, which frankly would have required it to be accompanied by a declaration by the Clerk of the Court. Plaintiff can easily demonstrate that digital recordings of hearings and trials are readily available by online request in Oregon State Court, https://www.courts.oregon.gov/courts/clackamas/records/Pages/atr.aspx. In

addition to a court reporter, each federal courtroom at the federal courthouse in Portland Oregon has a digital recording that saves the recording to central server.

Plaintiff has no other remedy and has alleged causation and damages. Compensatory damages include actual losses, mental anguish and humiliation, impairment of reputation, and out-of-pocket losses. See *Borunda, 885 F.2d at 1389; Knudson v. City of Ellensburg*, 832 F.2d 1142, 1149 (9th Cir. 1987); *Chalmers v. City of Los Angeles*, 762 F.2d 753, 760–61 (9th Cir. 1985). "[D]amages in § 1983 actions are not to be assessed on the basis of the abstract 'value' or 'importance' of the infringed constitutional right." *Sloman v. Tadlock*, 21 F.3d 1462, 1472 (9th Cir. 1994).

Plaintiff alleges that he is in a class of one. Recently, in *Village of Willowbrook v. Olech*, the United States Supreme Court affirmed that the Equal Protection Clause protects individuals, as well as vulnerable groups and fundamental rights from vindictive state action. This approach to Equal Protection jurisprudence is referred to as a "class of one" claim. Under this theory, individuals like the Olechs, who have been victimized by state or local officials, but who do not have a claim under a traditionally recognized Equal Protection category, can file a claim in federal court under 42 U.S.C. § 1983. These claims arise when a state or local government official inequitably administers a state statute or local ordinance. *Olech*, 120 S. Ct. at 1074-75.

Plaintiff is not clear as to whether Walker would be a person under § 1983 (although the Section 1983 Outline by the Office of Staff Attorneys, 9th Circuit indicates a court reported would be a person under this statute), but would be under § 1985, Oregon Constitution and *Bivens if considered a federal actor*.

Plaintiff alleged that Walker conspired with Hernandez, Mosman and Kugler to publish a false transcript and to delete her digital recordings. **Comp ¶ 99-102**. "A claim under this 1985 section must allege facts to support the allegation that defendants conspired together. A mere allegation of conspiracy without factual specificity is insufficient." *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 626 (9th Cir. 1988); see also *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1039 (9th Cir. 1991). For further discussion of proving conspiracy claims, see supra I.A.2.b.(5).

Publishing a false transcript is a crime. Conspiring to destroy the underlying digital recordings is a crime. In addition to the violations heretofore outlined, Plaintiff asserts that publishing the false transcript is a due process violation under Oregon's Constitution. For the arguments outlined above, Plaintiff moves this Court to vacate dismissal of the claims against Nancy Walker and permit plaintiff to engage in discovery.

4. Defendants PLF and Bernick

a. The Record

Plaintiff alleges specifically the PLF and CEO Bernick have been engaged in non-immune acts implicating **Claims I-III**, including but not limited to aiding and abetting and conspiring with the other defendants in retaliating against Plaintiff for bringing malpractice and other claims against the PLF and in retaliation for Rote publishing critiques of the PLF.

Plaintiff's factual allegations are referenced to page 16 of this brief, **Ecf #61-1, 61-2, 61-3, 61-6, 61-7, 61-8, 61-11, 61-12, 61-14, 61-15, 66-5, 66-6, 66-9, 72-1, 72-3, 72-7, See Comp ¶ 10, 22, 110-114, 126, 129, 134, 142, 153…**

Plaintiff alleges the actions taken by the PLF and Bernick are effective, that their solicitations represent facially successful requests for Constitutional violations that have abridged Plaintiff's rights of due process in multiple cases over many years and were taken under the color and protection of Oregon State law.

b. Argument

Although the PLF was organized to operate free from the Insurance Commissioner in Oregon, the PLF still uses its organized to enjoy tax exempt status of more than $6 million a year in profits. Plaintiff argues that the PLF and Bernick may not use the umbrella of a state public body, to use the resources of that public body (even if not an agency of the state) to target citizens that challenge the PLF's efficacy and activity. (**Ecf #60, 61-1, 61-2, 61-3**). The PLF successfully quashed Plaintiff's Subpoena of the insurance agreement between the PLF and

Zweizig (Ecf #72-7). In *the Reichardt case*, the state, by creating the Insurance Commission and the set of regulatory laws, had the obligation to see that the Commission operated equally in relation to all its citizens. See *Reichardt v. Payne*, 396 F. Supp. 1010, 1014 (1975), affid in part and remanded sub nom. *Life Ins. Co. of America v. Reichardt*, 591 F.2d 499 (9th Cir. 1979).

The position of the PLF is that they are not an agency of the state. The PLF made no argument that the PLF was a tantamount to the state, not have they denied that Bernick targeted Plaintiff out of retaliation. Nor have they denied that this targeting is part of larger effort to target litigants who oppose the distribution of child pornography, nor has the PLF group denied that they conspired with Defendants Steele, Mosman and/or Hernandez. Plaintiff is entitled to a broad interpretation of their conduct particularly because of the PLF's successful Motion to Quash the Zweizig agreement with the PLF, solicited by Bernick and carried out by Nena Cook.

To determine whether a governmental agency is an arm of the state, the court should "look to state law and examine 'whether a money judgment would be satisfied out of state funds, whether the entity performs central governmental functions, whether the entity may sue or be sued, whether the entity has the power to take property in its own name or only in the name of the state, and the corporate

status of the entity.'" *Hale*, 993 F.2d at 1399 (quoting Mitchell v. L.A. Cmty. Coll. Dist., 861 F.2d 198, 201 (9th Cir. 1988)).

Plaintiff has alleged that the PLF has equity of $100 Million. There is no indication that the PLF would look to the state to pay its debt should judgment in this case be rendered against them.

The PLF and Bernick have no justification for representing Zweizig. As a tax exempt captive insurance agency organized under the Oregon Judicial Department, these defendants implemented a policy to target and attack Plaintiff. The publicly stated purpose of the PLF is to provide malpractice coverage for the mutual benefit of citizens of the state and the victims of malpractice and criminal activity of attorneys licensed to practice law in Oregon. See https://www.osbplf.org/about/who-we-are.html.

Plaintiff's Analysis of the PLF, since it has rejected state agency as a placement, would be akin to municipal liability.

Even if the deprivation represents an abuse of authority or lies outside the authority of the official, if the official is acting within the scope of his or her employment, the person is still acting under color of state law. See *Anderson*, 451 F.3d at 1068–69; *McDade*, 223 F.3d at 1140; *Shah v. Cty. of Los Angeles*, 797 F.2d 743, 746 (9th Cir. 1986)

A defendant has acted under color of state law where he or she has "exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" *West v. Atkins*, 487 U.S. 42, 49 (1988) (quoting United States v. Classic, 313 U.S. 299, 326 (1941)). The PLF acquires its tax exempt status under state law just as municipalities do and presumably the acts of the PLF are those vested by its organization agreement.

Bernick was sued for acting in her official but inflicted constitutional damage by acting in her personal capacity. In so doing it is believed she abused the office of CEO. The PLF has not however made that argument.

As a first principle, it is important to note that the capacity in which the official acted when engaging in the alleged unconstitutional conduct does not determine the capacity in which the official is sued. See *Hafer v. Melo*, 502 U.S. 21, 26 (1991) (Official capacity "is best understood as a reference to the capacity in which the state officer is sued, not the capacity in which the officer inflicts the alleged injury."); *Price v. Akaka*, 928 F.2d 824, 828 (9th Cir. 1991).

"Personal-capacity suits seek to impose personal liability upon a government official for actions [the official] takes under color of state law." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). Liability in a personal-capacity suit can be demonstrated by showing that the official caused the alleged constitutional injury. See id. at 166.

Generally, employees of the state are acting under color of state law when acting in their official capacity. See *West v. Atkins*, 487 U.S. 42, 49 (1988); *Anderson v. Warner*, 451 F.3d 1063, 1068 (9th Cir. 2006).

Where a private party conspires with state officials to deprive others of constitutional rights, however, the private party is acting under color of state law. See *Tower v. Glover*, 467 U.S. 914, 920 (1984); *Dennis v. Sparks*, 449 U.S. 24, 27– 28 (1980); *Crowe v. Cty. of San Diego*, 608 F.3d 406, 440 (9th Cir. 2010).

A person deprives another of a constitutional right, "within the meaning of § 1983, 'if he does an affirmative act, participates in another's affirmative act, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.'" *Preschooler II v. Clark Cty*. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)).

"Liability under [§] 1983 arises only upon a showing of personal participation by the defendant. A supervisor is only liable for the constitutional violations of … subordinates if the supervisor participated in or directed the violations, or knew of the violations and failed to act to prevent them. There is no respondeat superior liability under [§] 1983." *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (citations omitted); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 676

(2009). Plaintiff has pled that Bernick fully participated and directed the constitutional violations.

Although the standard for stating a claim became stricter after *Twombly* and *Iqba*l, the filings and motions of pro se inmates continue to be construed liberally. See *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (as amended) (explaining that *Twombly and Iqbal* "did not alter the courts' treatment of pro se filings," and stating, "[w]hile the standard is higher [under Iqbal], our obligation remains, where the petitioner is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt." (internal citation omitted)).

To construe the Plaintiff's Complaint broadly, the Court would need to allow claims asserting a specific conspiracy by the PLF and Bernick with Steele, Mosman and Hernandez, the PLF having no contractual demand to represent Zweizig. Further the PLF and Bernick sponsored solicitations of the Court for bias by instructing the attorneys hired by the PLF to make arguments to state and federal Judges that Rote should be denied due process for critiquing the Court's publicly. Moreover, the PLF quashed the subpoena of the agreement between the PLF and Zweizig (a confirmed child predator), which Plaintiff alleges would show their mutual retaliatory animus and abuse of the PLF tax exempt status to sponsor child pornography, to retaliate against those who oppose it, to retaliate against

those who disclose the PLF's unlawful acts, all of which were taken under the color of state law as a pseudo municipality. Finally, the PLF Group shared a common objective with the other defendants named in this lawsuit, which was to abridge the Constitutional rights of the Plaintiff for their own benefit—whatever form that takes.

Plaintiff has alleged that Bernick and the PLF conspired with Steele, Mosman and Hernandez persecute Plaintiff and deny him due process through its various acts and in so doing violated § 1985. "A claim under this section must allege facts to support the allegation that defendants conspired together. A mere allegation of conspiracy without factual specificity is insufficient." *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 626 (9th Cir. 1988).

Plaintiff withdraws any claim or argument associated with the abuse of the anti-SLAPP, which will be addressed in a subsequent lawsuit. None of the defendants addressed the abuse of the anti-SLAPP in the hands of the state defendants and Plaintiff was not permitted to add parties or claims.

5. Defendant Kathie Steele

a. Plaintiff's Record

Plaintiff does not wish to take any further action to preserve claims against Egan or Herndon. Egan formerly represented child predator Max Zweizig, as far back as November 2003.

Plaintiff references page 14 of the factual recitations and further references **Comp ¶ 107, 108 and 115, Ecf #61-5, 61-6, 61-7, 61-8, 61-11, 61-13, 61-14, 66-5, 66-5, 66-7, 66-9, 72-1, 72-3, 72-7, 72-8.**

Defendant Steele concedes Plaintiff's allegations. Plaintiff clarified in response and alleges Judge Steele used her role as Chief Judge to interfere with the filing of case 19cv14552, taking action in favor of Zweizig and prejudicial to Rote, until such time as the PLF made an appearance to represent Zweizig and has continued to intervene to interfere with procedural and substantive due process.

Judge Steele used her role to interfere and delay with the assignment of Judges to cases filed by Plaintiff and when Plaintiff sought a hearing. Judge Norby for example has been assigned to case 18cv45257 and has yet to respond to Plaintiff's requests for a scheduling order. None of the above allegations are refuted. Plaintiff also clarified that he witnessed Steele in Chambers during the

anti-SLAPP fee petition hearings, wherein Steele was advising Lininger. There were multiple witnesses. (**Ecf #60, pg 19**).

After Plaintiff filed his Third Amended complaint in this case, Plaintiff discovered that although disqualified because of this litigation, Steele signed two limited judgments granting dismissal of claims against two defendants including the Oregon State Bar PLF and Carol Bernick in case Clackamas 18cv45257. Those limited judgments were signed by Steele on January 12th and 25th, 2022 and after Steele was no longer presiding Judge. Plaintiff has moved to set those judgments aside. Steele stepped down as presiding Judge of Clackamas County 5th Circuit Court on December 31, 2021.

b. Argument

Plaintiff alleges specific facts and further "plead that (1) the defendants acted under color of state law and (2) deprived plaintiffs of rights secured by the Constitution or federal statutes." *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986).

Generally, employees of the state are acting under color of state law when acting in their official capacity. See *West v. Atkins*, 487 U.S. 42, 49 (1988); *Anderson v. Warner*, 451 F.3d 1063, 1068 (9th Cir. 2006).

The question of whether a person who has allegedly caused a constitutional injury was acting under color of state law is a factual determination. See *Brunette*

v. Humane Soc'y of Ventura Cty., 294 F.3d 1205, 1209 (9th Cir. 2002); *Gritchen v. Collier,* 254 F.3d 807, 813 (9th Cir. 2001.

Plaintiff concedes that "Judges are absolutely immune from damage actions for judicial acts taken within the jurisdiction of their courts…. A judge loses absolute immunity only when [the judge] acts in the clear absence of all jurisdiction or performs an act that is not judicial in nature." *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam) (citations omitted); see also *Mireles v. Waco*, 502 U.S. 9, 9 (1991) (per curiam); Pierson v. Ray, 386 U.S. 547, 553–54 (1967); *Brooks v. Clark Cty*., 828 F.3d 910, 916 & n.3 (9th Cir. 2016); *Brown v. Cal. Dep't of Corr*., 554 F.3d 747, 750 (9th Cir. 2009) (absolute immunity is generally accorded to judges functioning in their official capacities)

"To determine if a given action is judicial …, courts [should] focus on whether (1) the precise act is a normal judicial function; (2) the events occurred in the judge's chambers; (3) the controversy centered around a case then pending before the judge; and (4) the events at issue arose directly and immediately out of a confrontation with the judge in his or her official capacity." *Ashelman*, 793 F.2d at 1075–76; see also *Stump*, 435 U.S. at 362; *Meek*, 183 F.3d at 965–66; *Partington v. Gedan*, 961 F.2d 852, 866 (9th Cir. 1992).

Plaintiff argues that Steele instructing Court staff to not permit Plaintiff to file a Motion for default against Zweizig is an unpublished pre-filing order that

was unconstitutional and does not enjoy immunity. At best it is an administrative action that is not otherwise protected. "Administrative decisions, even though they may be essential to the very functioning of the courts," are not within the scope of judicial immunity. *Forrester v. White*, 484 U.S. 219, 228–30 (1988) (holding that a judge is not absolutely immune from suit in her or his capacity as an employer and that the judge may be liable for unconstitutional conduct regarding the discharge, demotion, and treatment of employees); see also *Antoine v. Byers & Anderson, Inc*., 508 U.S. 429, 435 (1993); *Meek, 183 F.2d at 966; L.A. Police Protective League v. Gates*, 907 F.2d 879, 889 (9th Cir. 1990); *New Alaska Dev. Corp*., 869 F.2d at 1302.

Plaintiff alleges that Steele soliciting Bernick to cause the PLF to hire Nena Cook to represent Zweizig in case 19cv14552 is not an act which enjoys judicial immunity.

Plaintiff alleges that neither Clackamas County case 19cv14552 nor 19cv01547 were ever assigned to Judge Steele by Judge Steele, but were rather immediately assigned to Judge Ann Lininger. There is no evidence that Judge Steele had any jurisdictional reason or justification to be advising Lininger in Lininger's chamber as she recessed to consider fee petition Motions in the above named cases. These actions are under the cover of darkness, backroom deals that deprived Plaintiff of his due process rights, were likely taken out of retaliation for

Plaintiff publishing critiques of some members of the court and do not implicate the type of judicial immunity consider in this case.

Plaintiff was damages by these acts of Kathie Steele that even under the best of circumstances provided protection to a child predator for some defined benefit to Steele, a benefit which is inferred even if not known. If the unconstitutional acts were not for the benefit of child predator Zweizig, then they were for retaliatory reasons. Plaintiff is entitled to that inference. The defendant's response in its Motion to Dismiss did not deny Plaintiff's allegations and shed no light on the question of jurisdiction. Arguably defendant Steele has waived that argument or affirmative defense.

Plaintiff still asserts that he is a class of one and that multiple defendants, including Steele, targeted him and violated his due process and first amendment rights. Defendant Steele has not denied these allegations.

Defendant's arguments on 12(b)(1) is a pail that does not hold water. Defendants are not entitled to a plausibility inference to dismiss under 12(b)(6). And the retaliation continues.

Plaintiff alleges specifically that Mosman and Steele conspired to deny Plaintiff procedural and substantive due process by intervening for the benefit of child predator. Whether Steele wanted to effect some change of policy to endorse child predation is unknown, but her actions had that effect. "A claim under this

section must allege facts to support the allegation that defendants conspired together. A mere allegation of conspiracy without factual specificity is insufficient." Karim-Panahi v. L.A. Police Dep't, 839 F.2d 621, 626 (9th Cir. 1988); see also Sanchez v. City of Santa Ana, 936 F.2d 1027, 1039 (9th Cir. 1991). For further discussion of proving conspiracy claims, see supra I.A.2.b.(5).

The Oregon Courts need some warning from this Court that the Constitutional abuses against those who oppose child predators must stop. Plaintiff asks this Court to vacate the dismissal of Steele and remand for discovery. There will be ample opportunity for summary judgment.

6. Federal Defendants of Kugler, Mosman and Hernandez

a. Plaintiff's Record

The factual citations in the record on Hernandez are referenced to page 12 of this brief, **Comp ¶76, 77, 91, 92, Ecf #61-1, 61-10, 61-11, 61-14, 66-1, 66-2, 66-3, 66-4, 66-10, 66-11, 72-1, 72-3, 72-7, 72-8, and Counts I-III.**

Against Mosman **Comp ¶99**, **Ecf #61-1, 61-8, 61-10, 61-11, 61-14, 66-3, 66-4, 66-5, 66-6, 66-7, 66-8, 66-9, 66-10, 66-11, 72-1, 72-3, 72-7, 72-8 and Counts I-III**.

Against Kugler **Comp ¶71**, **Ecf #61-11, 61-15, 72-1, 72-3, 72-7, 72-8 and Counts I-III.**

b. Argument

The Democratic Party of Oregon has gone on the record as having an agenda to decriminalize the possession and distribution of child pornography. That position garners upwards of $200 Million a year for support of state and federal candidate campaigns for the Democratic Party in Oregon.

Zweizig in his deposition of December 21, 2020 claimed that he won his substantial judgment because Rote was incompetent in representing himself (**Ecf 61-1, pg 10, line 22-24**). While it is always true that a self-represented party has a fool for a client, the comment suggests that there was a method by which the suppression of the forensic reports by Hernandez in the Motion in Limine could have been reversed. And that's not true. The effort to get Zweizig on the record on the existence of the forensic reports was blocked by Hernandez during that Trial in case 3:15-cv-2401 (**Ecf #66-2, page 174-175**). Rote's blog Chapter 4 specifically referenced the forensic reports and was a document on the record in that case (**Ecf 72-3**). One of a dozen reports Rote wanted to get on the record in that case is in the record of this case, a report from Police Officer Steve Williams, **Ecf #61-14**. It is un-refuted that in that 3:15-cv-2401 case Rote was denied the opportunity to engage in discovery or take the deposition of Zweizig. The Trial was a sham and it

was over before it started. Zweizig was approximately 40 years old at the time he was downloading and disseminating porn.

Let us presume for a moment that Zweizig is successful in securing a $1 Million satisfaction of his judgment and that after paying his legal fees he retains $500,000. At present his child porn business is presumed to generate 100,000 views per year of the child porn he has on line. If he uses this judgment money to increase capacity and product he will easily generate 100,000 views per month. If 5% of an annual 300,000 viewers acted out, groomed and molested children, his child porn business supported by the Democrat activists in Oregon will support 15,000 new and active child predators. If each predator grooms and molests 10 children before being caught that is 150,000 molestations, traced back to its origin of Portland Oregon and the US District Court of Oregon.

Shenoa Payne, who represented Zweizig in the 9th Circuit Court of Appeal of case 3:15-cv-2401, claims on her website that in "Zweizig v. Rote, 18-35991 (9th Cir. 2020) (holding that individual defendant was not entitled to compel arbitration because he was not party to arbitration agreement)", Shenoa Payne Attorney at Law results — Shenoa Payne Attorney at Law PC (paynelawpdx.com). The problem with this public statement to the defendants in this case is that it is an admission that Hernandez, Mosman and Kugler conspired to use the Court to affect an appeal reversal of a previously decided case in New Jersey compelling Zweizig,

his employer and Rote (non-party to the agreement) to arbitration. That is a violation of the *Rooker-Feldman doctrine*. The further problem with this statement is that it violates Oregon Law, as outlined on Rote Motion for reconsideration to the 9th Circuit (**Ecf #61-10**), *Livingston* confirms that non-signatories may compel and may be compelled to arbitrate post-employment retaliation claims. The court does not decide waiver under Oregon law. *Livingston v. Metro. Pediatrics, LLC*, 227 P.3d 796, 803 (Or. Ct. App. 2010). Even if one could infer that the USDCOR conspired with others to change the application of mandatory arbitration, the USDCOR nor the 9th having jurisdiction to do so, the act still resulted in adding and abetting the distribution of child pornography and the likely future molestation of 150,000 children.

Hernandez quashed the subpoenas for Nancy Walker's digital recordings quashed the subpoenas of Crow's arbitration file (which likely would have evidence of Kugler's call to Crow), denied Plaintiff discovery and the depositions of Zweizig and Ware, refused to compel arbitration on exactly the same claims involving the same parties Zweizig brought before by Zweizig in 2004-2011 (where arbitration against Rote was compelled), allowed Zweizig to effect an appeal on the contractual right to arbitrate (Rooker-Feldman violation), allowed Zweizig to allege claims and request damage already denied in prior litigation and strategically suppressed impeachment evidence of the computer forensic reports

which paved the way for Zweizig to lie about the content of the forensic reports. **Comp ¶14**. Plaintiff agrees the Judge Hernandez has absolute immunity to do so.

. Judge Mosman however engaged in a number of retaliatory acts outside the protection of immunity, including but not limited to unlawfully exercising jurisdiction over state court claims against state resident defendants and dismissed those claims with prejudice (recently reversed by the 9th Circuit), refused to recuse himself while conflicted on litigation involving his personal friend in Nancy Walker, failed to recuse himself on conflicts arising from his financial relationship with the PLF, failed and has thus far refused to disclose benefits received from the PLF and others in quid pro quo agreements, and on information and belief ordered a clerk to destroy the court's trial recordings in case 3:15-cv-2401, solicited state judicial actors to retaliate against the plaintiff and ordered the U.S. Marshals Service to harass and attack the Plaintiff and Plaintiff's extended family in retaliation for filing this action against the judicial defendants. **Comp ¶ 13**.

Kugler also has engaged in numerous acts of retaliation including but not limited to soliciting the abuse of a public office on multiple occasions, targeting and harassing plaintiff Rote in 2006, 2010, 2014, 2018 and 2019, the details of which are outlined in the complaint. **Ecf #61-11**, **Comp ¶ 12**.

Plaintiff alleges in relevant parts that the federal defendants conspired to aid and abet the abuses carried out by Walker, Steele, and the PLF Group. There is no

immunity for that and discovery should be permitted "A claim under this section must allege facts to support the allegation that defendants conspired together. A mere allegation of conspiracy without factual specificity is insufficient." *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 626 (9th Cir. 1988); see also Sanchez v. City of Santa Ana, 936 F.2d 1027, 1039 (9th Cir. 1991). For further discussion of proving conspiracy claims, see supra I.A.2.b.(5).

"Actions under § 1983 and those under Bivens are identical save for the replacement of a state actor under § 1983 by a federal actor under Bivens." *Van Strum v. Lawn*, 940 F.2d 406, 409 (9th Cir. 1991) (borrowing state personal-injury statute of limitations for Bivens action); see also *Hartman v. Moore, 547 U.S. 250, 254 n.2 (2006)*; *Alexander v. Perrill*, 916 F.2d 1392, 1396 (9th Cir. 1990) (stating that failure to perform a duty creates liability under both § 1983 and Bivens); F.E. *Trotter, Inc. v. Watkins*, 869 F.2d 1312, 1318 (9th Cir. 1989) (stating that immunities are analyzed the same under § 1983 and Bivens).

Although the recitation by the defendants invoked absolute immunity, the federal defendants did not dive into the relative functions of each federal defendant. "The 'official seeking absolute immunity bears the burden of showing that such immunity is justified for the function in question.'" Garmon, 828 F.3d at 843 (quoting Burns v. Reed, 500 U.S. 478, 486 (1991))

Plaintiff concedes the historical application of Bivens as to 4th and 8th Amendment violations, but does not concede conspiracy to delete the Court's trial recordings, suppress evidence to cover up the false publication of the transcript, the false publication of the transcript, the lack of jurisdiction in retaining and dismissing state tort claims, refusal to permit the Motion to Vacate the judgment in case 3:15-cv-2401 for Zweizig's admissions of perjury, interfering with Rote joining the Victims Advocate program in Clackamas County, all this a sample of what has been done to attack Plaintiff.

The admissions by Zweizig in his deposition of December 21, 2020 (**Ecf #72-2**), in the hearing of March 9, 2021 (**Ecf 72-6, pg 55, line 14**) repeat claims by Zweizig that Rote should be punished for being a rich person. It is the very same highly destructive claim he made during the 3:15-cv-2401 trial and it provides corroborating evidence that the federal defendants understood they were colluding to publish a false transcript in that 3:15-cv-2401 case. The fact that Zweizig then moved to suppress that deposition (**Ecf #72-5**) is tantamount to the suppression of the forensic reports he accomplished in the 3:15-cv-2401 and supports the Plaintiff's claims that the Court knew Zweizig was committing perjury during that trial and would commit perjury in further actions.

Plaintiff seeks a remedy for the defendant's collusion and for the many violations against Plaintiff's First and Fourteenth Amendment rights.

Plaintiff asserts that allegations in the complaint are sufficiently pled against the Federal Defendants to permit discovery on the First Amendment and § 1985 claims. That does not require Bivens be superimposed here. Plaintiff asks the Court to vacate and remand as appropriate to allow discovery on those claims.

B. THE COURT COMMITTED REVERSIBLE ERROR BY DISMISSING THE COMPLAINT WITH PREJUDICE WITHOUT FIRST OUTLINING THE WEAKNESSES OF THE PLAINTIFF'S PLEADING.

This Court most certainly knew there was not a commonality of defendants even if some relevant facts were common to both cases. Under those circumstances, the Court if wanting to narrow the complaint should have provided the plaintiff the opportunity to amend the complaint.

1. Standard of Review

Dismissal of a *pro se* complaint without leave to amend is proper only if it is clear that the deficiencies of the complaint could not be cured by amendment. See *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (per curiam); *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995); see also *Flowers*, 295 F.3d at 976 (noting that court is cautious in approving a district court's decision to deny pro se litigant leave to amend).

2. Pro Se Litigants Must Be Given the Right to Amend

Plaintiff argues only that while the Opinion and Order, Ecf #76, outlined very well the law and application of the various elements of the complaint,

Plaintiff argues that it did not rise to provide anything more than a blanket statement intimating that the facts are not sufficiently pled. Plaintiff argues that the Order was embracing a Motion for Summary Judgment Standard.

As the Ninth Circuit has explained when employing the same rule for *pro se* and in forma pauperis litigants, the rules in these circuits are not a formalistic requirement. These rules are substantive and intended to protect *pro se* litigants' rights: "The requirement that courts provide a pro se litigant with notice of the deficiencies in his or her complaint helps ensure that the pro se litigant can use the opportunity to amend effectively. Without the benefit of a statement of deficiencies, the pro se litigant will likely repeat previous errors." *Noll v. Carlson*, 809 F.2d 1446, 1448–49 (9th Cir. 1987) ("Amendments that are made without an understanding of underlying deficiencies are rarely sufficient to cure inadequate pleadings."), superseded on other grounds by statute as stated in *Lopez v. Sm*ith, 203 F.3d 1122 (9th Cir. 2000) (en banc); see also *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (explaining that, "before dismissing a pro se complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively").

Plaintiff presumes this Court could take action *sua sponte* to vacate Zweizig's judgment in case 3:15-cv-2401 or to order the USDCOR to hold a hearing on that Motion and to accept the filing after Mosman was forced to recuse.

Plaintiff moves the Court to vacate and remand if necessary for further guidance on factual allegation deficiencies.

C. THE COURT COMMITTED REVERSIBLE ERROR BY REFUSING TO DISQUALIFY THE JUDGES AND MAGISTRATES OF THE U.S. DISTRICT COURT OF OREGON

Plaintiff filed his Motion to Disqualify the Judges of the Portland Division based on the division's pronounced support of criminal behavior including the dissemination of child incest pornography, published enthusiasm for retaliating against the press, the suppression of evidence confirming criminal activity and by the many constitutional violations outlined in the fact section of this brief. One or more Judges in this Division ordering the destruction of trial digital recordings while that case is active, at the same time unilaterally squashing subpoena's for the court's and court reporter's tapes is an abuse the length and breadth of which is rarely seen outside the acts of U.S. Attorney's Office, as the FISA Court has so opined.

1. Standard of Review

The denial of a recusal motion is reviewed for an abuse of discretion. See *Glick v. Edwards*, 803 F.3d 505, 508 (9th Cir. 2015) (construing objections made

to magistrate judge's findings and recommendations as a motion for recusal, and reviewing for abuse of discretion.

2. The Portland Division Is Compromised

Plaintiff notes for the record that Judge Mosman did step down as Chief Judge of the U.S. District Court and the very capable Judge Hernandez has assumed those duties. Notwithstanding that Judge Mosman may have been the Judge who ordered digital recordings and tapes destroyed, Judge Hernandez is not free of historical stench of the constitutional violations and plaintiff does hereby by reference raise 28 U.S.C. § 455(a) and (b) (5) as Judge Hernandez is also a named defendant and further took unilateral action to quash a subpoena to third party Nancy Walker when no party had standing to object. The United States did object but did not have standing in case 3:15-cv-2401-HZ. The evidence is strong that the District has been compromised. Plaintiff's Motion to disqualify the Division is not broad and should not be ignored when Constitution violations permeate the Portland Divisions choice of tools to punish First Amendment speech critical of that same group of Judges or to deploy tactics that implicate substantive due process violations.

The court did hear the Motion to Disqualify in this case, but did refuse to disqualify the Judges of the Portland Division (**Ecf #75**). The destruction of the trial recordings by judicial actors and employees of the Portland division is

irrefutable (**Ecf #66-4**). Plaintiff is entitled to a fair trial by an independent triar and in an uncompromised Division. The United States does not oppose transfer to the Southern District of Washington.

CONCLUSION

Plaintiff sufficiently pled the necessary elements of his First Amendment, Fourteenth Amendment, ***42 U.S.C. § 1983 and 1985 Claims*** with specificity as to the documented actions of the defendants, the harm those actions caused, the harm those actions still cause and the violations that continue in this state that remain unabated and undeterred.

Plaintiff concedes in relevant parts the many of the actions ascribed herein to the defendants are subject to absolute immunity. Not all but many. Plaintiff asks this Court for enhanced findings on the application of immunity to the destruction of the court's trial recordings, the lack of standing and interference in favor of that cover up by the defendants and the DOJ and to provide Plaintiff with a remedy.

Plaintiff requests the dismissals be vacated and the case remanded with instruction, preferably to a Judge outside the Portland Division.

Plaintiff has a standing Motion to Disqualify Judge Richard Paez.

Date: August 5, 2022

/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 13,250 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: August 5, 2022

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

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2022 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: August 5, 2022

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