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Honorable Marco Hernandez

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

MAX ZWEIZIG, Plaintiff, vs. TIMOTHY C. ROTE, *et al.*, Defendants.	Case No.: 3:15-CV-2401-HZ DEFENDANT'S MOTION TO VACATE JUDGMENT FOR FRAUD UPON THE COURT ON NEW EVIDENCIARY ADMISSIONS BY PLAINTIFF DATED DECEMEBER 21, 2020

MOTION

Defendant respectfully offers his Motion to Vacate the Judgment and Dismiss the Plaintiff's the Judgment for Fraud upon the Court under FRCP 60 (d) (3), based in part on Plaintiff's deposition and admissions dated December 21, 2020 in Clackamas case 19cv01547 and other evidence including opposing counsel's website publications.

INTRODUCTION

Over the close to twenty years the Northwest Direct Group was in business those companies paid compensation on approximately 3,750,000 hours of labor. Zweizig was the only

person, out of approximately 7,000 former employees, who made an allegation of retaliation arising from or connected to his employment.

The average 10 person law firm has payroll hours of approximately 20,000 hours a year. It would take that law firm 185 years to match Rote's historical success in protecting his employee's rights.

Defendant asks the court to look at the historical abuses by the Zweizig team as relevant to those repeated in this case, especially because this body of evidence shows a pattern of perjury, destruction of evidence and the subornation of that perjury and spoliation.

FACTS

Defendant references his prior Motion to Vacate for Fraud Upon the Court as laying the ground work for the pervasive perjury by Zweizig suborned by opposing counsel and offers herein new evidence of the plaintiff's collusion with counsel to perpetrate Fraud Upon The Court. That fraud is perjury, the subornation of that perjury by opposing counsel and the history of these behaviors which Zweizig celebrates in his deposition of December 21, 2020.

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

A. The Body of New Evidence

(1) Zweizig's Deposition Transcript of December 21, 2020.

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

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

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

1. The emotion distress Zweizig claimed from the publication of the blog he is again asserting because he was deposed on the 19cv01547 case, a case he brought (**Exhibit 1, page 4**);

2. Refuses to acknowledge the only two documents his attorneys claimed to have used to justify the 19cv01547 litigation (**pages 6-8**);

3. Disagrees with the opinion and order of this court in 3:14-cv-0406 (**page 9**);

4. Acknowledges that Ward Greene resigned from representing him in case 19cv01547 upon Rote asking Greene to measure the impact to child molestation if Greene was successful in securing money for Zweizig (**page 10 and Exhibit 4**);

5. Acknowledges that he got away with a $1 Million jury award instead of $150,000 because defendant Rote was not good at defending himself, which defendant argues is a reference to the suppressed forensic reports showing child porn (**page 10**);

6. Does not deny that he downloaded child porn and lied to the jury (**page 10**);

7. Is aware that Williams Kastner placed an unlawful lien on property owned by Tanya Rote (**page 11**);

8. Refused to acknowledge that the *lis pendens* placed on the Sunriver property owned by Tanya Rote caused the sale of the property to fail three days before closing (**page 13**);

9. Refused to acknowledge that Joel Christiansen owns half the judgment and played a role in filing the unlawful *lis pendens* (**page 14**);

10. Acknowledges receiving and refusing an offer of alternative property of superior value exceeding his judgment to avoid harassing Tanya Rote in that action (**page 16**);

11. Refuses to acknowledge documents filed two years earlier in the case showing Tanya Rote's interest in the property dating back to 2012 (**pages 17-21**);

12. Claims he is in danger for attending the deposition in New Jersey (**pages 22-23**);

13. Refuses to acknowledge or provide documents in discovery, documents referenced to him by former counsel (**pages 26-29**);

14. Admits he did not file a malpractice claim against Linda Marshall arising from Clackamas case 19cv14552 (**page 33**);

15. Refuses to disclose why then the Oregon State Bar PLF represented him in Clackamas case 19cv14552 (**page 33-34**); and

16. Generally provided knowingly evasive answers to simple question such as acknowledging his former attorneys Joel Christiansen and Nena Cook.

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

(2) Joel Christiansen's Website

Exhibit 2 is a page from Joel Christiansen's website identifying his success in this case. Plaintiff counsel Joel Christiansen has publicly celebrated his success is this case, publishing about this case in his online bio. Historically the text of that bio claimed that he successfully argued that defendant had published 96,000 derogatory words about Zweizig, with a link to an Oregon Live publication of the jury award story. He has not changed his language on his web page to not make such assertions, leaving it the Oregonian to do so. That publication notes that

“Christiansen argued that Rote's harassing 96,000 words in multiple derogatory articles were a form of retaliation for Zweizig's whistleblower suit. By now the court knows that only 1,000 of the 96,000 words written in the blog by the time of trial were about Zweizig’s conduct and perjury in the arbitration and that Zweizig was offered anonymity and redaction. Almost all of the content of the blog addressed the failures of the litigation process itself and the subornation of perjury by opposing counsel, including Christiansen.

Joel Christiansen has been asked to denounce child molestation and trafficking and he has refused to do so.

(3) Shenoa Payne’s Website

Exhibit 3 references the Zweizig case on Payne’s website, specifically concluding that Zweizig prevailed on an appeal on this court decision refusing to compel arbitration because Rote was not a party to the arbitration contract between employer NDT and Zweizig.

As will be more fully addressed in the argument section, both **Exhibit 2 and 3** are publications akin to Rote’s blog that would draw the same if not greater attention to Zweizig’s past criminal conduct in the context of his employment by any future employer. Payne has been asked to denounce child molestation and trafficking and she has refused to do so.

(4) Defendant’s Email to Ward Greene

Exhibit 4 is one of several emails defendant sent to former Zweizig counsel Ward Greene. The new evidence includes an admission by Zweizig that former counsel Williams Kastner quit representation over not wanting to be associated with Zweizig’s present and past activity of distributing child pornography. As has been done with all attorneys who represent Zweizig, defendant Rote asks a pertinent question, which is if “you as counsel are successful in garnering property for Zweizig, how many more children will be molested.” In all cases, the

forensic reports filed in this case were provided to opposing counsel. A growing number of attorneys have refused to represent Zweizig, acknowledging the likely outcome of increases molestation and production of child pornography.

(5) The Motion To Stop Holding Opposing Counsel Responsible

Exhibit 5 is a Motion filed by Ward Greene asking the court to try to force defendant Rote to stop raising these child trafficking issues as Greene was having trouble staffing the litigation. Defendant filed an anti-SLAPP to strike that Motion. Greene resigned and that Motion has been withdrawn.

(6) The Crow Declaration

Although defendant is in possession of a declaration by former arbitrator William B. Crow, therein admitting that he made several mistakes in his decisions during the arbitration and was solicited to find in Zweizig's favor by several nonparties, defendant Rote is reticent to publish the declaration until more of the allegations have been vetted. That declaration specifically identifies that the filing of the Jones and Kugler transcripts filed in the arbitration were in Crow's opinion a part of an ongoing scheme by Zweizig, Ware and Marshall to compromise his fair adjudication. He acknowledged he succumbed to the pressure to find in Zweizig's favor and identified who pressured him.

B. The Body of Corroborating Evidence

(1) The Delaware Registration of Superior Results, Inc.

Exhibit 6 is a Delaware registration showing former NDT CEO Paul Bower and Max Zweizig organized a company called Superior Results, Inc. to compete with Zweizig employer NDT. Defendant has long maintained that Zweizig hi-jacked the employee protection statutes in pursuit of an award that would allow him to set up a competing company with NDT. The

company was organized on September 16, 2001, just one month after Zweizig was hired by NDT. Zweizig's contract of employment with NDT is in the record (Doc #116-1) Bower recruited Zweizig. The registration document shows Zweizig as a 49% owner. This evidence is un-refuted. The plot was not discovered until October 2002. Rote then confronted Bower and Zweizig, took control of Superior and Paul Bower was removed as president. Zweizig was given a second chance. This evidence is offered as the beginning of Zweizig's long history of attacks against his employer and Rote.

(2) The Summary Judgment Motion of 2009

Exhibit 7 is a Motion for Summary Judgment in the arbitration dated June 4, 2009. After more than three years into the arbitration, which was moving along at a snail's pace, NDT filed a Motion for Summary Judgment providing its proof that Zweizig was terminated by letter and email on October 2, 2003, three weeks before the date Zweizig claimed he was terminated for filing a complaint on October 25, 2003. The forensic experts of Steve Williams and Mark Cox provided declarations that the email was on Tim Rote's computer, preserved and sent to Zweizig on October 2, 2003.

Zweizig's computer forensic expert Justin Mcann did not refute the October 2nd date of the email. The receipt of the email by Zweizig could not be corroborated because Zweizig did not turn over a hard drive or email digital file of his emails from May 2003 through November 13, 2003. The active 60 gig hard drive used by Zweizig had no email traffic from Zweizig from May 12, 2003 to the time it was returned to NDT (November 13, 2003). **See Exhibit 14**. The reformatted 120 gig hard drive Zweizig turned over on his last day only contained email traffic from before May 8, 2003.

Exhibit 7 also contains a declaration from John Weil which documents his conversation with James Egan.

During his final days with NDT Zweizig falsely alleged that he had been terminated for raising a claim that NDT had been over-billing clients by reference to an excel spreadsheet he claimed to have received via an email. Zweizig's email notice of concern about over-billing was sent to Rote on October 25, 2003, with his attached spreadsheet. The email he referenced as having been the source of the spreadsheet was never turned over by Zweizig and remained uncorroborated through the pendency of the arbitration. Rote and NDT refuted that there had been any over-billing. Zweizig's single piece of evidence showed $400 of hourly adjustments in a month NDT billed $400,000. No clients were identified on the excel spreadsheet.

(3) The Forensic Reports

Exhibit 8 (#120-18) was the first forensic report. In 2005, the first of many forensic reports was issued forensic experts showing Zweizig fabricated the crash of the 120 gig hard drive and reformatted it on November 12, 2003, just before returning it to NDT.

Exhibit 9 (#120-17) addressed whether the 120 gig hard drive was used by Zweizig after Zweizig claimed he had reformatted it, for any known purpose, expert Cox concluding that it was used to store videos up until November 12, 2003 when Zweizig reformatted that hard drive.

Exhibit 10 (#116-5) addressed again whether the 120 gig hard drove was used by Zweizig during a period of time in which Zweizig claimed the hard drive had been reformatted and placed in his safe. Expert Cox opined that the hard drive was in continuous use through November 12, 2003 by Zweizig and that the hard drive had not been used or accessed after that time. By May of 2003, Zweizig had refused to provide the programming and processing software generated by him during his employment, property that was owned by his employer NDT. On a

visit to see Zweizig in New Jersey, Zweizig was making a presentation to Rote and feigned the crash of the 120 gig hard drive, a computer hard drive used exclusively by Zweizig from August 2001 to November 2003. Zweizig testified that the 120 gig hard drive had crashed and he reformatted it immediately thereafter. This and other forensic reports refute Zweizig's testimony.

Exhibit 11 (Doc #120-2) is a report from expert Cox opining that the Foxpro program files deleted by Zweizig when he reformatted the hard drive on November 12, 2003 could not be recovered. This report also corroborates the existence of programs Zweizig claimed did not exist.

Exhibit 14 is a forensic report from Mark Cox opining that Zweizig did not maintain a digital email file on the active 60 gig hard drive Zweizig used from May 12, 2003 through November 13, 2003.

(4) Other Evidence

Exhibit 12 is the Jones and Kugler documents filed in this case by Christiansen to influence the outcome of this case. The Jones transcript (#41-4) was first filed with plaintiff's anti-Slapp Motion; it was first downloaded by Sandra Ware when she worked for the Blumberg and Lindner firm, downloaded on February 2, 2004 as the header in that document so indicates. The Kugler show cause (#41-5) was also first filed in this case with the plaintiff's anti-Slapp. The interpreted intent of the admission of this evidence was move the court to suppress the forensic reports, paving the way for Zweizig to lie to the jury about his child porn, computer fraud and cybercrime activities. Crow openly admitted that these same two documents influenced his decisions in the arbitration.

Exhibit 13 is testimony from Jaime Gedye that he could find no programming files created by Zweizig or anyone else, on the Eugene servers, when he traveled to the Eugene location of NDT. Gedye had to recreate the programming and during that time NDT was shut

down. Zweizig's behavior and performance deteriorated after the May 2003 feigned crash of the 120 gig hard drive, to the point that he was more than five months late in completing processing and returning data files to key clients. That came to an apex when Zweizig's failures were brought to Rote's attention. Zweizig refused to complete the processing unless given a raise. He was rebuffed in that raise, completed the processing and was immediately terminated on October 2, 2003 but with 45 days of notice, Rote wanting to secure the processing programs. Zweizig did not provide the programming and NDT shutdown for 10 days right after Zweizig's last day. Ultimately the programming files were found on the 120 gig hard drive by the forensic experts.

LEGAL STANDARD

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

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

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

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

The court may take action with Motion of a party.

ARGUMENT

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

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

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

Defendant further argues that Christiansen (counsel) and Ware (NJ Counsel) suborned that perjury. That subornation is a necessary element of this Motion. This subornation forms around an attorney of record (1) concluding that the forensic reports of Zweizig's child porn activity, and other criminal conduct, are accurate and (2) concealing or suppressing that evidence, which aided and abetted Zweizig's perjury about that evidence. Had Zweizig not lied about his child porn activity, this Motion would not likely be viable. Had the forensic reports not been suppressed, this action would not likely be viable. When combined with Christiansen's closing arguments misrepresenting almost all of the blog and other evidence, the record of suborning Zweizig's perjury is abundantly clear and convincing.

Exhibit 1 provides clear and convincing evidence that Zweizig no longer denies that he lied to the jury about his child porn and that a number of attorneys also believe the forensic evidence in the record in this case and more specifically that Zweizig is a child predator. Williams Kastner in fact intimated on the record of having difficulty finding staff who wanted to work on the Zweizig account (**Exhibit 5**).

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

A. The Framework of Analysis

In *Kupferman v. Consolidated Research & Manufacturing Corp,* 459 F.2d 1072 (1972) the court stated that [w]hile an attorney "should represent his client with singular loyalty that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary his

loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court." And when he departs from that standard in the conduct of a case he perpetrates a fraud upon the court. In other words, "[s]ince attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court."

"Almost all of the principles that govern a claim of fraud on the court are derivable from the Hazel-Atlas case." 11 Wright & Miller, Federal Practice and Procedure §2870 (3d ed.). In that case, Hazel-Atlas—alleging fraud on the court—commenced an action in 1941 to set aside a 1932 judgment for infringing Hartford's patent for a glass-making machine. *Hazel-Atlas,* 322 U.S. at 239. In support of Hartford's application for that patent, "certain officials and attorneys of Hartford determined to have published in a trade journal an article signed by an ostensibly disinterested expert" (William Clarke), championing Hartford's machine as "a remarkable advance in the art of fashioning glass." Id. Hartford received the patent in 1928 and sued Hazel-Atlas for infringement. *Id*. at 240-41.

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

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

This Court reversed. The Court acknowledged that "[f]ederal courts … long ago established the general rule that they would not alter or set aside their judgments." *Id*. at 244. But "[f]rom the beginning there has existed … a rule of equity to the effect that under certain circumstances, one of which is after-discovered fraud, relief will be granted against judgments regardless of the term of their entry." *Id*. This rule "was firmly established in English practice … to fulfill a universally recognized need for correcting injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the term rule." *Id*.

Applying these principles, the Court concluded that the judgment against Hazel-Atlas could not stand, as the record offered troubling evidence of a "planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Appeals." *Id*. at 245. That "Hazel did not exercise the 24 highest degree of diligence" in bringing the fraud to the court's attention made no difference, for Hartford inflicted injury not just against a "single litigant" but rather committed a "wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." *Id*. at 246; cf. id. at 264 (Roberts, J., dissenting) (noting that "Hazel's counsel knew the facts with regard to the Clarke article and knew the names of witnesses who could prove those facts" even before the settlement, but "[a]fter due deliberation, it was decided not to offer proof

on the subject"). At bottom, the Court reasoned, "it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants." 322 U.S. at 246; see also *United States v. Beggerly*, 524 U.S. 38, 47 (1998) (citing Hazel-Atlas and concluding courts must intervene "to prevent a grave miscarriage of justice").

B. The Evidence

(1) Confession of Emotional Distress Directed to Litigation

In **Exhibit 1 page 4** Zweizig again references the emotional distress and trauma he feels being forced to engage in a deposition on a case he brought against defendant Rote and Tanya Rote. He specifically references the "torture" he and his family have suffered while refusing to concede that he has brought almost all of the litigation and that his acts of litigation are no less torturous to the Rote's. During his testimony before the jury Zweizig specifically implicated this very trauma and emotional distress arising from litigation as being tantamount to the exposure brought by the blog. His testimony now confirms, as did Christiansen's closing arguments, that the argument for emotional distress is directed to litigation.

Zweizig's testimony on Exhibit 1, page 4 notes:

18 internet is not very fair to me being -- sitting in this

19 position under this kind of pressure from you, answering

20 questions from you, especially directly from you. So I

21 want to make sure that was on the record.

So Zweizig sues Tanya Rote to try to garner a piece of a Sunriver property she has owned since 2012 and a rental property she owned since 2003, without regard to the evidence or the disruption to Tanya Rote's life.

Zweizig's testimony on Exhibit 1, page 9 further notes:

15 ……Only because of your

16 actions did you not walk away from this whole thing. That

17 was really stupid, sir.

Zweizig still seems to not understand or appreciate that it cost NDT and defendant more than $450,000 to defend against these allegations since 2002, on top of the loss of revenue of over $1 Million based on a claim that NDT over-billed clients $400….in a year NDT billed $5 Million.

(2) Confession of Perjury

Exhibit 1, page 10 Zweizig pronounced:

7 ……You have successfully

8 denied me my right to counsel by asking one of my

9 attorneys, Given your age how many children --

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

11 to --

12 A. -- how many children have you raped. Okay.

13 You asked my attorney how many children he has raped, sir.

What is telling about Zweizig acknowledging the loss of Williams Kastner, is that ***Zweizig does not now refute that he downloads and disseminats child porn***. Zweizig has been given an opportunity to correct the deposition and has not done so. Kastner did not in fact file an answering brief on behalf of Zweizig in the appeal of Clackamas County case 19cv01547 on counterclaims raised by the Rote's for Zweizig filing a knowingly unlawful *lis pendens* on a property owned by Tanya Rote. Kastner has never argued that the forensic evidence falsely accuses Zweizig of downloading child porn or of engaging in perjury during the trial in this case.

All of Zweizig's attorneys are asked a key question, "whether as a civil litigation attorney he or she is comfortable pursuing and collecting a judgment that will likely be used by Zweizig to expand his child pornography business. Payne and Christiansen confirmed that they are comfortable with it. Taryn Basauri and Ward Greene finally decided they are not. That question is not asked without presenting the forensic evidence, such as **Exhibit 8**, which has been reproduced in this case. **Exhibit 4** is one of several emails finally asking Greene how many children he has raped. According to Zweizig Exhibit 1, Greene quit the case three months after this. Greene contributed, aided and abetted Zweizig by filing a lawsuit on knowingly false assumption for leverage purposes in Clackamas case 19cv01547. Upon receiving evidence that defeated his false narrative, Greene nonetheless persisted in his pursuit. At that point, his commitment to Zweizig was not just about the law, but rather it raised questions about his commitment to the pedophile lifestyle.

Exhibit 5 is a Motion Greene filed asking the court to in essence force defendant to stop asking the aforementioned questions to opposing counsel and staff and too stop publishing public critiques of counsel. This Motion is just about his law firm and employees, it is not a denial that Zweizig is engaged in the child porn business. Note specifically Greene does not defend Zweizig. Defendant still publishes the same evidence offered in 2015 and it's important to do so. Greene dropped the Motion and chose to resign, according to Zweizig's testimony in **Exhibit 1**.

(3) Christiansen and Payne Website Publications

Attorneys representing Zweizig do not have an exclusive first amendment right to publish support or critiques of prior litigation involving Zweizig.

Both Christiansen and Payne celebrate their respective wins in this case and the appeal. Both published their wins on their respective websites and in both cases provided enough

information that Zweizig's criminal past, including his child porn, cybercrime and computer fraud would be discovered by prospective employers.

The truth is by publishing their wins on their respective websites, these two attorneys have confirmed that the blog written by defendant Rote could not at any time have caused Zweizig any damages separate from the public presence he caused by initiating the many lawsuits against defendant and his family. That presence has never been actionable, not by Zweizig and not by defendant. Yet the record he sat before the jury is that this presence was caused by the blog. Defendant encourages the court to do an internet search. Almost all of the search results are on the case itself.

If Zweizig own attorneys will not restrain themselves on bringing attention to Zweizig's activity, how is it even actionable when the defendant offered plaintiff both anonymity and redaction? That question was raised during the trial, but the evidence of counsel's publication is of course after the verdict and is offered as new evidence.

(4) The Scheme is Long and Sorted

Defendant has long maintained that Zweizig hi-jacked the employee protection statutes in pursuit of an award that would allow him to set up a competing company. **Exhibit 6** is a Delaware registration showing former NDT CEO Paul Bower and Max Zweizig organized a company called Superior Results, Inc. to compete with NDT. The company was organized on September 16, 2001, one month after Zweizig was hired by NDT. The registration document shows Zweizig as a 49% owner. This evidence is un-refuted. The plot was not discovered until October 2002, more than a year later. Rote then confronted Bower and Zweizig, took control of Superior and Paul Bower was removed as president. Zweizig was given a second chance.

Exhibit 7 is an example of the evidence ignored by Crow. That body of evidence is a Motion, Memorandum and four Declarations in support seeking to dismiss Zweizig's wrongful termination claims because the forensic evidence showed Zweizig was terminated by email three weeks before he filed the complaint to Rote of NDT over-billing by $400. Zweizig alleged that he did not receive an email terminating him. Rote and two forensic experts opined that the email sent was preserved on the same computer from which it was sent and in its native digital form. By contrast Zweizig did not retain or produce his digital file on emails sent and received by him for the final six months of his employment which included the period when he was terminated.

While Zweizig maintained his emails were on his active 60 gig hard drive, three forensic experts opined that no such post May 12, 2003 digital email file existed for that same six-month period (May to November 2003) on any hard drive Zweizig returned to employer NDT. Mark Cox reported this, which is provided as **Exhibit 14**. Part of Zweizig's scheme was to claim he was not given notice on October 2, 2003 by denying he received the email, which required he maintain his email account on a hard drive he did not turn over. This is part of a long term scheme by Zweizig, a scheme supported by Sandra Ware (NJ Attorney).

More than 150 people were laid off in November 2003 when NDT shut down in order to recreate the software Zweizig destroyed on the 120 gig hard drive. Jaime Gedye was hired to regenerate the software programs and testified that the Zweizig programs could not be found. See **Exhibit 13**.

(5) The Forensic Proof

What remains is the core reason for the blog, that evidence was summarily ignored by Crow at the request of judicial actors with Zweizig's full knowledge and consent of that interference.

Defendant published the summary of perjury by Zweizig. **See 120-16**. That evidence is not refuted. What's new is that Zweizig no longer refutes that he downloads and disseminates child porn and that at least one of his attorney's resigned from representing him over reaching the same conclusion and not wanting to be associated with it. While Zweizig may claim that defendant Rote "…successfully denied me my right to counsel by asking one of my attorneys, Given your age how many children have you raped…", by reference to the forensic reports, this is not a denial by Zweizig that he downloaded and disseminated child porn using a peer to peer program registered to him.

Exhibit 8 shows that Zweizig used his business computer and the 120 gig hard drive to maintain personal files, including porn, child porn, movies, music, identity records (that should not have been there) and programming he denied existed. Withholding and destroying the programming caused the shutdown. This evidence was ignored by the arbitrator at the request of judicial actors. This same evidence was suppressed in this by the plaintiff's Motion in Limine. That act of suppression suborned Zweizig's perjury in this case.

Exhibit 9 shows that the 120 gig hard drive did not crash as Zweizig alleged and was used by him post May 8, 2003 to store videos. This evidence was ignored by the arbitrator at the request of judicial actors, the evidence suppressed in this case by the plaintiff's Motion in Limine. That act of suppression suborned Zweizig's perjury in this case.

Exhibit 10 shows that the 120 gig hard drive was reformatted on November 12, 2003, not in May 2003 as Zweizig alleged. This evidence was ignored by the arbitrator at the request of

judicial actors, the evidence suppressed in this case by the plaintiff's Motion in Limine. That act of suppression suborned Zweizig's perjury in this case.

Exhibit 11 shows that the programming found on the 120 gig hard drive could not be recovered safely after Zweizig's reformatting of the hard drive. This evidence was ignored by the arbitrator at the request of judicial actors and the evidence was suppressed in this case by the plaintiff's Motion in Limine. That act of suppression suborned Zweizig's perjury in this case.

Exhibit 14 shows that Zweizig did not maintain his email on the active 60 gig hard drive he returned on his last day, November 13, 2003. This evidence was ignored by the arbitrator at the request of judicial actors and the evidence was suppressed in this case by the plaintiff's Motion in Limine. That act of suppression suborned Zweizig's perjury in this case.

(6) The Jones and Kugler Transcripts

Doc #41-4 (Jones) and #41-5 (Kugler) were filed by Christiansen in this case several times, the first with the anti-SLAPP, and is tantamount to a scheme directed at the court. The publishing of the irrelevant documents is part of the scheme or plan to compromise the court. There is no other reason to file these documents. These documents were directed to the court to garner favor that would yield suppression of evidence and the quashing of subpoenas.

C. The Application of Hazel-Atlas In This Case

(1) The Offending Party and His Duty

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

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

(2) The Conduct

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

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

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

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

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

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

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

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

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

The scheme started one month after Zweizig was hired by NDT, in August 2002. That showing of evidence is **Exhibit 6**. The numerous lawsuits filed by Zweizig includes a repeating

and “unconscionable plan or scheme” to destroy evidence, engage in perjury, suborn perjury and to threaten a member of the judiciary in an attempt to improperly influence the court’s decision.

The Crow declaration acquired after the judgment in this case sheds new light on the unspoken influence Zweizig, Ware and Marshall had on the arbitrator and the influence attempted against this court. Arbitrator Crow was clearly influenced by the Jones and Kugler transcripts. Defendant addresses the content of that declaration.

Christiansen and the Oregon State Bar PLF also filed the Kugler and Jones transcripts in three Clackamas County cases. Obviously there is a long history of these filings having the intended effect of influencing the court in way the compromises justice. These same two documents prejudicing the defendant’s right of due process have been filed some ten times in five actions in three different states. And with the filing of these documents it is plausible to conclude that multiple Judges in multiple jurisdictions were read in to aid and abet Zweizig in his and Sandra Ware’s attempt to cover up the effort to extort a judicial actor.

As most schemes do, the Zweizig-Christiansen scheme in this case unravels when Zweizig boldly claims that he was denied representation because Ward Greene did not want to be associated with Zweizig child porn history. Although that was an admission set up by an email defendant Rote sent to Williams Kastner (**Exhibit 4**), the Motion to restrict statements to attorneys with copies of **Exhibit 8** (**Exhibit 5**) showing the child porn, is an admission of common knowledge that all the attorneys representing Zweizig possess--that Zweizig admitted to the porn and other criminal acts outlined in **Exhibit 8**. And if he admitted to the porn, he committed perjury to the jury in this case when he denied it. Christiansen would only suborn that perjury if it was not going to backfire. He did as described take steps to suborn perjury and until now it has not backfired.

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

(3) The Victim

Defendant is not the only victim. While Defendant has previously argued that plaintiff's testimony was replete with lies and therefore perjury, that Christiansen suborned that perjury directly in the suppression of evidence and indirectly in his closing arguments, this is the first time Zweizig has bragged about it on the record.

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

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

The plaintiff's Motion in Limine intentionally misled the court into believing that the interpretation of the forensic reports had already been adjudicated in the arbitration in in favor of Zweizig. There was nothing further from the truth as the Arbitrator's Opinion and Order (which was on the record) showed. The arbitrator did not refute that Zweizig downloaded and

disseminated child porn or destroyed programming owned by NDT causing a shut down. The suppression of that forensic evidence not only vitiated the defendant's defense, but its absence was likely critical in the plaintiff's case because they alleged defendants allegations in the blog by reference to those forensic reports were not truthful.

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

Because of the equitable and flexible nature of the rule, this defendant contends that courts have ample leeway and discretion to consider the victim's status—i.e., those parties unable to recognize or combat the fraudulent activity—in determining whether to set aside a judgment for fraud on the court.

Defendant will also contend that if Ward Greene believed that the forensic reports showed definitively that Zweizig had been engaged in multiple criminal acts, that both Christiansen and Sandra Ware believed the same and designed their discovery actions and Motion in Limine to exploit the defendant and deceive the court. This attack is not just an attack on the defendant but on the litigation process itself.

Plaintiff should have provided in discovery specific blog posts and the forensic reports referenced he claimed were dishonest, as in a challenge to the report itself. A number of these forensic reports were in fact already on the record in the federal confirmation of the arbitration award in 2011. Because discovery was not provided, plaintiff took a position even challenging the existence of the forensic reports, which implicates an attack directed to the litigation process itself.

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

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

(4) Remedy

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

Some courts have premised dismissal or default of a litigant who committed fraud on the court entirely on Rule 11. *Combs v. Rockwell Int'l Corp*., 927 F.2d 486, 488 (9th Cir. 1991).Other courts have relied on Rule 41(b) for authority to dismiss a plaintiff who has

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

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

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

CONCLUSION

Based on the above facts and arguments, defendant asks the court to vacate the judgment.

Dated: January 28, 2021

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

Certificate of Service

I hereby certify that on January 28, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Joel Christiansen

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

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