

No. 19-35847

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

TIMOTHY C. ROTE,

Plaintiff-Appellant,

v.

LINDA L. MARSHALL; et al.,

Defendants-Appellees

On Appeal from the United States District Court
for the District of Oregon, Portland
No. 3:19-cv-00082-MO
Hon. Michael W. Mosman

**CAROL J. BERNICK, PROFESSIONAL LIABILITY FUND, AND
PAMELA J. STENDAHL'S RESPONSE IN OPPOSITION TO
APPELLANT'S MOTION TO SUPPLEMENT THE RECORD**

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Defendants-Appellees Carol J. Bernick, Professional Liability Fund, and Pamela J. Stendahl (“PLF Defendants”) oppose Plaintiff-Appellant’s Motion to Supplement the Record (Doc #35), which seeks to supplement the appellate record with a deposition transcript of a non-party recently taken in an unrelated state court action. The deposition was not part of, nor considered by, the district court below.

Federal Rule of Appellate Procedure 10 defines the record on appeal as consisting solely of documents filed in the district court, the transcript of proceedings, and the docket. Fed. R. App. Proc. 10(a). This Court ordinarily does not allow supplementation of the record on appeal with materials not considered by the district court, and plaintiff does not provide any reason to depart from that rule. *Daly-Murphy v. Winston*, 837 F.2d 348, 351 (9th Cir. 1987) (citing cases holding same).

In addition to not being part of the record below, the proffered transcript is an irrelevant deposition of a non-party who is not an agent or representative of the PLF Defendants or any other party in this action. No doubt plaintiff believes there are inferences supporting his conspiracy theories that can be drawn from this proffered submission. Lest plaintiff suggest that defendants and the court are taking advantage of a *pro se* litigant by invoking procedural “technicalities,” the PLF Defendants invite the court to assess the substance of plaintiff’s assertions by

reviewing the proffered transcript, so that its decision on plaintiff's motion can be based upon both its procedural as well as substantive infirmities.

For the reasons set forth above, the motion should be denied.

DATED this 12th day of January, 2021.

FOSTER GARVEY P.C.

s/ Joseph Arellano

Joseph Arellano, OSB #801518

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