APPENDIX TABLE OF CONTENTS

JOAN CAROL LIPIN V. WISEHART SPRINGS INN, INC., ET AL., USCA10 No. 20-1007 ("*LIPIN II*")

OPINIONS AND ORDERS

REHEARING ORDER

APPENDIX TABLE OF CONTENTS (Cont.)

ORDER DOCUMENTS

JOAN C. LIPIN V. ARTHUR DODSON WISEHART, ET AL., USCA10 No. 18-1060 & 18-1176 ("*LIPIN I*"):

OPINIONS AND ORDERS

APPENDIX TABLE OF CONTENTS (Cont.)

REHEARING ORDER

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, ORDER AND JUDGMENT FILED (UNPUBLISHED) DATED (JANUARY 15, 2021)

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JOAN CAROL LIPIN,

Plaintiff-Appellant,

v.

WISEHART SPRINGS INN, INC.; ARTHUR D. WISEHART, IN HIS INDIVIDUAL CAPACITY AND IN HIS CAPACITY AS PRESIDENT AND "ALTER-EGO" OF WISEHART SPRINGS INN, INC.; MARK APELMAN; DEBBIE GRIFFITH, IN HER OFFICIAL CAPACITY AS DELTA COUNTY ASSESSOR; REBECCA W. GEYER; ELLENE. WISEHART; RICHARD HUNTER KREYCIK; ERIN M. JAMESON,

Defendants-Appellees.

No. 20-1007

(D.C. No. 1:19-CV-00935-RBJ)
(D. Colo.)

Before: LUCERO, HOLMES, and EID,
Circuit Judges.

Plaintiff Joan C. Lipin appeals the dismissal, pursuant to Fed. R. Civ. P. 12(b)(6), of her claims arising out of a dispute over property in Paonia, Colorado (the "Property"). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the judgment of the district court. Further, we conclude the appeal is frivolous. Accordingly, we invite Defendants to move for an award of sanctions pursuant to Fed. R. App. P, 38, and we direct Lipin to respond by the designated deadline. We also *sua sponte* impose filing restrictions on Lipin, subject to any objection she files within twenty days from the date of this decision.

BACKGROUND

This action is one of several brought by Lipin arising out of a dispute concerning ownership of the Property. She has pursued this matter in federal and state court, in this jurisdiction and others. The majority of the underlying facts surrounding the dispute are set forth in *Lipin v. Wisehart,* 760 F. App'x 626, 629-32 (10th Cir. 2019) ("*Lipin I*") (per curiam), and we need not restate them here. In *Lipin I,* this court affirmed the district court's grant of summary judgment against Lipin. The undisputed material facts established that the Property was owned by the Dorothy R. Wisehart Trust, Arthur McKee Wisehart ("AMW") and Arthur Dodson Wisehart ("ADW") were co-trustees of the Trust, documents purporting to convey the Property to AMW himself and/or to Lipin were invalid, and Lipin had no ownership interest in the Property whatsoever. We rejected Lipin's challenges to the district court's conclusions and found her appeal to be frivolous, ultimately assessing sanctions in the amount of $15,000 pursuant to Fed. R. App. P. 38 and

imposing filing restrictions until Lipin paid the sanctions.

Approximately two-and-a-half months after we decided *Lipin I,* Lipin filed this action, once again asserting she was the true owner of the Property and seeking declaratory relief to that effect. She again sought ejectment of Defendants and compensatory damages. In this suit, she added claims for violations of the Racketeer Influenced and Corrupt Organizations Act, claims for violations of her civil rights under 42 U.S.C. § 1983, and assorted allegations of fraud, conspiracy, and civil theft. She named all of the defendants from the first action as well as Mark Apelman, the Wiseharts' attorney; Debbie Griffith, the Delta County assessor; and Ellen Geyer, an Indiana attorney who served as an expert witness for the defendants in *Lipin I.*

Lipin's history of litigation misconduct is well documented. Indeed, multiple courts have surveyed and documented cases throughout the country in which she has been sanctioned for her behavior, including the filing of frivolous suits. *See, e.g., Lipin v. Hunt,* 573 F. Supp. 2d 836, 842-43 (S.D.N.Y. 2008) (discussing six prior cases in which Lipin was sanctioned for litigation misconduct); *Lipin v. Hunt,* No. 14-cv-1081-(RJS), 2015 WL 1344406, at *1 & n.1 (S.D.N.Y. Mar. 20, 2015) (collecting twelve such cases). The District Court for the Southern District of New York has stated: "[Lipin's] *modus operandi* is clear: she litigates variations of the same meritless claims against an ever-growing group of defendants over and over. Once [Lipin] receives the inevitably unfavorable decision, she simply brings the lawsuit again, adding lawyers, judges, and court clerks as defendants." *Lipin v. Hunt,*

2015 WL 1344406, at *11. The district court in this case found that this "is precisely what she has done here." R. Vol. 2 at 33. The court therefore dismissed Lipin's amended complaint under Rule I 2(b)(6) and imposed filing restrictions barring her from bringing any further *pro se* lawsuits in the District of Colorado, in her name or anyone else's name, "which raise[] her claim of ownership of the Paonia property" or related claims without first obtaining judicial leave. *Id.* at 39.

We consider the legal issues raised on appeal and take measures to redress Lipin's repeated abuse of the litigation process.

DISCUSSION

Initially, we note that large portions of Lipin's briefs are devoted to irrelevant, conclusory, and incomprehensible argument. Fed. R. App. P. 28(a)(8)(A) requires that an appellate brief include "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies." Arguments that consist of "mere conclusory allegations with no citations to the record or any legal authority for support" do not meet this requirement and may be deemed waived. *Garrett v. Selby Connor Maddux & Janer,* 425 F.3d 836, 841 (10th Cir. 2005).[1] With these precepts established, we turn to the three issues Lipin raises on appeal.

---

[1] This is not the first time this court has found deficiencies in Lipin's written submissions to this court. Her briefing in *Lipin I* was replete with similar problems. *See Lipin v. Wisehart,* 760 F. App'x at 633. Further, our resolution of the issues in this appeal does not depend on our construction of Lipin's pleadings: even if we construed her arguments more generously, we would readily conclude they were meritless.

1. Issue Preclusion

Lipin first argues the district court misapplied the doctrines of claim and issue preclusion in its order dismissing her case and imposing filing restrictions. We agree with the district court that issue preclusion applies here, so we need not consider the applicability of claim preclusion (res judicata).

Collateral estoppel, also referred to as issue preclusion, "bars a party from relitigating an issue once it has suffered an adverse determination on the issue, even if the issue arises when the party is pursuing or defending against a different claim." *Park Lake Res. LLC v. U.S. Dep't of Agric.*, 378 F.3d 1132, 1136 (10th Cir. 2004). The district court concluded, and Lipin does not dispute, that each of her claims in this action depended on a finding that she has an ownership interest in the Property. Thus, because it was conclusively established in *Lipin I* that Lipin does not have any ownership interest in the Property, *see Lipin*, 760 F. App'x at 632-35, if collateral estoppel applies, the district court properly dismissed her claims.

We apply a four-part test to determine whether collateral estoppel applies:

> (1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.

Murdock v. Ute Indian Tribe of Uintah & Ouray Rsrv., 975 F.2d 683, 687 (10th Cir. 1992) (internal quotation marks omitted). We have no trouble concluding those elements are met here.

Regarding the first element, the relevant issue is whether Lipin has any interest in the Property. In her amended complaint, Lipin alleges that she is "the legal title owner, in fee simple absolute, of the Property]." R. Vol. 1 at 246. Her claims for relief demand damages, declaratory relief that she is the owner of the Property, and ejectment of Defendants from the Property. *Id.* at 272. She is not entitled to such relief if, as the district court held, she is not the legal owner of the Property. Lipin does not challenge this conclusion on appeal. Instead, she appears to argue the ownership of the Property was not fully decided in *Lipin I.* This contention, though, is plainly belied by the court's summary judgment order in the earlier case, which we summarized in our decision affirming the same:

> In February 2018, the district court denied Lipin's summary judgment motion, granted Defendants' cross-motion, and entered judgment for Defendants. In doing so, the court found there were no material disputed facts and that as a matter of law AMW and ADW were co-trustees of the Trust pursuant to the Appointment of Co-Trustee document and that AMW had no right as a co-trustee to convey the Property to himself individually. . . . [T]he district court held the Trust continued to own the Property because AMW held no interest in it when he quit-claimed his interest to Lipin in 2016. As a result, the

> district court held, Lipin's trespass and ejectment claims necessarily failed and Defendants were entitled to summary judgment.

Lipin I, 760 F. App'x at 631. The first element of collateral estoppel is therefore met. Regarding the second element, we have "recognize[d] that summary judgment operates as an adjudication on the merits." *Goichman v. City of Aspen,* 859 F.2d 1466, 1471 n.13 (10th Cir. 1988). Lipin does not contest this well-established principle. She does argue, however, that the prior adjudication of her ownership of the Property was not "final" because the defendants in *Lipin I* obtained the judgment against her through fraud. She relies upon Fed. R. Civ. P. 60(d)(1) and (3), which allow a court to "entertain an independent action to relieve a party from a judgment, order, or proceeding" or to "set aside a judgment for fraud on the court." But Lipin's amended complaint did not ask the district court to set aside the judgment that we affirmed in *Lipin I*; instead, she recast substantially all of the substantive allegations made in the first action and added new defendants. Moreover, Lipin's RICO claims in this action do not undermine the preclusive effect of the judgment that this court affirmed in *Lipin I. See Knight v. Mooring Cap. Fund, LLC,* 749 F.3d 1180, 1187 (10th Cir. 2014) ("[T]he remedies under RICO do not include setting aside a prior judgment or undermining its preclusive effect by a collateral attack."). And the type of "fraud" Lipin describes in her amended complaint—false statements, fraudulent documents, and perjurious testimony regarding Defendants' ownership interest in the Property—does not rise to the level of fraud *on the court,* as is required for relief under Rule 60(d)(3):

> Fraud on the court . . . is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury . . . It is thus fraud where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function—thus where the impartial functions of the court have been directly corrupted.

Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985). We therefore conclude that *Lipin I* was finally adjudicated on its merits, notwithstanding Lipin's allegations in the present suit. The second element of collateral estoppel is therefore satisfied.

The third and fourth elements are satisfied as well. The doctrine is invoked against Joan Lipin, the plaintiff here and in *Lipin I,* so privity exists. "In the context of a defendant's motion for summary judgment, a plaintiff has a full and fair opportunity to litigate if it is allowed to submit evidence to defeat a motion for summary judgment." *Matosantos Corn. Corp. v. Applebee's Inc.,* 245 F.3d 1203, 1211 (10th Cir. 2001). Lipin was allowed to, and did, submit evidence in opposition to the motion for summary judgment in *Lipin I.* She also moved for summary judgment herself. *Lipin I,* 760 F. App'x at 631. She thus had a full and fair opportunity to support her claim that she owns the Property.

Because all four elements of collateral estoppel are satisfied, the district court correctly dismissed Lipin's amended complaint.

The district court also dismissed some of Lipin's claims against Griffith (the Delta County assessor) and Geyer (the attorney who served as an expert in the prior litigation) under the Colorado Governmental Immunity Act and the doctrine of testifying witness immunity, respectively. We affirm these dismissals for substantially the same reasons set forth in the district court's well-reasoned order dated January 3, 2020. *See* R. Vol. 2 at 37-38.

2. Judicial Notice

Lipin next argues the district court erred by taking judicial notice of *Lipin I* when it dismissed her complaint on the basis of issue preclusion without converting the motion to a Fed. R. Civ. P. 56 motion for summary judgment. She further argues the district court erred by not taking judicial notice of an affidavit in another case. These arguments lack merit. A district court has authority to "take judicial notice of its own records to evaluate preclusion." *Knight,* 749 F.3d at 11 87; *see also Gee v. Pacheco,* 627 F.3d 1178, 1194 (10th Cir. 2010) ("The district court properly referred to its records to dismiss these allegations.") (finding claim preclusion). Moreover, because the facts of *Lipin I* conclusively establish that Lipin is not entitled to any of the relief she seeks in the instant action, her reference to an affidavit in another case is immaterial.

3. Disqualification

Last, Lipin asserts the district court erred in denying her cross-motion to disqualify Apelman as counsel for some of the Defendants. Her argument on this issue consists only of a single, conclusory sentence accompanied by citations to three non-binding author-

ities and lacking any explanation or analysis whatsoever. Under these circumstances, we conclude Lipin waived her challenge to the district court's order denying her motion to disqualify. *See Garrett,* 425 F.3d at 841.

SANCTIONS

All Defendants have argued that sanctions are appropriate under Fed. R. App. P. 38 because the appeal is frivolous. "An appeal is frivolous when the result is obvious, or the appellant's arguments of error are wholly without merit." *Braley v. Campbell,* 832 F.2d 1504, 1510 (10th Cir. 1987) (internal quotation marks omitted). Other indicia of a frivolous appeal include rambling briefs, citation to irrelevant authority, and continued attempts to relitigate matters already concluded. *See id.* at 1513 (collecting cases from other circuits finding such conduct frivolous). It is particularly troubling that the sanctions that multiple courts have imposed on Lipin for repeated abuse of the judicial process have not meaningfully deterred her conduct.

Before we can impose sanctions for a frivolous appeal, the person who may be subject to sanctions must receive notice that sanctions are being considered and an opportunity to respond. *Id.* at 1514-15; *see* Fed. R. App. P. 38 (stating court may award sanctions "after a separately filed motion or notice from the court and reasonable opportunity to respond"). Because Defendants have not requested sanctions in a separately filed motion, Lipin has not had an opportunity to respond to their request. We could provide such an opportunity by ordering Lipin to show cause as to why we should not sanction her under Rule 38, but

we would also like to receive additional information from Defendants to help inform our sanctions decision.

Just as we did in *Lipin I,* therefore, we order that, within fifteen days of this order and judgment, Defendants file a motion describing in detail the sanctions sought and the basis therefor. Lipin shall have fifteen days from the last-filed submission by Defendants to show cause why she should not be sanctioned. The parties' submissions on this subject will guide our determination regarding the imposition and size of an appropriate monetary sanction. All parties shall comply with the length limits in Fed. R. App. P. 27(d)(2); if, however, Defendants file separate motions and Lipin elects to file a unitary response, her response must not exceed thirty pages. The parties need not provide hard copies of their filings.

FILING RESTRICTIONS

"Federal courts have the inherent power to regulate the activities of abusive litigants by imposing carefully tailored restrictions under appropriate circumstances." *Ysais v. Richardson,* 603 F.3d 1175, 1180 (10th Cir. 2010). Filing restrictions are appropriate where the litigant's lengthy and abusive history is set forth; the court provides guidelines as to what the litigant may do to obtain its permission to file an action; and the litigant receives notice and an opportunity to oppose the court's order before it is implemented. *Id.*

We conclude that Lipin's previous appellate filings warrant imposing limited restrictions upon her with respect to further *pro se* filings with this court. Therefore, in order to proceed *pro se* in this court in any civil appeal or original proceeding for mandamus or prohibition that raises the same or similar issues

relating to the Property as asserted in Tenth Circuit Case Nos. 18-1060, 18-1176, and 20-1007, Lipin must provide this court with:

1. A list of all appeals or original proceedings filed concerning the Property, whether currently pending or previously filed with this court, including the name, number, and citation, if applicable, of each case, and the current status or disposition of each appeal or original proceeding; and

2. A notarized affidavit, in proper legal form, which recites the issues she seeks to present, including a short discussion of the legal basis asserted therefor, and describing with particularity the order being challenged. The affidavit must also certify, to the best of Lipin's knowledge, that the legal arguments being raised are not frivolous or made in bad faith; that they are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; that the appeal or original proceeding is not interposed for any improper purpose, such as delay or to needlessly increase the cost of litigation; and that she will comply with all appellate and local rules of this court.

These filings shall be submitted to the Clerk of the court, who shall forward them for review to the Chief Judge or his designee, to determine whether to permit Lipin to proceed with a *pro se* civil appeal or original proceeding. Without such authorization, the matter will be dismissed. If the Chief Judge or his designee authorizes a *pro se* appeal or original proceeding to proceed, an order shall be entered indicating that the matter shall proceed in accordance with the Federal Rules of Appellate Procedure and the Tenth Circuit Rules.

Lipin shall have twenty days from the date of this decision to file written objections, limited to fifteen pages, to these proposed restrictions. Unless this court orders otherwise upon review of any objections, the restrictions shall take effect thirty days from the date of this order and judgment and shall apply to any appeal filed by Lipin after that time.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the district court. Defendants are invited to move for an award of sanctions against Lipin, and Lipin shall respond by the designated deadline. In addition, Lipin shall have twenty days from the date of this decision to file written objections to the proposed filing restrictions.

Entered for the Court

/s/ Allison H. Eid
Circuit Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO (DENVER), FINAL JUDGMENT (JANUARY 3, 2020)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JOAN CAROL LIPIN,

Plaintiff/Counter Defendant,

v.

WISEHART SPRINGS INN, INC.; ARTHUR D. WISEHART, IN HIS INDIVIDUAL CAPACITY AND IN HIS CAPACITY AS PRESIDENT AND "ALTER-EGO" OF WISEHART SPRINGS INN, INC.; MARK APELMAN; DEBBIE GRIFFITH, IN HER OFFICIAL CAPACITY AS DELTA COUNTY ASSESSOR; REBECCA W. GEYER; ELLENE. WISEHART; RICHARD HUNTER KREYCIK; ERIN M. JAMESON,

Defendants.

(D.C. No. 19-CV-00935-RBJ)

In accordance with the orders filed during the pendency of this case, and pursuant to Fed. R. Civ. P. 58(a), the following Final Judgment is hereby entered.

Pursuant to the ORDER [ECF No. 32] of Judge R. Brooke Jackson entered on January 3, 2020, it is

ORDERED that the Wisehart defendant's motion to dismiss [ECF No. 12] is GRANTED, Geyer's motion to dismiss [ECF No. 19] is GRANTED and Debbie Griffith's motion to dismiss [ECF No. 22] is GRANTED. It is

FURTHER ORDERED that Plaintiff's motion to disqualify counsel [ECF No. 16] is DENIED. It is FURTHER ORDERED that judgment is entered on behalf of the defendants, Wisehart Springs Inn, Inc., Arthur D. Wisehart, Mark Apelman, Debbie Griffith, Rebecca W. Geyer, Ellen E. Wisehart, Richard Hunter Kreycik, and Erin M. Jameson, and against the plaintiff, Joan C. Lipin. It is

FURTHER ORDERED that as the prevailing parties, the defendants are awarded costs to be taxed by the Clerk of Court pursuant to Fed. R. Civ. P. 54(d)(1) and D.C. Colo. L. Civ. R. 54.1. It is

FURTHER ORDERED that Ms. Lipin is expressly precluded from filing another prose lawsuit, in her name or in anyone else's name, in the United States District Court for the District of Colorado, which raises her claim of ownership of the Paonia property or her claim that the Co-Trustee Agreement is invalid or unenforceable without the express advance approval of one of the United States District Judges in this district. It is

FURTHER ORDERED that this civil action and all claims therein are dismissed with prejudice. It is

Dated at Denver, Colorado this 3th day of January, 2020.

For the Court:

Jeffrey P. Colwell
Clerk

By: /s/ J. Dynes
Deputy Clerk

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO (DENVER), ORDER ON MOTIONS TO DISMISS (JANUARY 3, 2020)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JOAN CAROL LIPIN,

Plaintiff,

v.

WISEHART SPRINGS INN, INC.; ARTHUR D. WISEHART, IN HIS INDIVIDUAL CAPACITY AND IN HIS CAPACITY AS PRESIDENT AND "ALTER-EGO" OF WISEHART SPRINGS INN, INC.; MARK APELMAN; DEBBIE GRIFFITH, IN HER OFFICIAL CAPACITY AS DELTA COUNTY ASSESSOR; REBECCA W. GEYER; ELLENE. WISEHART; RICHARD HUNTER KREYCIK; ERIN M. JAMESON,

Defendants.

(D.C. No. 19-cv-00935-RBJ)

Before: R. Brooke JACKSON,
United States District Judge.

This order addresses (1) the Wisehart defendants' motion to dismiss and impose filing restrictions on plaintiff; (2) plaintiffs motion to disqualify attorney Mark Apelman and his law firm; (3) defendant Geyer's

motion to dismiss; and (4) defendant Griffith's motion to dismiss. Plaintiff's motion is denied. but the defendants' motions are granted.

BACKGROUND

In this case Joan C. Lipin claims, among other things, that Arthur D. Wisehart, Ellen E. Wisehart, Richard Hunter Kreycik, and Erin M. Jameson have operated the Wisehart Springs Inn in Paonia, Colorado as a cover for illegal narcotics trafficking and money laundering. I refer to these five defendants as the "Wisehart defendants." Defendant Mark Apelman is the Wisehart defendants' attorney. Rebecca Geyer is an Indiana-based lawyer who provided expert opinions in a previous lawsuit. Debbie Griffith is the Delta County Assessor. Ms. Lipin's Amended Complaint asserts violations of RICO and other wrongs.

However, these claims cannot be understood or determined without knowing the context in which they are asserted. I provide that context by taking judicial notice of two other lawsuits in this district and one in state court involving Ms. Lipin and the Wiseharts.

Lipin v. Wisehart I

On March 21, 2016 Ms. Lipin sued the same Wisehart defendants, minus the Wisehart Springs Inn, concerning the same property in Paonia, Colorado that is the subject of the present case. Ultimately, I granted summary judgment in defendants' favor, *Lipin v. Wisehart,* No. 16-cv-00661-RBJ-STV, 2018 WL 828024 (D. Colo. Feb. 9, 2018). That decision was affirmed by the Tenth Circuit in *Lipin v. Wisehart,*

760 F. App'x 626 (10th Cir. 2019) (unpublished). I will refer to that case as *Lipin v. Wisehart I.*

The pertinent facts, taken from *Lipin* v. *Wisehart* I, began in 1987 when Dorothy Wisehart created the Dorothy R. Wischart Trust (the Trust). She named herself and her son, Arthur McKee Wischart ("AMW") as co-trustees. As described by the Tenth Circuit,

> She intended for the Trust assets to qualify for the $1 million "Generation Skipping Transfer Exclusion" for federal estate tax purposes and therefore directed in the Trust Agreement that $1 million would remain in the Trust upon her death . . . and that AMW's children and his wife, Elizabeth, would become income beneficiaries of income from these assets.

760 F. App'x at 629.

AMW had four children: Arthur Dodson Wisehart ("ADW"), Ellen Wisehart, Winston Wisehart, and William Wisehart. In 1992 his daughter Ellen Wisehart and her husband, Richard Kreycik, bought the property in Paonia, Colorado that ultimately has become the subject of all this litigation. They did so through a trust called the Morning Sun Farm Trust. The property consists of four parcels of land. The Wisehart Springs Inn is located on the land.

In 1993 Dorothy Wisehart died. AMW became the sole Trustee of the Trust. AMW's wife, Elizabeth, and four children (ADW, Ellen, Winston and William) became income beneficiaries of the Trust.

In 1995 Ellen and her husband Richard quitclaimed the Paonia property to the Trust. At that

time there was still debt on the property. In 1996 AMW assumed responsibility for that debt (which might explain some of the things that happened later). The debt was paid, but it is unclear where the funds came from.

In 2009 four of the five income beneficiaries of the Trust, exercising authority granted in the Trust Agreement, removed AMW as the sole trustee of the Trust and appointed AMW and ADW as co-trustees. AMW and ADW accepted their appointments as co-trustees.

In 2013 AMW's wife, Elizabeth, died. At that time ADW and his wife, Erin, and Ellen Wisehart and her husband, Richard, lived on the property. ADW and Erin operated the Wisehart Springs Inn.

In 2015 AMW married Joan C. Lipin. AMW was a lawyer of many years' experience. Ms. Lipin was his former client and paralegal. The Tenth Circuit described Joan as having "nearly two decades of experience as an active pro se litigant in federal and state courts in the Northeast." 760 F. App'x at 630. Ms. Lipin has indicated that she is a law school graduate." *Id.*

In 2015, shortly after marrying Joan Lipin, AMW sued his son ADW, his son Winston, and the Wisehart Springs Inn in federal court in New Jersey. He alleged that the defendants had conspired to steal property from him, including the Paonia property, in violation of RICO. That lawsuit was later transferred to this district. I will come back to it later.

Still in 2015 AMW recorded two notices in the real estate records of Delta County, Colorado in which he stated (incorrectly) that he was the sole trustee of the

Trust, and (incorrectly) that the Trust had transferred the Paonia property to him by warranty deed.

In January 2016, AMW (or Ms. Lipin) recorded four quit-claim deeds, one for each of the four parcels of the Paonia property, purporting to convey the parcels to Ms. Lipin. In February 2016 Ms. Lipin informed the defendants that they were trespassing; that they were illegally operating the Wisehart Springs Inn; and that she planned to sell at least three of the four parcels.

On March 16, 2016 ADW filed a lawsuit against AMW and Ms. Lipin in the Delta District Court seeking declarations that the Trust owned the property. Five days later, on March 21, 2016, Ms. Lipin filed *Lipin v. Wisehart I* in this court. She sought equitable relief, essentially to eject ADW, Erin, Ellen and Richard from the Paonia property.

On February 9, 2018 I granted summary judgment in favor of the defendants. 2019 WL 828024 at *3. I found that Ms. Lipin had provided "no evidence that there was anything flawed or invalid about the Appointment of Co-Trustee Document." *Id, I* further found that AMW had no right as Co-Trustee to convey the Paonia property without the signature of the other Co-Trustee, much less to convey it to himself. *Id.* Thus, I concluded that "Ms. Lipin has no interest in the Property. The Property continues to belong to the DRW Trust." *Id.*

Ms. Lipin appealed. The Tenth Circuit affirmed the grant of summary judgment in favor of the defendants. Defendants requested sanctions against Ms. Lipin. The court stated, "We have no difficulty concluding Lipin's appeals are frivolous under Rule 38." 760 F.

App'x at 637. However, because "the person who may be subject to sanctions must receive notice that sanctions are being considered and an opportunity to respond," the court granted Ms. Lipin fifteen days to show cause as to why she should not be sanctioned. *Id.*

Ms. Lipin did not show cause. On March 4, 2019 the Tenth Circuit imposed sanctions. *Lipin v. Wisehart, et al.,* Nos. 18-1060 and 18-1176, slip op. at 2 (10th Cir. March 4, 2009). On May 15, 2019 the Tenth Circuit remanded the case to this Court with directions to reduce the $15,000 sanctions order to judgment (including interest on any unpaid portion) and indicating that further appeals by Ms. Lipin would be summarily dismissed unless she submits proof of payment of the sanctions judgment. ECF No. 142. I issued the judgment as directed and, in doing so, ordered that a $10,000 cost bond held in the court registry plus accumulated interest would be released to defendants' counsel in partial satisfaction of the judgment. ECF No. 145. Whether the remainder of the sanctions judgment has been paid is unknown to me.[1]

---

[1] Ms. Lipin is not a stranger to judicial sanctions. In *Lipin v. Hunt,* 573 F. Supp. 2d 836 (S.D.N.Y. 2008), the court stated that "Ms. Lipin has been sanctioned severely by other courts for her litigation conduct," noting six cases in which monetary sanctions had been imposed for her litigation misconduct. *Id.* at 839-41. The court enjoined her from further litigation concerning claims relating to her father's estate or estate property without first obtaining leave of the court. *Id.* at 846. In a separate but more recent case of the same name, a different judge began his opinion by stating, "Plaintiff Joan C. Lipin, proceeding *pro se,* has a long and well-documented history of vexatious litigation relating to claims originating a decade ago in Maine probate court." *Lipin v. Hunt,* No. 14-cv-1081. 2015 WL 1344406,

Wisehart v. Wisehart (federal)

This is the lawsuit mentioned above that was filed by AMW pro se (or someone on his behalf) in federal court in New Jersey in 2015, shortly after AMW married Ms. Lipin. It was transferred to the District of Colorado on January 4, 2018. No. 18-cv-00021-MSK-NYW. The defendants were ADW, the Wisehart Springs Inn, and Charles Winston Wisehart.

The Complaint described AMW as having been born on July 3, 1928, which made him 87 years old at the time of the filing, and as a graduate of the University of Michigan Law School in 1954, with various honors received thereafter. ECF No. 1 at ¶¶ 13-17 in 18-cv-00021. Much like the present case, the plaintiff alleged that the defendants conspired with themselves and with William Wisehart, Ellen Wisehart, Erin Jameson and Richard Kreycik to steal the Paonia property from him and the Trust, and to engage in wrongful acts on the property including illegal narcotics activities, mail fraud, wire fraud, extortion and money laundering, all in violation of RICO. *See generally id.* at ¶¶18-127.[2]

The New Jersey court denied plaintiffs motion to disqualify defense counsel but granted defendant's

---

at *1 (S.D.N.Y. March 20, 2015). The *case* was filed in violation of previously-imposed filing restrictions. The court dismissed Ms. Lipin's claims sua sponte, with prejudice. Tt did not impose monetary sanctions, fearing that it would just prolong the litigation, but it warned that fines or even imprisonment would follow if she attempted to raise the same issues in another case. *Id.* at 11.

[2] The Complaint also references properties in New York and Ohio, *id.* at 19, but the Paonia property is its predominant focus.

motion to dismiss the case without prejudice. ECF No. 26 in 18-cv-00021. Plaintiff was, however, granted leave to amend in order properly to alleged venue. ECF No. 27. After plaintiff failed to file an amended complaint, the case was dismissed with prejudice. ECF No. 28. Plaintiff moved to vacate that order. Ultimately, the court did vacate the dismissal order and, instead, transferred the case to the District of Colorado. ECF No. 63.

Many pleadings later, plaintiff filed a motion for summary judgment. ECF No. 127. On March 5, 2019 the court, by Judge Krieger, denied that motion, finding that "Plaintiff has not come forward with evidence sufficient to state *a prima facie* claim [under RICO] even in the absence of a response by the Defendants." ECF No. 196 at 4. The court granted the plaintiff twenty-one days to submit admissible evidence sufficient to support his claims. *Id.* at 6. Plaintiff filed a response, ECF No. 202, but also filed an appeal. ECF No. 198. The appeal was dismissed for lack of jurisdiction. ECF No. 205. The case remains in the district court, and its future is uncertain at this time.

Ms. Lipin filed the present case approximately three weeks after the court denied plaintiffs summary judgment motion in *Wisehart v. Wisehart.*

***Wisehart v. Wisehart* (Delta County)**

On March 16, 2017 ADM, as Co-Trustee of the Trust, filed a lawsuit in the District Court for Delta County, Colorado against AMW and Ms. Lipin. No. 16CV30032. ADM sought a declaration that the Paonia property was owned solely by the Trust and damages for breach of fiduciary duty and other common law

theories and for the recording of ineffective documents in the real estate records of Delta County. In apparent reaction to that filing, Ms. Lipin filed *Lipin v. Wisehart I* in this Court five days later. A chronology of the case can be found in the order of Delta District Judge Steven L. Schultz issued March 26, 2019, filed as ECF No. 12-2 in the present case.

Briefly, as shown in Judge Schultz's order, the AMW and Ms. Lipin were served and filed motions to dismiss and other motions, but they never answered. After twice denying plaintiffs motion for a default, in order to give AMW and Ms. Lipin a further opportunity to answer, the clerk entered a default. The court set a hearing on plaintiff's motion for a default judgment, but neither AMW nor Ms. Lipin nor anyone on their behalf appeared. The court was satisfied that a default judgment should enter but, nevertheless, set a hearing on August 20, 2018 to consider damages. The defendants tried to call in for that hearing but the court denied that request, "given the vexatious history of the Defendants' involvement in this case and the complexity of the remaining damages issues." *Id.* at 5, ¶ 10. Nevertheless, the court rescheduled the hearing for October 12, 2018. AMW and Ms. Lipin failed to appear. *Id.* ¶ 11.

In its order of March 26, 2019, the court entered a declaratory judgment that the Paonia property was vested solely in the Trust, that AMW and ADW were validly appointed as Co-Trustees, and that any sale or disposition of the property requires the approval of both Trustees so long as there remain two Co-Trustees. *Id.* at 6, ¶ 1. This order was consistent with this Court's order to the same effect in *Lipin v. Wisehart I,* as affirmed by the Tenth Circuit.

The court also found that AMW's filing of a deed of trust, an affidavit, two notices of transfer, and four quitclaim deeds contrary to the true ownership of the property constituted self-dealing and a breach of fiduciary duty, such that all such recorded documents were void and set aside. *Id.* ¶¶ 2-5. The court described these documents as "either groundless, contain a material misstatement or false claim, or are otherwise invalid and are spurious document, pursuant to C.R.S. § 38-35-109(3) and C.R.S. § 38-35-201(3), or because they were procured or resulted from the improper acts of Arthur McKee Wisehart, in breach of his fiduciary duties to the trust and to the beneficiaries thereof." *Id.* at 7, ¶ 8.

As for Ms. Lipin, the court found that AMW could not convey an interest in the Paonia property to her, and indeed, Ms. Lipin "had actual knowledge, inquiry notice, and/or constructive notice that Arthur McKee Wisehart had no authority to convey the Paonia Property to himself, that she was not a bona fide purchaser for value of the Paonia Property, and that those Recorded Documents under which she claims ownership were invalid and ineffective to convey title to the Paonia Property," *Id.* at 6, ¶¶ 6-7.

The court found that the plaintiffs were entitled to statutory penalties of $6,000 ($1,000 for each of the six recorded bogus documents) jointly and severally against AMW and Ms. Lipin. *Id.* at 7, ¶10-12. In addition, the court found AMW and Ms. Lipin liable for civil theft, *Id.* at 9, ¶¶ 24-26; and civil conspiracy, *Id.* at ¶¶ 28-29. It enjoined AMW and Ms. Lipin from recording any further documents affecting title to the Paonia property on a pro se basis without first acquiring leave of court. *Id.* at 10, ¶¶ 32-34.

The Court also found that AMW and Ms. Lipin's conduct in the lawsuit was frivolous, vexatious, and engaged in by them in bad faith and to increase the costs to ADW to recover the illegally transferred property, noting that it was relying on the court's own findings but also the findings and conclusions of this Court and the Tenth Circuit in *Lipin v. Wisehart I.* It awarded attorney's fees in the amount of $31,745 against both defendants and an additional $1,200 against AMW alone. *Id.* at 12, ¶ 48.

The present case was filed by Ms. Lipin on March 29, 2019. This was three days after Judge Schultz's decision in the Delta County case (and as noted earlier, approximately three weeks after Judge Krieger denied plaintiff's (AMW's) motion for summary judgment in *Wisehart v. Wisehart (federal case).*

ANALYSIS AND CONCLUSIONS

A. Motion to Dismiss (Wisehart Defendants), ECF No. 12.

Preliminarily, in the more recent *Lipin v. Hunt* case, *supra* n.1, the court stated, "[Ms. Lipin's] *modus operandi* is clear: she litigates variations of the same meritless claims against an ever-growing group of defendants over and over. Once Plaintiff receives the inevitably unfavorable decision, she simply brings the lawsuit again, adding lawyers, judges, and court clerks as defendants." 2015 WL 1344406 at *11.

That is precisely what she has done here. Despite the contrary rulings from this Court, the Tenth Circuit, and the Delta County District Court, Ms. Lipin asserts, once again, that she is the legal title owner of the Paonia property. ECF No. 1 at ¶ 16.

This time she joins the Wisehart defendants' lawyer, and the Indiana lawyer who was hired by the Wisehart defendants to express opinions in the Delta County case and in *Lipin v. Wisehart I*, and the Delta County Assessor, as additional defendants. What's more, despite Judge Krieger's assessment of the RICO claim asserted by or in the name of AMW in *Wisehart v. Wisehart (federal)*, Ms. Lipin brings a substantially similar RICO claim in this case. It appears that each time Ms. Lipin sustains a loss in one court (and regardless whether monetary sanctions were imposed), she quickly files a similar case in another court.

The Wisehart defendants argue that Ms. Lipin's claims against them, which all rest on the premise that she owns the Paonia property, are barred by claim preclusion, either by res judicata or by collateral estoppel. Issue preclusion (collateral estoppel) is established if the defendant shows

> (1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.

Murdock v. Ute Indian Tribe of Uintah and Ouray Reservation, 975 F.2d 683, 687 (10th Cir. 1992).

I find that the issues related to ownership of the Paonia property—the relevant terms of the Trust; the validity of the appointment of Co-Trustees, the

Trust's ownership of the property; the requirement that both Co-Trustees (AMW and ADW) must approve any disposition of the property, which has not occurred; and Ms. Lipin's lack of any valid claim to ownership of the property-arc identical to issues presented and decided in *Lipin v. Wisehart I.* That action has been finally adjudicated on the merits. Ms. Lipin had a full and fair opportunity to litigate the issues (and any variations on the theme such as to assert a RICO violation) in that case.

Ms. Lipin's response to the motion includes irrelevant and largely frivolous complaints about defense counsel. *See* ECF No. 17 at ¶¶ 1-19, 22, 27-32. She has made arguments concerning the Court's obligations in considering Rule 12(b)(6) motions, *id.* at ¶¶ 20-21, but those arguments are inapplicable given that previous court decisions of which I may take judicial notice render her claim of ownership of the Paonia property to be false as a matter of law. I have considered her arguments concerning claim preclusion, *id.* at ¶¶ 23-26, none of which addresses the simple point that she has asserted her claim of ownership in the previous case (cases) and has unequivocally lost, both at the district and the appellate levels.

Accordingly, she is likely barred by res judicata from relitigating the ownership issues at least against the Wisehart defendants who were also named as defendants in *Lipin* v. *Wisehart I.*

At a minimum she is barred by collateral estoppel from relitigating those issues against all the Wisehart defendants in the present case, Because her claims regarding ownership of the Paonia property are the foundation on which all her claims rest, defendants'

motion to dismiss must be granted.[3] The Wisehart defendants also seek an award of attorney's fees. I will discuss possible sanctions later in this order.

B. Motion to Disqualify Attorney Mark Apelman and Boyle/Apelman PC, ECF No. 16.

Ms. Lipin complains that opposing counsel, Mr. Apelman, tiled four documents "under a spoliated and altered caption that constitutes a forgery." ECF No. 16 at ¶ 2. The four documents are Mr. Apelman's Entry of Appearance, ECF No. 9; a Disclosure Statement indicating that Wisehart Springs Inn, Inc. has no parent corporation or publicly held corporation owning 10% or more of its stock, ECF No. 10; a Notice of Related Cases, identifying the cases I have discussed in this order plus an Ohio case that I have not discussed, ECF No. 11; and the Wisehart defendants' motion to dismiss in the present case, ECF No. 12. The gist of the motion seems to be that whereas in the caption of the Amended Complaint as she drafted it she sued ADW *"in his individual capacity,* and in his capacity as President and 'Alter-Ego' of Wisehart Springs Inn, Inc.," (emphasis in original), the four pleadings read "individually and in his capacity as President of Wisehart Springs Inn, Inc.," *i.e.*, not the same wording as in the Amended Complaint. ECF No. 16 at ¶¶ 5.

---

[3] One could argue that, having had the property ownership issue decided in *Lipin v. Wisehart I,* Ms. Lipin lacks standing now to assert a claim based on her ownership of that property. That issue has not been raised or briefed by the parties. Thus, assuming arguendo that she does have standing, her claims arc nevertheless barred by claims preclusion.

Mr. Apelman, foolishly in my opinion, responds that he changed the caption and omitted the reference of ADW as the "alter-ego" of the Wisehart Springs Inn, Inc. because that characterization was a theory of recovery, not a legal capacity, and therefore was "verbiage." ECF No. 21 at 2. If lie objected to the way Ms. Lipin captioned her case, the solution was not to take it upon himself to change her caption. He could either ask the plaintiff to change the caption or, if this would be futile, bring his concern to the attention of the Court with a motion and let the Court resolve it. Changing her caption was just an invitation for trouble.

That said, however, it is much ado about nothing. His bit of self-help is not ground for disqualification, and certainly it is not indicative of "spoliation" or "forgery." Ms. Lipin has a history of filing motions to disqualify lawyers and judges, and it does not appear to take much for her to do so. Accusing Mr. Apelman of forgery or spoliation, seemingly terms she does not understand to begin with, is frivolous and groundless.

Ms. Lipin also argues that Mr. Apelman will be a necessary witness at the "evidentiary hearing" in this case and, therefore, should be disqualified under Rule 3.7 of the Colorado Rules of Professional Conduct. ECF No. 16 at 7, ¶ 18. Whether that rule would apply in the event of an evidentiary hearing on the merits or a trial is irrelevant, as there will not be a hearing or trial in this case. The rule would not disqualify Mr. Apelman in the event of an evidentiary hearing on the reasonableness of an attorney's fee request.

The Court has considered the other arguments in the motion, including a conclusory assertion that Mr.

Apelman conspired with the Delta County Assessor to alter public records that has no evidentiary support, and finds that none of them provides any basis for disqualification of Mr. Apelman or his law firm.

C. Motion to Dismiss (Rebecca Geyer), ECF No. 19.

Ms. Geyer, an Indiana attorney specializing in Trusts and Estates law, was retained to express opinions in *Lipin v. Wisehart I* (and in the Delta County case) regarding the validity of the Trust and the Appointment of Co-Trustees. Her opinions were provided in an affidavit. Consistent with her affidavit, this Court and the Tenth Circuit have found that the Trust owned the property, and that the Appointment of Co-Trustees was a valid instrument. Representing herself pro se, Ms. Geyer argues that because the ownership issue has been resolved in *Lipin v. Wisehart I,* the claims against her (which rest on Ms. Lipin's assertion that she owns the Paonia property) should be dismissed based upon issue preclusion (collateral estoppel), ECF No. 19 at 2-4. I agree, as noted with respect to the Wisehart defendants, that the *Murdock* requirements for collateral estoppel are met.

Even more fundamentally, Ms. Geyer argues that because her involvement was solely that of a witness, she should be granted immunity in this case. Again, I agree. *See PJ ex rel. Jensen v. Wagner,* 603 F.3d 1182, 1196 (10th Cir. 2010) ("Like the absolute immunity afforded prosecutors who perform actions intimately associated with the judicial process, `[t]he immunity of parties and witnesses from subsequent damages liability for their testimony in judicial proceedings is well established in the common law. . . .' Testifying witness immunity is 'supported by the public policy

of preserving the truth finding process from distortions caused by fear of suit.'") (quoting *Spielman v. Hildebrand,* 873 F.2d 1377, 1382 (10th Cir. 1989)). *See also Dalton v. Miller,* 984 P.2d 666, (Colo. App. 1999), *cert. denied* (March 27, 2000) (psychiatrist hired to perform an independent medical examination, prepare a report, and testify in a trial preservation deposition was entitled to immunity from civil liability for statements in his report and testimony). As I have noted, Ms. Lipin has a history of relitigating issues she has lost and expanding the litigation to include individuals who had some role in the prior lawsuit. People such as Ms. Geyer should not be discouraged from participation in the judicial process by the risk of facing a subsequent damages suit by a party who does not like their opinions.

D. Motion to Dismiss (Debbie Griffith), ECF No. 22.

Ms. Griffin was sued in her official capacity as the Delta County Assessor, which in substance is a suit against Delta County, not against Ms. Griffin individually. *See, eg., State v. Nieto,* 993 P.2d 493, 508 (Colo. 2000). The Assessor maintains certain official records. Ms. Lipin asserts, in conclusory language, that Ms. Griffith conspired with Mr. Apelman to alter or destroy public records. No facts are alleged that could make out a plausible claim. In any event, the gravamen of the complaint against the Assessor again comes back to Ms. Lipin's claim of ownership of the Paonia property, with which she apparently seems to think Ms. Griffith interfered in some improper way. Because that issue was resolved in *Lipin v. Wisehart I* (and in the Delta County suit), based not upon the Assessor's records but upon the terms of the Trust documents. I find and concludes that Ms. Lipin's claim against

Delta County based on the Assessor's acts is barred by claim preclusion (collateral estoppel).

Defendant also argues that Ms. Lipin's common law fraud claim (Claim VII) is barred by the Colorado Governmental Immunity Act, specifically, by her failure to provide statutory notice per C.R.S. § 24-10-109(1). ECF No. 22 at 7-9. I agree. That failure is jurisdictional.

Defendant seeks an award of attorney's fees on several grounds. I discuss sanctions immediately below.

E. Sanctions.

The history of this case, which is consistent with Ms. Lipin's litigation history elsewhere, indicates that Ms. Lipin will not respect the orders of courts in which she files lawsuits and is heedless of the impacts, financially and otherwise, that her lawsuits have on the persons she sues. The present lawsuit is, simply put, an abuse of the litigation process.

As a sanction for the filing of this repetitive and meritless case. the Court orders that Ms. Lipin may not file another pro se lawsuit, in her name or in anyone else's name, in the United States District Court for the District of Colorado which raises her claim of ownership of the Paonia property or her claim that the Co-Trustee Agreement is invalid or unenforceable, without the express advance approval of one of the United States District Judges in this district.

Some of the defendants have requested an award of attorney's fees. I decline to address that issue on the present record. It could be that one or more defendants might elect not to pursue a monetary sanction in order to avoid prolonging the litigation.

If, however, one or more defendants elects to pursue a possible attorney's fees award, I will need briefing on the specific grounds. For example, as to C.R.S. § 13-17-101 *et seq.*, does it apply in this federal case? *See McCoy v. West,* 965 F. Supp. 34, (D. Colo. 1997). Does C.R.S. 13-17-201 apply at all? Does 28 U.S.C. § 1927 apply to a pro se litigant (and does the fact, if it is a fact, that Ms. Lipin is a lawyer make a difference? *See Hutchinson v. Pfeil,* 208 F.3d 1180, 1187 n.9 (10th Cir. 2000). Are there grounds for a sanction under Rule 11 of the Federal Rules of Civil Procedure? If the decision is to pursue a fee award, I request that the defendant or defendants, in addition to identifying the statutory basis, specifies the amount of fees requested and provide itemized billing records and any other relevant documentation. Ms. Lipin will have an opportunity to respond in writing, and the Court will also hold a hearing.

ORDER

1. The Wisehart defendant's motion to dismiss, ECF No. 12, is GRANTED.

2. Plaintiff's motion to disqualify counsel, ECF No. 16, is DENIED.

3. Defendant Geyer's motion to dismiss, ECF No. 19, is GRANTED.

4. Defendant Debbie Griffith's motion to dismiss, ECF No. 22, is GRANTED.

5. This civil action and all claims therein are dismissed with prejudice.

6. As the prevailing parties, defendants are awarded costs to be taxed by the Clerk of Court pursuant to Fed. R. Civ. P. 54(d)(1) and D.C. Colo. L. Civ. R. 54.1.

7. The Court reserves ruling on any requested monetary sanction (attorney's fees) pending the filing of specific motions, briefing and a hearing on same.

8. Ms. Lipin is expressly precluded from filing another pro se lawsuit, in her name or in anyone else's name, in the United States District Court for the District of Colorado, which raises her claim of ownership of the Paonia property or her claim that the Co-Trustee Agreement is invalid or unenforceable without the express advance approval of one of the United States District Judges in this district.

Dated this 3rd day of January, 2020.

By the Court:

/s/ R. Brooke Jackson
United States District Judge

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, ORDER DENYING PETITION FOR REHEARING *EN BANC* (FEBRUARY 16, 2021)

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JOAN CAROL LIPIN,

Plaintiff-Appellant,

v.

WISEHART SPRINGS INN, INC.; ARTHUR D. WISEHART, IN HIS INDIVIDUAL CAPACITY AND IN HIS CAPACITY AS PRESIDENT AND "ALTER-EGO" OF WISEHART SPRINGS INN, INC.; MARK APELMAN; DEBBIE GRIFFITH, IN HER OFFICIAL CAPACITY AS DELTA COUNTY ASSESSOR; REBECCA W. GEYER; ELLENE. WISEHART; RICHARD HUNTER KREYCIK; ERIN M. JAMESON,

Defendants-Appellees.

No. 20-1007

(D.C. No. 1:19-CV-00935-RBJ)
(D. Colo.)

Before: HOLMES, Circuit Judge, LUCERO, Senior Circuit Judge and EID, Circuit Judge.

This matter is before the court on Appellant's Petition for Rehearing En Banc. Having carefully considered the petition, we direct as follows:

To the extent the appellant seeks rehearing by the panel, the petition is denied pursuant to Fed. R. App. P. 40.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, the petition seeking rehearing en banc is denied pursuant to Fed. R. App. P. 35(f).

Entered for the Court

/s/ Christopher M. Wolpert
Clerk of the Court

Additional material from this filing is available in the Clerk's Office.