APPENDIX A

US COURT OF APPEALS FOR THE NINTH CIRCUIT CASE

#19-35547

Michael T. Brooks v Centene Corporation; et al

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL T. BROOKS, Plaintiff-Appellant, v. AGATE RESOURCES, INC., DBA Agate Healthcare (Oregon ABN 695284-96), DBA Apropo Benefits Management, LLC, DBA Employers Health Alliance, LLC, DBA Health Policy Research Northwest, DBA Lane Home Medical, LLC, DBA Lane Individual Practice Association, Inc., DBA Trillium Advantage, DBA Trillium Community Health Plan, DBA Trillium Community Health Plan, Inc., DBA Trillium Community Health Plan, LLC, DBA Trillium Coordinate Care Organization, Inc., DBA Trillium Medicare, DBA Trillium Sprout, Defendant-Appellee.	No. 19-35547 D.C. No. 6:15-cv-00983-MK District of Oregon, Eugene ORDER

Before: TROTT, SILVERMAN, and NR SMITH, Circuit Judges.

Appellant's motion for judicial notice (Docket Entry No. 4), motion to disqualify counsel (Docket Entry No. 11), and motions to strike (Docket Entry No. 46 & 49) are denied. Appellant's motion for extension of time (Docket Entry No. 54) is denied as moot.

Appellee's motions to strike (Docket Entry Nos. 44 & 52) are denied as moot.

Appellant's motion for summary judgment (Docket Entry No. 61) is denied as moot. Pursuant to this court's October 22, 2019 order, we do not entertain the renewed motion for appointment of pro bono counsel.

Appellee's motions to strike (Docket Entry Nos. 51, 56, 60, 66, & 70) are granted. The Clerk shall strike: (1) Exhibit 5 to Docket Entry No. 47; (2) Exhibits XX & YY to Docket Entry No. 54; (3) Exhibits 3, 4, 5, and 8 to Docket Entry No. 57; (4) Exhibits 2, 9, 23, and the DVD attached to Docket Entry No. 62; and (5) Docket Entry No. 68 (DVDs). The Clerk shall return the stricken DVDs to appellant. Appellant's motions to file documents under seal (Docket Entry Nos. 47, 53 57, 62, & 67) are denied as moot.

No further motions for reconsideration, clarification, or modification of this order shall be filed or entertained.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL T. BROOKS,

Plaintiff-Appellant,

v.

AGATE RESOURCES, INC., DBA Agate Healthcare (Oregon ABN 695284-96), DBA Apropo Benefits Management, LLC, DBA Employers Health Alliance, LLC, DBA Health Policy Research Northwest, DBA Lane Home Medical, LLC, DBA Lane Individual Practice Association, Inc., DBA Trillium Advantage, DBA Trillium Community Health Plan, DBA Trillium Community Health Plan, Inc., DBA Trillium Community Health Plan, LLC, DBA Trillium Coordinate Care Organization, Inc., DBA Trillium Medicare, DBA Trillium Sprout,

Defendant-Appellee.

No. 19-35547

D.C. No. 6:15-cv-00983-MK
District of Oregon,
Eugene

ORDER

Before: TROTT, SILVERMAN, and N.R. SMITH, Circuit Judges.

The non-party request for publication (Dkt Entry # 75) is DENIED.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL T. BROOKS,

Plaintiff-Appellant,

v.

AGATE RESOURCES, INC., DBA Agate Healthcare (Oregon ABN 695284-96), DBA Apropo Benefits Management, LLC, DBA Employers Health Alliance, LLC, DBA Health Policy Research Northwest, DBA Lane Home Medical, LLC, DBA Lane Individual Practice Association, Inc., DBA Trillium Advantage, DBA Trillium Community Health Plan, DBA Trillium Community Health Plan, Inc., DBA Trillium Community Health Plan, LLC, DBA Trillium Coordinate Care Organization, Inc., DBA Trillium Medicare, DBA Trillium Sprout,

Defendant-Appellee.

No. 19-35547

D.C. No. 6:15-cv-00983-MK

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Ann L. Aiken, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Submitted November 3, 2020**

Before: TROTT, SILVERMAN, and NR SMITH, Circuit Judges

Plaintiff Michael Brooks appeals following the district court's dismissal of his amended complaint. We have jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

The magistrate judges acted within their authority by ruling on non-dispositive pretrial matters and issuing a Findings and Recommendation (F&R) on the defendant's motion to dismiss the amended complaint. 28 U.S.C. § 636(b)(1); *SEC v. CMKM Diamonds, Inc.*, 729 F.3d 1248, 1259-60 (9th Cir. 2013). The district judge properly reviewed the F&R and plaintiff's objections de novo. 28 U.S.C. § 636(b)(1). None of plaintiff's statements, even if taken as true, plausibly allege judicial misconduct. *Clemens v. U.S. Dist. Ct.*, 428 F.3d 1175, 1178-80 (9th Cir. 2005) (setting forth the standard).

The district court did not abuse its broad discretion by denying counsel's sixth extension of time for discovery after ordering that no further extensions of time would be allowed absent good cause because the case had been pending almost two years. Nor did the court abuse its discretion by later deferring

---

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

additional discovery until after the court ruled on the motion to dismiss the amended complaint. Plaintiff had ample time to conduct discovery while he was represented by counsel. *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1027 (9th Cir. 2006) (setting forth the clear abuse of discretion standard of review); *Nascimento v. Dummer*, 508 F.3d 905, 909 (9th Cir. 2007) (holding that the district court did not abuse its discretion by denying a motion to extend the discovery deadline when the party had "nearly five months to conduct discovery").

The district court did not abuse its discretion by requiring plaintiff to provide a privilege log when he requested that defense counsel return documents produced by plaintiff's attorney during discovery. *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Ct.*, 408 F.3d 1142, 1149 (9th Cir. 2005) (holding "that boilerplate objections or blanket refusals inserted into a response to a Rule 34 request for production of documents are insufficient to assert a privilege"); *Dole v. Milonas*, 889 F.2d 885, 890 (9th Cir. 1989) (recognizing that "the district court may adopt the 'privilege log' approach").

The district court did not abuse its discretion by denying plaintiff's motion to sanction counsel. *Patelco Credit Union v. Sahni*, 262 F.3d 897, 912-13 (9th Cir. 2001) (setting forth the standard of review). Neither the production of documents by plaintiff's counsel during discovery nor the fact that counsel conferred

regarding discovery constitutes wrongdoing or criminal conduct. There is no evidence of a conspiracy or any conduct that would warrant sanctions. Moreover, defense counsel offered to destroy or return to plaintiff any documents that plaintiff identified as privileged. Nor did the district court err by denying plaintiff's motion for an interlocutory appeal pursuant to 28 U.S.C. § 1292(b). *Couch v. Telescope, Inc.*, 611 F.3d 629, 633 (9th Cir. 2010) (setting for the § 1292(b) elements). This court similarly denied plaintiff permission to appeal when he raised most of the same issues in 2018. *Brooks v. U.S. Dist. Ct.*, No. 17-73242 (9th Cir. Mar. 1, 2018) (Order).

The district court acted well within its discretion when it reasonably granted a 60-day extension of time for plaintiff to respond to the motion to dismiss and indicated that no further extensions would be granted because the case had been pending three years. *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258 (9th Cir. 2010) (setting forth the standard of review). Similarly, the magistrate judge properly ordered that objections to the F&R be filed by the statutory deadline for objections set forth in 28 U.S.C. § 636(b)(1).

The district court did not abuse its discretion by holding that plaintiff had not established exceptional circumstances that would require appointment of counsel. Plaintiff had previously litigated at least two federal lawsuits against the

defendant, had been represented throughout most of the lawsuit, was generally familiar with the rules, had already responded to the motion to dismiss, and had drafted the amended complaint with the assistance of pro bono counsel. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (setting forth the standard of review and exceptional circumstances test).

The district court did not abuse its discretion when it sealed only the medical records attached to plaintiff's objections. Plaintiff gave no compelling reasons for sealing the remainder of the objections. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2016) (holding that we review for an abuse of discretion and that a court may seal records only for "a compelling reason").

Contrary to plaintiff's claim, the defendant properly filed its corporate disclosure statements.

Plaintiff waived specific challenges to the dismissal of his claims in his opening brief. *Frank v. Schultz*, 808 F.3d 762, 763 n.3 (9th Cir. 2015) (per curiam). In any event, the district court properly dismissed the amended complaint for failure to state a claim. Plaintiff failed to state a Sarbanes-Oxley whistle blower claim because he failed to allege that he worked for a publically traded company or a subcontractor of a publically traded company. *Lawson v. FMR LLC*,

571 U.S. 429, 432-33 (2014) (holding that Sarbanes-Oxley protects employees of publically traded companies and private contractors of those public companies). The Privacy Act whistle blower claim was properly dismissed because he failed to allege that his employer was a federal governmental agency. *Unt v. Aerospace Corp.*, 765 F.2d 1440, 1447 (9th Cir. 1985). The Dodd-Frank claim fails because plaintiff did not allege that he filed a securities fraud complaint with the SEC before his termination. *Digital Realty Tr., Inc. v. Somers*, 138 S. Ct. 767, 778 (2018). Plaintiff has not shown that he can cure these deficiencies by amendment.

The national origin and religious discrimination claims and Affordable Care Act claims are unexhausted and/or untimely. *Shah v. Mt. Zion Hosp. & Med. Ctr.*, 642 F.2d 268, 271-72 (9th Cir. 1981) (holding that the district court properly dismissed race, color, and religious discrimination claims where the plaintiff only included sex and national origin claims in his administrative complaint); 29 U.S.C. § 218c(b)(1); 15 U.S.C. § 2087(b)(1); 29 C.F.R. § 1984.103(d) (requiring that the complainant file an administrative complaint within 180 days of the violation).

The Oregon whistle blowing claims alleged under sections 659A.199 and 659A.230 of the Oregon Revised Statutes are barred by the statute of limitations. Or. Rev. Stat. § 659A.875.

The defamation claims made in conjunction with plaintiff's employment are also barred by the statute of limitations. Or. Rev. Stat. § 12.120(2). Plaintiff's defamation claims for statements made in judicial and quasi-judicial proceedings are barred by absolute privilege. *Wallulis v. Dymowski*, 918 P.2d 755, 761 (Or. 1996) (En Banc).

Plaintiff failed to allege facts to support a prima facie case for the remainder of his claims. *Bell Atl. Corp. v Twombly*, 550 U.S. 544, 555 (2007) (holding that a complaint must allege more than the conclusory elements of the claim). Plaintiff has not established that these claims could be saved by amendment. The district court acted well within its discretion by dismissing with prejudice. It had already granted leave to amend almost three years into the lawsuit and after the discovery deadline had been extended five times and had expired. *World Wide Rush, LLC v. City of Los Angeles*, 606 F.3d 676, 690 (9th Cir. 2010) (noting that a "district court's discretion to deny leave to amend is particularly broad where a plaintiff previously has amended the complaint").

We decline to consider arguments and allegations raised for the first time on appeal. *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam). We do not consider documents not filed with the district court. *Kirshner v. Uniden Corp. of Am.*, 842 F.2d 1074, 1077 (9th Cir. 1988).

AFFIRMED.

November 2, 2020

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL T BROOKS

Brooks

vs

US COURT OF APPEALS FOR THE NINTH CIRCUIT CSE #19-35547
Centene Corporation
dba Agate Resources
dba Agate Health Care (aka Agate Healthcare)
dba LIPA (aka/dba Lane Individual Practice Association
(aka.dba Lane Independent Physicians Association
dba Trillium Community Health Program
US DISTRICT COURT FOR THE DISTRICT OF OREGON: 6:15-cv-00983
Brooks v. Agate Resources, et al

US COURT OF APPEALS FOR THE NINTH CIRCUIT CASE #19-71240
Brooks v US DOL Review Board #2017-0033
US DOL ADMINISTRATIVE REVIEW BOARD CASE #2017-0033
BROOKS v Agate Health Care, appealing
US DOL, ADMINISTRATIVE LAW CASE #2016-SOX-00037
Brooks v Agate Resources

US DOL ADMINISTRATIVE REVIEW BOARD CASE #2019-0078
Brooks v Agate Health Care, appealing
US DOL, ADMINISTRATIVE LAW CASE #2018-SOX-00046
Brooks v Agate Health Care
Respondents

ON PETITION FOR WRIT OF CERTIORARI

Michael T Brooks
32713 Vintage Way
Coburg, Oregon 97408
541-556-6130

TABLE OF CONTENTS

16,920 words

QUESTIONS PRESENTED

1. Can the federal courts ignore the Federal Rules?
Brooks (included with this) was granted in forma pauperis status at the District Court; the Appeals Court dismissed 19-71240 ignoring that and in violation of FRAP 24. As well as Brooks records showing he had a choice between Court fees and medication necessary to staying alive. District Judge Aiken of the Oregon District Court assigned Magistrate Judges in violation of FRCP 73. Two different Magistrate Judges with conflicts of interest were assigned by Judge Aiken ignored Roell et al. v. Withrow, No. 02-69 (2003). Judge Aiken retaliated against Brooks for opposing those appointments and dismissed his wrongful termination case.

2. **Are the federal courts subject to the Rehabilitation Act and the American's With Disabilities Act and the ADAAA extensions?**
Brooks wrote a request for a stay while he recovered from a seven hour long heart surgery on January 31, 2020. Instead of granting that, the Court issued multiple Orders and a team of three defense counselors filed motions; more than 700 pages of documents and 30+ motions, with the Courts all piling on with Orders.

> *** The Court denied counsel to Brooks who is paralyzed on the left side and has had three major surgeries in the last 18 months - cancer, upper spine, and heart. Brooks cannot sit up for more than 10 minutes, walk, or even sleep (his swallow reflex is gone.**
>
> Brooks was terminated by his employer after the cancer diagnosis and the spinal injury result from an on the job accident. The employer cancelled Brooks medical insurance, refused to even offer Cobra, literally tore up requests for Workman's Compensation medical for on the job injuries (detached retina, broken foot, lower back herniated disks). Those are STILL without necessary care.
>
> Brooks's former employer controls "Authorization Approvals" in Oregon and denied Brooks an MRI and treatment for 14 months causing spinal compression nerve damage to reflexes and Brooks' heart. Brooks cannot sleep laying down without choking from an impaired swallow reflex, is paralyzed on the left side cannot move his neck because four disks and two vertebrae were destroyed.
>
> As a result of a torn spinal sheath (Mylin Sheath) is suffering from the onset of MS:
>
> > *... in MS, the sheath covering nerve fibers in the brain and spinal cord becomes damaged, slowing or blocking electrical signals from reaching the eyes, muscles and other parts of the body. This sheath is called myelin...Although several treatments and medications alleviate the symptoms of MS, there is no cure. "There are no drugs available today that will re-myelinate the de-myelinated axons and nerve fibers, and ours does that," said senior author Tom Scanlan, Ph.D., professor of physiology and pharmacology in the OHSU School of Medicine.*

4. Has a whistleblower filed a timely complaint if he files with state agencies having contracts with and acting as a federal agents for the EEOC and OSHA?
Brooks filed whistleblower retaliation claims against his employer for race, national origin, age, cost and disability based discrimination patient profiling, medical redlining. The US Department of Labor, in an email, tells Brooks to file with Oregon OSHA. Prior to being terminated, state agents working for Oregon OSHA tell Brooks that they pass these cases to Oregon Bureau of Labor and Industries (BOLI) which has sole jurisdiction to file and cross file those claims.

In another **recorded telephone** call with BOLI attorney Jeremy Wolff, Brooks is told Oregon **has** filed complaints. Brooks signs another complaint with additional charges at BOLI headquarters on March 6, 2014, twenty days before the filing deadline for additional charges. BOLI held did not investigate or pursue Brooks' case for a year. Then they administratively dismissed it when Brooks filed suit in federal court for misrepresentation and fraud

BOLI had not filed those complaints and withheld that information from Brooks for a year. The forged a complaint form was sent to Petition after December 1, 2014, (it arrived on December 5) that does not resemble the charge sheet Jeremy Wolff is heard reading from in the recording on March 3, 2014. OSHA is claiming Brooks was late in filing because he filed with the wrong agency.

There are three cases, here, that are one case. They were obfuscated to hide the simple issue embodied in question #4. This is a simple case of a corrupt Oregon agency protecting themselves and a state contractor engaged in fraud, selling medical records, selling records of State Mental Hospital Patients, HIV and STD laboratory reports, counseling records and more. This is so bad and so extensive that is unbelievable. So Brooks is providing those records to the Court.

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all possible parties to the proceeding in the court whose judgment is the subject of this petition is as follows. Brooks does not believe all of these parties receive these and Brooks does not have the funds to serve all of these parties in any event. Brooks is sending these to the parties in bold, addressed together as written here. Brooks believes that the US Department of Labor and the state of Oregon should be criminally indicted in this matter. Brooks has that in his Conclusion.

NINTH CIRCUIT 19-35547 (appeal of 6:15-cv-00983-TC/JR/MK/AA)

Sidney R. Thomas
William C. Canby. Jr.
Ronald M. Gould
Case #19-35547
US Court Ninth Circuit Court of Appeals
THE JAMES R. BROWNING COURTHOUSE
95 7TH STREET,

Subject: Activity in Case 6:15-cv-00983-MK Brooks v. Agate Resources Mandate
Date: November 30, 2020 at 1:52 PM

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U.S. District Court

District of Oregon

Notice of Electronic Filing

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Case Name: Brooks v. Agate Resources
Case Number: 6:15-cv-00983-MK
Filer:
WARNING: CASE CLOSED on 05/14/2019
Document Number: 228

Docket Text:
MANDATE Issued regarding *USCA Memorandum [226] for the 9th Circuit, USCA #19-35547, re Notice of Appeal [216]. The decision of the District Court is: AFFIRMED.* (bd)

6:15-cv-00983-MK Notice has been electronically mailed to:

Michael T Brooks mibrooks@mac.com

Reilley D. Keating reilley.keating@stoel.com, dmholland@stoel.com, docketclerk@stoel.com

Stephen H. Galloway shgalloway@stoel.com, dmholland@stoel.com, docketclerk@stoel.com

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From: [redacted]
Subject: Activity in Case 6:15-cv-00983-MK Brooks v. Agate Resources USCA Memorandum/Opinion
Date: November 5, 2020 at 3:39 PM
To: [redacted]

U.S. District Court

District of Oregon

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Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

November 12, 2019

To: Michael T. Brooks

From: Molly C. Dwyer, Clerk of Court
By: Khanh Thai, Deputy Clerk

Re: Receipt of a Deficient Brief of Appellants on 11/07/2019

USCA No. 19-35547 Michael Brooks v. Agate Resources, Inc.

The opening brief cannot be filed for the following reason(s):

- *Opening brief already filed: Appellant has already filed an opening brief. Only one opening brief may be filed. See Fed. R. App. P. 28.* ***Please submit a motion requesting permission to file a substitute or supplemental brief.***

The following action has been taken with respect to the brief received in this office:

- *The deficiency by the appellants is judged to be serious. We cannot file your brief. The deficiency must be corrected within 14 days or the case is subject to dismissal pursuant to 9th Cir. R. 42-1. The receipt of a seriously defective brief in this office does not toll the time for filing the brief while the defect is being corrected.*

  9th Cir. R. 42-1 provides:

  When appellants fail to file a timely record, pay the docket fee, file a timely brief, or otherwise comply with rules requiring processing the appeal for hearing, an order may be entered dismissing the appeal. In all instances of failure to prosecute an appeal to hearing as required, the Court may take such other action as it deems appropriate, including imposition of

disciplinary and monetary sanctions on those responsible for prosecution of the appeal.

When you submit corrections to your brief or a corrected brief, **please return a copy of this letter.** If you don't submit your correction within 14 days of this notice, you must file a motion for leave to file a late brief. *See* 9th Cir. R. 31-2.3 re: Extensions of time for filing brief.

June 25, 2019

Michael T. Brooks
mibrooks@mac.com
32713 Vintage Way
Coburg, Oregon 97408
Telephone: 541-556-6130
Pro Se

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Michael T. Brooks

Petitioner.

v.

Agate Resources, Inc.,
dba Trillium Community Health Plan, Inc.
et al

United States District Court
For The District of Oregon

Defendants

APPEAL OF COURT ORDER TO DISMISS CASE 6:15-CV-00983-MK
TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

MAGISTRATE JUDGE MUSTAFA KASUBHAI AND/OR DISTRICT JUDGE ANN L. AIKEN PRESIDING

RULE 60AND RULE 59 APPEAL
MOTION FOR A MISTRIAL AND NEW TRIAL AND VENUE
BASED ON COURT AND DEFENDANT MISCONDUCT

This case is ultimately about the Oregon District Court's denial of due process and retaliation against a disabled Plaintiff for asserting his rights. The District Court imposed Magistrate Judge's on this case, to which Plaintiff objected in a timely and legal manner. The Court ignored those objections, simply did not even acknowledge receiving them. Plaintiff repeated those objections and was ignored. Plaintiff resisted being bullied and ignored and was

forced to publicly state his refusal to give consent to Magistrate Judges that he knew had conflicts of interest. The District Court, for that, retaliated against Plaintiff, created an increasingly hostile environment, and ultimately retaliated against Plaintiff by dismissing this case for persisting.

There are other wrong doings, including judicial misconduct, inappropriate communications with defense, and egregious abuse of discretion. This Appeal only discusses some of those. Plaintiff is prepared to cooperate with the U.S. Court of Appeals For The Ninth Circuit or the U.S. Supreme Court in investigating this matter.

INTRODUCTION

Plaintiff is also filing this appeal under Rule 60 and Rule 59.

Plaintiff, acting on advise of the Court of Appeals, filed a Motion To Reconsider to provide the District Court with an Opportunity to fix its errors on May 24, 2019. It has been a full month and the District Court has not availed itself of the opportunity to fix its errors nor even answered Plaintiff's Motion, so Plaintiff is filing an Appeal with the U.S. Court of Appeals For The Ninth Circuit.

The District Court dismissed, with prejudice, and closed his case on, apparently, May 17, 2019. **[Exhibit 1, Judges Order and Judgement; Exhibit 2 court docket and phone records of calls to Ninth Circuit]** This appears to be retaliation for objecting to the Court's imposing a biased Magistrate Judge on this case. Plaintiff pointed out other errors and Filed A Motion For a Mistrial (new trial) under Rule 59(d) and (e).

Plaintiff telephoned the Ninth Circuit Court of Appeals on May 20, 2019, (4:13 p.m.) and told them what he proposed doing, to make sure filing deadlines being missed or some legal technicality were not missed. Plaintiff deliberately wrote a Motion To Reconsider, to give the District Court a Chance to fix its errors, and because he is actively fearful of vengeful actions by District Court judges. Plaintiff's Motion To Reconsider was filed on May 24, 2019, **[Exhibit 3]**.

The Court did not answer that motion and Plaintiff telephoned the Court Clerk at the Ninth Circuit Court of Appeals on June 6, 2019, (10:28 a.m. - 10 minutes; 4:09 p.m. - 3 minutes; 4:13 p.m. - 20 minutes). The Court Clerk advised giving the Court time to answer.

On June 7, 2019, defense counsel filed a "Defendant's Response To Plaintiff's Motion To Reconsider and Motion For Mistrial" **[Exhibit 4]**.

The District Court refused to appoint counsel for a disabled Plaintiff. Plaintiff was disabled from job-related injuries that his employer had retaliated against Plaintiff by withholding Workers Compensation. In fact, Plaintiff had been terminated two days after demanding Worker's Compensation and having been forced to go to his doctor and get the results from an MRI and provide it to Trillium executives.

The Court, in full knowledge, with doctors letters and medical reports, refused to grant accommodations and required Plaintiff to stand doing days of scanning that resulted in back and neck injuries.

Worse, Defendant was in charge of Authorization Management for Plaintiff's insurer and denied medical imagining and care, ignored repeated appeals by doctors, which resulted in Plaintiff's hospitalization, major surgery, a heart attack on the operating table, and continuing health issues. The Court knew that and refused to intervene because it was concerned with dismissing this case least it harm state officials.

At one point, Plaintiff was not able to even sit up. The Court refused to appoint counsel. With the help of friends Plaintiff filed repeated motion about this with the District Court. Then, an unlawfully assigned Judge, Mustafa Kasubhai criticized Plaintiff for not being physically capable of answering a 55 page long document from Kasubhai filled with factual errors, defamation.

BACKGROUND, WHISTLEBLOWING

Plaintiff was the Data Warehouse Administrator for an Oregon Health Plan (OHP) contractor that had engaged in massive fraud, medical redlining, patient profilings, secretly sold patient medical records and laboratory test results (including HIV, STD, genetic test, and cancer test results) to employers, prospective employers and financial services businesses.

Plaintiff reported that to the state, both to Secretary of State Brown and the Oregon Attorney General Rosenblum, who failed to take any action to protect those patients. Plaintiff discovered that state officials engaged in trying to covering that up. When the state discovered

that Plaintiff had records of this and had provided them to federal investigators, the state illegally tried to identify the investigators, resorted to trying to pass of state employees as federal agents to get copies of that evidence, spied on Plaintiff and his family (including wire taps, IMSI traps, WIFI intrusions, physical surveillance, and more).

Plaintiff turned over evidence to federal investigators and that resulted in the resignation of Governor Kitzhaber and an expanding investigation of state wrongdoing. That invited further retaliation of Plaintiff, which Plaintiff wrong about when he first filed this suit. Plaintiff asked that the state be included because the state has been deeply involved in patient profiling and redlining of Hispanic and foster children. State officials have accepted bribes and favors and those same state officials have misdirected federal money and permitted millions of dollars to be outright stolen by favored state contractors.

Plaintiff was upset by Defendant's racial profiling of patients, continuing sale of employee-patient and their dependent medical records and laboratory test results (now expanded to 27 states), medical redlining, generating fraudulent claims, double billing fraud, and other wrong doing. Plaintiff was especially upset by Trillium's providing costly patient records to doctors resulting in those patients being dropped by doctors. That meant there was no one to monitor hypertension medication, even the toxicity of supplements, and the inability of those patients to get pain relief, anti-anxiety, sleep, or even muscle relaxants. Trillium lied on federal reports about this. When Plaintiff reported those falsified federal reports, Lane County used a low income housing grant to build and staff two temporary clinics for this patients to bail out Trillium Community Health Plan, a private for profit company. The doctors at those clinics had as many as 8000 patients assigned to them. This was plainly a brazen political favor for a "campaign contributor" and employer of county officials spouses.

Plaintiff stood up at a staff meeting on October 3, 2012, and spoke out about Trillium's unlawful and unethical actions. Plaintiff was yelled at by Trillium's COO, demoted from his position, removed from IT, had his desk moved and was subjected to degrading sexual, racial, age, and disability taunts.

Plaintiff did not know it at the time, but Defendant hacked into his private-home MSN email and cloud account and read emails and documents pertaining to his whistleblowing.

Records show this as primarily being in August 2013 when lawyers for a former employer were emailing plaintiff about being an expert witness.

Plaintiff was the inventor of technology that employer had patented and was asking him to defend that patent as an expert witness. It was not evident in those private emails, however, that this was what he was to be an expert witness for. All of this begs the question, what was Trillium and their counsel doing hacking into Plaintiff's private email account? How did they even know the existence of that account, much less the name and password to access it? Nonetheless, they not only did that, they were so brazen about it that they used computers on the Trillium network to do that and left IP addresses and computer signatures behind.

Trillium even used a professional hacking outfit to attach spyware to an email they sent him. Plaintiff has that email and the spyware attachment.

BACKGROUND, ON THE JOB INJURIES, MEDICAL

Plaintiff had several on the job injuries in 2012 that are related. He suffered a detached retina on April 2, 2012, resulting from working in an unlighted office over a long weekend, without sleep. Plaintiff had three large tears and a detached retina to his right eye. That resulted in three surgeries that cost Plaintiff 50% of the vision in that eye. A fourth surgery was scheduled when he was terminated.

Plaintiff developed what doctors thought was Epstein-Barr. That caused kidney disease and bleeding. Doctors originally thought this might be due to bladder or prostate cancer, but the CT scan and tests for that revealed a growth in the lower lobe of Plaintiff's right lung. This took place in September and October 2012. The mass in Plaintiff lung was discovered on October 18, 2012.

Plaintiff had a broken right foot on November 23, 2013, that was subsequently crushed when a lathe fell on it in February 2013. That foot would not heal and a bone spur in a joint caused swelling. Plaintiff was continually in cast and on crutches or in a wheelchair from November 25, 2012, through June 2014.

On August 19, 2013, in spite of being on crutches and wearing a cast, Plaintiff was told to come to work at 6:00 a.m. and do custodial work - remove old charts, graphs, and software diagrams from his cubicle wall, collect old papers and books and "junk"; load them onto a steel

media cart and transport them to an outside dumpster. Co-workers were prohibited from helping plaintiff.

In the process the media cart caught on the backdoor threshold, fell and broke Plaintiff's left foot and further damaged his right foot. MRI's were scheduled for August 28, 2018. The results of those and a nuclear scan were telephoned to Plaintiff on September 9, 2013.

Defendant had never paid for a dime for the detached retina and had prohibited Plaintiff from filing for Workers Comp. This time, Plaintiff obtained a form 801, filled it out, and demanded Worker's Comp. Plaintiff recalls submitting that form on September 11, 2013, to Human Resources Director Nanette Woods and Trillium's COO Patrice Korjenek. They told Plaintiff to leave the office and not return without a copy of the MRI and doctors report. Plaintiff got copies and submitted them to Woods and Korjenek on Thursday, September 12, 2013. Plaintiff was terminated the following Monday morning, at 8:00 a.m.

DISTRICT COURT AND INJURIES, DENIAL OF DUE PROCESS

Plaintiff is severely disabled, in forma pauperis, and Pro Se. Plaintiff had surgery on his neck on January 17, 2019, where four disks were removed, because they had ruptured and deteriorated, resulting in paralysis to Plaintiff's left side.

Plaintiff's insurance is through his wife's job as a kindergarten teacher. That insurance, as with all public employees in Oregon, is through the Oregon Health Plan. Plaintiff's insurer was MODA Health.

MODA Health used AIM Specialty Health for Authorization Benefits Management (ABM) until March 31, 2017. Thereafter they used eviCore, however eviCore was involved with service denials as of January 1, 2018. Authorization Benefits Management is where a third party business looks at a patients medical records and decides whether to approve an authorization or referral for services, approve or deny a prescription drug or medical appliance. Beyond normal medical care by a patient's primary care doctor, urgent care or emergency care, the ABM is the gatekeeper for all medical services.

With MODA this turned out to be the Defendant being denied critical medical services by Trillium Community Health Plan, hiding behind the name eviCore/CareCore. MODA, who

has the same lawyers as Trillium, not only hid that fact, they gave attorney's copies of 45 CFR § 164.524 demands for who accessed Plaintiff's records. Trillium's attorneys in this case literally wrote responses and refused to honor a federally required record request. The District Court, refused to enforce that federal requirement, too.

Plaintiff had been injured between October 22, 2017, and November 15, 2017, as a direct result of District Court ordered tasks. Doctors thought Plaintiff had a pulled muscle and ordered him into physical therapy. Plaintiff slowly got worse and doctors requested an MRI for Plaintiff's lower back on December 15, 2017. That showed **new (within the last six weeks)** damage, including several new ruptured disks in Plaintiff's lower back. [**Exhibit 5**]. No one expected that. Thereafter, MODA-Trillium denied any and all authorizations or referrals. Except for already approved physical therapy (which was not renewed by Trillium) and work with a rehabilitation doctor, all authorization requests were denied. This went on until August, after Plaintiff went to the US Department of Labor, OSHA, and they issued a letter of right to sue on July 18, 2018. Trillium received that letter and issued an approval for that MRI on July 25, 2018, under their eviCore name. This needs noting. Only Trillium received that right to sue notice. Plaintiff and his doctors had given up on even trying to get appeals with MODA. Even if they were merely acting as a contractor for eviCore there was insufficient time for Trillium to contact MODA, who would contact eviCore and approve that authorization. This was Trillium, acting directly as eviCore, likely on advise of their shared counsel.

Defendant, Plaintiff's former employer, denied medical treatment and imagining for over a year, which resulted in those injuries being much worse than they should have been. Plaintiff's deteriorated health resulted in a "cardiac episode" (heart attack) on the operating table on January 17, 2019, a clot, and a whole host of other problems. Subsequently, Plaintiff has had more than 60 episode of atrial flutter and atrial fibrillation. Plaintiff discovered that PHI was "shared" by Defendant with their counsel and because of that is providing medical records to this Court. [**Exhibit 6, neck; 7, chart notes; 8, cardiac records; 9, cancer**], These records are not provided to garner sympathy. They are in proof of Plaintiff's contention that the District Court engaged in such egregious misconduct that an investigation and sanctions are in order. They show that Plaintiff was injured by the District Court, was denied accommodations, was treated

abominably by a Court that was in an unseemly hurry to dismiss a case and spare their friends in state government from being named as parties in a proceeding that proves criminal conduct by the state and state contractors.

The District Court has taken advantage of a disabled plaintiff. The District Judge dismissed and closed the case three days before posting or mailing it to Plaintiff, who lives "two to three mail delivery days" away from Eugene in the small town of Coburg. Plaintiff, even then, was able to answer her in a timely manner with a polite Motion To Reconsider, granting the District Court the ability to fix its errors. The District Court, instead, has refused to take advantage of that opportunity by ignoring yet another Motion.

Plaintiff does not trust the District Court and is sending a copy of this Appeal and exhibits directly to the Ninth Circuit Court of Appeals and to Clerk's Office of the U.S. Supreme Court. Plaintiff is being retaliated against for being a Christian and blowing the whistle on corrupt Democratic Party officials in Oregon.

Judge Aiken blocked 84,318 patients from access to justice, whose records had been unlawfully sold by Trillium. Those patients were harmed by being laid off from jobs, not getting hired, being denied loans and credit, denied medical care, because Judge Aiken granted a protective order for Trillium essentially claiming that fraud was a trade secret.Then, after Dugan stole those records and others, the Court permitted Stoel Rives to be keep and possess the stolen records in violation of her Protective Order!

Dennis Richardson, the recently Secretary of State who passed away, had seen the records of wrong doing by Trillium, had them forensically audited, and independently verified. He saw criminal violations of state law and spoke with the Oregon Attorney General who promised to prosecute Trillium executives and state officials involved in that wrongdoing. Secretary Richardson developed brain cancer and he Oregon Department of Justice buried and covered up that evidence and did nothing.

The current situation in this Court, with judges having connections with the Oregon Department of Justice officials that spoke with Mr. Richardson, is unacceptable. In addition to low wage workers, Trillium targeted foster children, involuntarily committed patients at the state mental hospital, inmates in the state's prison system and and their families, undocumented

workers and so called anchor babies and their parents and siblings. This is awful. Plaintiff blew the whistle on this and was fired because the state protected the evil men and women who profiled these human beings, denied them care, kicked them to the curb.

Plaintiff asks the Court to make note of the injury date on the chart notes - October 22 through November 15, 2018. Plaintiff can provide dozens of records showing the date of the neck and back injuries corresponding with the District Court's refusal to provide accommodations and the District Court's assignment of tasks that it was warned by doctors and Plaintiff would result in further injuries. Those are, to put it bluntly, ADA and Rehabilitation Act violations and the District Court is financial responsible for the expenses incurred as a result of its negligence. In spite of claims to the contrary, the federal courts are not immune to the statutory requirements of Congress. Article III of the Constitution is quite clear that the District Courts are the creation of and subject to statutory law. The ADA and Rehabilitation Act both explicitly apply to any entity receiving federal money. Congress did not exempt the federal courts from that requirement and the U.S. Supreme Court and those "Article III inferior courts" would not have authority to grant any such exemption to themselves.

The Oregon District Court violated Plaintiff's Due Process rights. Plaintiff asked for either additional time in October 2017 due to disabilities and asked for the appointment of counsel after his injuries as of November 2017. The Court refused both requests in direct violation of Supreme Court rulings with regards to Due Process. The Court, also prevented plaintiff, under threat of sanctions, from filing an Interlocutory Appeal of their Court's excesses

Denying Pro Bono counsel to a Plaintiff that cannot even sit up for 10 to 20 minutes and favoring defense counsel whose firm the judges and court officers have personal relations with is outlandish, but not the worst thing judges have done in this case.

Treating a disabled plaintiff with contempt by ridiculing him (the court clerk ridiculed plaintiff's hoarseness when speaking after the surgery of January 17, 2019, damaged nerves that prevent food and liquids swallowed from going into the lungs. The Magistrate Judge made fun of a photograph showing what happened to Plaintiff's foot when he stood scanning for 90 minutes - the left foot turned blue colored and swelled to double normal size. Courts, judges, are not supposed to act this way.

The U.S. Supreme Court ruled that a **court violates due process rights by failing to provide counsel or reasonable alternative procedural safeguards.** Citing Matthews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), the Supreme Court used several factors to determine what specific safeguards are required by the Due Process Clause. These include:

- the nature of the private interest that will be affected;
- the comparative risk of an erroneous deprivation of that interest with and without additional or substitute procedural safeguards; and,
- the nature and magnitude of any countervailing interest in not providing additional or substituted procedural requirements.

The Turner case involved child support and the possibility of imprisonment, but the Supreme Court explicitly does not limit its decision to cases where incarceration are an issue. Specifically, the Court held that its ruling applies to any case in which there is a risk of erroneous deprivation of significant rights. As a practical matter, the Court held that Judges are **required to appoint an attorney** "whenever it is apparent that due process rights cannot be adequately preserved without an attorney". This is not discretionary. But this is what the District Court did in the face of repeated pleas for assistance.

There is hardly a clearer case of animus than when an in forma pauperis Pro Se Plaintiff, who cannot sit in a chair for more than 10 to 20 minutes is refused accommodations and belittled. Provably, the neck injuries were due to Court actions.

One of the cores of this case involves untreated on the job injuries. The Court refused to provide for accommodations in the face of legal precedent, the Americans With Disabilities Act, the Rehabilitation Act, and common human decency, and caused further disabilities. Everything that has taken place in this case since at least October 22, 2017, has involved an egregious denial of due process by the District Court.

The District Court permitted discovery by defense while denying that to plaintiff. The Court permitted declarations and evidence by defense while denying plaintiff those. Now, with this Order, the District Court is attempting to limit the basis for an appeal by scrubbing the record of declarations, recordings, exhibits of wrong doing, misleading statements, altered records including altered medical records, and records of criminal conduct by defendants.

Something to note, too, is that Magistrate Judge Kasubhai refers to Plaintiff having time to write a new amended complaint. During that time, from November 15, 2017, to December 1, 2018, Plaintiff was **paralyzed** and being denied access to medical care by Defendant, something the District Court both knew of and should have remediated. On December 1, 2018, Plaintiff was transported to the Emergency Room at PeaceHealth Hospital and, then, admitted directly into the hospital by doctors to circumvent Defendant's denial of services via their contract as the Prior Authorization Manager for MODA Health.

Defendant executives altered medical records at Slocum Orthopedic, where the President of Trillium was the owner, in an attempt to muddy Plaintiff's contention that he had requested time off for surgery for the on the job injury that led to the neck surgery. In doing so, they destroyed a record indicating early signs of atrial fibrillation in an outpatient surgical record. This nearly resulted in killing Plaintiff. The District Court was appraised of that, too.

Doctors were in the middle of operating on Plaintiff's neck when his heart went into 75 BMP Venticular / 300 BPM Atrial. The D. Diemer record is of a clot that resulted from blood pooling in the lower chamber of Plaintiff's heart. That clot, by an act of God, did not go to Plaintiff's brain, lung, or heart where it would end up 95% of the time, resulting in a stroke.

Again, the District Court was aware of all of this. Plaintiff was bedridden and still unable to even sleep in a normal bed. Plaintiff provided records of this to the Court in repeated pleas for the appointment of counsel or accommodations.

Plaintiff was denied Pro Bono counsel or other accommodations by the District Court even though he has been unable to sit up for more than a few minutes. Plaintiff has only been able to do filings with the help of volunteers who have helped with these filings.

The District Court harmed Plaintiff on behalf of state officials with whom they have friendships and personal relations in an unseemly rush to dismiss this case. The District Court permitted both counsel and Defendant misconduct that not only damaged this case, they made a mockery of the legal process.

Plaintiff will not hazard to guess if that bias resulted in deliberate or unintentional abuse of discretion, but the fact of that bias and abuse is beyond doubt and it calls for independent investigations of the Oregon District Courts.

The District Court was kept appraised of Plaintiff's injuries. The Court, in fact, ignored requests for accommodations, motions to appoint counsel, doctors letters, and medical records, and ordered Plaintiff to scan documents and write drafts that caused the neck and back injuries in the medical records provided as exhibits.

The District Court, By Imposing Magistrate Judges Over Plaintiff's Objections, Created A Prejudicial Error

Magistrate Judge Kasubhai was the second magistrate judge the District Court attempted to impose on Plaintiff. Plaintiff had objected to both Magistrate Judges because of conflicts of interest in their relations with state agents.

In both cases, Plaintiff wrote objections to the Chief Justice of the District Court, Michael Mosman. In both cases those objections were ignored, which resulted in subsequent written objections. Those objections were ignored, too. Ignoring Motions they do not like is a bad habit with this Court.

In her Order To Dismiss 6:15-cv-00983-MK, District Judge Ann Aiken wrote:

> *the Court ADOPTS Magistrate Judge Kasubhai's F&R (doc. 198) in its entirety. Accordingly, defendants Motion to Dismiss (doc. 137) is GRANTED, and plaintiffs Amended Complaint (doc. 135) is dismissed, with prejudice.*
> *[ORDER, May 14, 2019, Ann Aiken]*

How does an unlawfully appointed Magistrate Judge's prejudicial writings end up being cited by a District Judge as reason to dismiss? Magistrate Judge Mustafa Kasubhai was **illegally** acting as the judge and his "Findings and Recommendations" were prejudicial and inadmissible and unlawful. The District Judge retaliated against Plaintiff for objecting to Judge Kasubhai's taking part in this matter at all and for pointing out that the District Court misunderstood Rule 72, Rule 73, and 28 U.S.C. § 636.

Plaintiff was notified that the Court was appointing Magistrate Judge Kasubhai on September 21, 2019, and filed a formal written objection with the Chief Justice of the District Court on September 30, 2019 [docket #176]. Plaintiff wants it noted that the manner of notification was not in accordance with federal law and Federal Rule requirements.

Plaintiff's Motion to oppose appointment was docketed under seal on October 2, 2019.

The Court completely and totally ignored that opposition. Plaintiff filed a second and third objection to Magistrate Judge Kasubhai's case assignment which were also ignored. Finally, Plaintiff was forced to file open motions objecting to the District Court's imposing this Magistrate Judge's appointment to this case.

Plaintiff reminded the Court that he had objected to the appointment Magistrate Judge Jolie Russo of March 7, 2016. Plaintiff filed a Rule 73 objection of March 10, 2016. The Court did not deem to answer that. Plaintiff filed two other letters objecting to that appointment and even explained that his objection were due to the Magistrate Judge's friendship with two Oregon Assistant Attorney General's and named them. That objection was never answered.

The failure to answer those objections, and Plaintiff still has copies of them, amounted to treating Plaintiff with destain. A Court simply is not permitted to run roughshod over the legal objections of a litigant like the Oregon District Court has done. The District Court's refusal to obey the Federal Rules of Civil Procedure were another violation of Plaintiff's right of Due Process and an egregious violation of the Federal Rules.

Judge Aiken, in her Order of May 14, 2019, noted that Plaintiff had not "given full consent". Really? Plaintiff had vigorous opposed the appointment of Judge Kasubhai. Judge Aiken goes on to write:

> The Court notes, however, that the District of Oregon's Local Rules "designates every Magistrate Judge to conduct all pretrial proceedings authorized by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72, without further designation or assignment." LR 72-1. The Court also randomly assigns newly filed civil cases to both Magistrate Judges and District Judges. *See* L.R. 16-1 (a). Thus, in accord with Fed. R. Civ. P. 72, magistrate judges may preside in cases and issue non-dispositive orders on pretrial matters, even when consent is not given.

First off, local rules must conform to the Federal Rules of Civil Procedures (Rule 83: "Rule 83,"**local rules are required to be consistent with the national rules**"), which the "Local Rules" of the Oregon District Court do not. Secondly, both Judge Aiken and defense counsel have Rule 72 and 73 reversed. Rule 72, "Pretrial Order", governs proceedings where all parties **have consented** to a Magistrate Judge. Rule 73, "Trial By Consent", **governs the appointment and consent process for Magistrate Judges**. Rule 73(b) is the consent procedure.

The section of Rule 72(b) referred to by Judge Aiken (and inappropriately in the District

Court's Local Rule 72-1) has to do with criminal, not civil proceedings. As the notes of the Advisory Committee make clear, **Subdivision B governs court-ordered referrals of permissible dispositive pretrial matters and prisoner petitions challenging conditions of confinement, pursuant to statutory authorization in consent of the parties which is limited to petitions for "relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement".**

Local Rule 73-1, states that any Magistrate judge is "subject to the consent of the parties", but LR 73-3 both goes on to contradict and violate compliance with Federal Rule 73, LR 73-1 and with 28 U.S.C. § 636(c). There are no provisions under federal law where a District Court can appoint a Magistrate Judge for any period of time or duty if they are objected to by any party in a dispute. Even the emergency provisions in 28 U.S.C. § 636(f) disallow that lacking consent.

A footnote to LR 73-3 makes it clear that the District Court fails to understand the consent provisions of 28 U.S.C. § 636(c)(1), (2),(3) and 28 U.S.C. § 636(d), based upon case law and Supreme Court rulings. As the Supreme Court court noted in Roell et al. v. Withrow, No. 02-69 (2003), "The Federal Magistrate Act of 1979 (Act) empowers full-time magistrate judges to conduct ...any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case,' as long as they are "specially designated ... by the district court" and acting with "the consent of the parties." The court emphasizes "any" and explicitly maintained that, where a party objects to the appointment of a Magistrate Judge, anything done by that Judge is thrown out. See, also, descent by Justice Thomas, with whom Justice Stevens, Justice Scalia, and Justice Kennedy join:

> *The majority holds that no express consent need be given prior to the commencement of proceedings before the magistrate judge. Rather, consent can be implied "where ... the litigant or counsel was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case before the Magistrate Judge...In my view, this interpretation of §636(c)(1) is contrary to its text, fails to respect the statutory scheme, and raises serious constitutional concerns. Furthermore, I believe that a lack of proper consent is a jurisdictional defect and, therefore, a court of appeals reviewing a judgment entered by a magistrate judge pursuant to §636(c) may inquire sua sponte into the consent's validity.*

The Oregon District Court did not, never does, make litigants aware of the right to withhold consent. That said, Plaintiff in both the case of Russo and Kasubhai, wrote timely objections. The "implied consent" provision would not apply, but the emphasis upon how seriously the Supreme Court takes this should be noted. It leads to mandatory decision that everything done by a trial court from the point of that objection being thrown out. In this case of this case, the District Court's misconduct at least makes a fair trial impossible and warrants a new trial in a new venue imperative. Plaintiff was clearly denied Due Process and the District Court was clear prejudicial and acted beyond its discretion.

In his objections to the District Court, Plaintiff maintained that anything done by either Magistrate Judge was prejudicial to a fair trial. Plaintiff moved to have all of their actions stricken from the docket, except where those actions harmed Plaintiff and impeded a fair trial.

Plaintiff notes that both Magistrate Judges Russo and Kasubhai exceeded their authority as Magistrate Judges and violated 28 U.S.C. § 636(b)(1)(A). In spite of District Judge Aiken's contentions to the contrary, the Court docket records shows both Magistrate Judge's entertaining defense motions and acting on them for summary decisions, dismissal for failure to state a claim, suppressing evidence including declarations, etc.

Judge Russo went so far as to block an appeal by Plaintiff under 28 U.S.C. § 636(c)(3) and Rule 73(c) when Plaintiff attempted to file an Interlocutory Appeal with the Appeals Court about her exceeding her authority. Judge Russo both prohibited that appeal in violation of Rule 73(c) and permitted defense to file a flurry of inappropriate motions objecting to Plaintiff right to file it which she heard and used as an excuse to deny the Appeal. This flies in the face of the Federal Rules and statutory law enacted by Congress that created the District Courts.

Judge Aiken's reference to 28 U.S.C. § 636(b) is inappropriate and appears to be an attempt to create new law to justify the District Court's trampling Plaintiff's rights. 28 U.S.C. § 636(b) is a list of functions a Magistrate Judge may perform under the assumption that the Magistrate Judge is already consented to by all parties. In that sense, it covers issues similar to Rule 72.

The ensuing errors due to this misapplication of the law are not the harmless errors of Shinseki v. Sanders. They are violations of the Federal Rules Of Civil Procedure, and violate due

process. Plaintiff's Motion To Reconsider was filed in order to give the District Court an opportunity to fix its error. At this late date, however, the animus and prejudice have made any further hearing of this case before the Oregon District Courts suspect. A new trial under Rule 59(e) and Rule 60 is the only option.

The Federal Rules exist to prohibit a District Court from imposing a Magistrate Judge on a proceeding. In this case, imposing is precisely what the District Court did and the District Court even misunderstand the governing laws they cite to defend their unlawful action. Worse, however, was so ignoring the objections of Plaintiff that he had to insist on his rights, which meant incurring "adverse substantive consequences".

The response of the Court to those objections was to vindictively dismiss this case, judicial excess and indiscretion by a Judge that should have recused herself is unheard of. Again, Aiken's Order of May 14, 2019, was not filed until May 17, 2019, and that was not even mailed to Plaintiff for several days. The Court was attempting to deny an appeal to its Order.

Judge Aiken concludes her order with "the Court adopts Magistrate Judge Kasubhai's F&R (doc 198) in its entirety. Accordingly, defendant's Motion To Dismiss is granted, and plaintiff's amended complaint is dismissed with prejudice". How does a Court adopt an F&R that legally does not exist?

The Court Engaged in Prejudicial Actions and Indiscretions

Judge Russo, even unlawfully conducting Plaintiff's case, exceeded judicial discretion by engaging in private discussions with defense counsel about pending motions, by allowing defense counsel to retain stolen property, by permitting defense counsel to lie to Plaintiff and the Court with impunity, and by permitting defense counsel to withhold emails, agreements, and discussions between them and Marianne Dugan, pseudo counsel appointed to represent Plaintiff. In an email dated August 23, 2017, Defense counsel wrote Ms. Dugan:

> *Due to the lack of production and the court's stated willingness to hear our motion to compel next week, we are withdrawing the notice of plaintiffs deposition for Monday, August 28. We reserve all rights to conduct the deposition after the current cut off date in accordance with the court's order.* ***[Exhibit 10]***

Note the date. Defense counsel filed a Motion To Compel on August 15. The docket is silent until August 29, when Ms. Dugan files a response to the Motion to Compel. Judge Russo issues a decision on August 31, 2017 [docket #68], sanctioning Ms. Dugan and eliminating Plaintiff's right to discovery. **In other words, defense counsel is writing about secret, off the record and inappropriate contact between themselves and the court.** They admit (1) contact with regards to the court's treating their Motion To Compel with favor and (2) they admit a foreknowledge of the cutoff dates in a court order issued 8 days later, on August 31, 2017! "Discovery is extended until 9/15/2017 for the limited purpose of allowing defendant to review the recently produced documents and depose plaintiff...."

Plaintiff will not hazard to guess if the indiscretion is by the Magistrate Judge or another Court officer. Russo was a member of a social organization that included defense counsel, "OWLS" and their law firm, Stoel Rives, as well as with Oregon Department of Justice Assistant Attorney General's that are involved in covering up the wrongdoing that Plaintiff reported and should have recused herself. Judges Aiken and Russo's relationship goes back more than 20 years. Russo was Aiken's senior staff attorney from 1988 until **2016,** were members of OWLS together, and Judge Aiken sponsored Russo's Magistrate judicial appointment.

Judicial misconduct is not required to create the problems seen here. It merely requires judicial prejudice. Plaintiff, as a whistleblower against state agents, a (former) governor, a former Secretary of State and Present governor and Attorney General, all friends of the judges on the District Court, Judges who have publicly ridiculed Christians and "conservatives" is public knowledge.

Plaintiff would, also, direct the Court of Appeals to look at the email Dugan writes to her fellow qui tam attorneys about a discussion and agreement pertaining to discovery between Dugan and Reilley Keating on April 24, 2017:

> *Just had a conferral call with Reilley Keating from Stoel about the wrongful discharge case.*
>
> *:*
>
> *3) They agree to a two-month extension of discovery (bringing it to some time in October) because of the above two issues and the fact that I am just coming on board.*

According to Ms. Dugan, based on that agreement she left the state for more than two months to plan her daughter's wedding, vacation and visit with relatives, and take part in a trial.

During that period, which Defense counsel knew about, because they had agreed to it, they carefully sent letters, made telephone calls to an office landline, and sent emails to Dugan's office that defense counsel knew was a single person office without secretarial services. Stoel Rives sent an RFP, Notice of Deposition, and other papers to a known empty office. They knew Plaintiff's telephone number and address, just as they knew about Dugan's fellow attorney's and they carefully neglected to inform any of them. It was a dirty trick, a violation of a verbal contract, and the Court rewarded them for it. So they did it again and again.

Dugan's fault was in not formalizing the agreement with Stoel Rives and letting them know that she was a single person office who would not have secretarial assistance during that time period. Based on that trick, Judge Russo sanctions Dugan.

At the very least, the Court should have figured out that someone was lying about the production conference being put off until October 2017. Either Defense entered into that agreement and abrogated it, then lied, and should have been sanctioned; or Dugan lied, failed to communicate with her client, and should have been sanctioned.

In neither case did Plaintiff do anything wrong. So why was Plaintiff punished by having his right to production ended by the Court? Why, indeed, was Dugan sanctioned and fined when she apparently had been tricked?

Plaintiff was given a stash of emails showing defense counsel threatening Dugan with further monetary sanctions by the Court that seem to involve more secret communications with the Court, after which she is seen stealing Plaintiff and her fellow qui tam attorneys documents, recordings, evidence of fraud, attorney client emails, **case strategy documents**, drafts and filings from other cases, records and communications with federal investigators about current cases, from a locked office used by her fellow qui tam attorneys and sending it all to Stoel Rives. Plaintiff, Dugan's fellow counsel, did not know this until October because Dugan flat out lied to Plaintiff and her fellow counsel.

Defense counsel tried to keep that secret from Plaintiff and the Court, but then erred by using information from a 90 page long strategy document Plaintiff had written. Plaintiff asked what they had received and filed a Motion for a Protective Order from the Court. Defense counsels response was to mislead the court with a declaration by legal aide Julie Brown who

received documents from Dugan:

> *On September 13, 2017, Stoel Rives received a letter from Ms. Dugan enclosing another flash drive that contained additional electronic documents produced in response to Defendant's RFP. Many of these documents were duplicative of those previously produced.* ***[Exhibit 11]***

This was a deliberate falsehood, an attempt to mislead the Court and Plaintiff. Plaintiff suspected this to be a lie because defense counsel was using information from Plaintiff's strategy documents in their filings.

What Stoel Rives received was a memory stick with every piece of evidence qui tam lawyers had for their case, all of their work product, witness statements, hundreds of hours of recordings, strategy documents, emails and correspondence with federal investigators, and every draft or every document Plaintiff had ever written for any administrative or court action since being terminated on September 27, 2013. This was a deliberate attempt to mislead, one of several that the Court refused to call them on.

Plaintiff found out what Ms. Dugan had sent when, in response to a court order, defense counsel sent Plaintiff the memory stick Dugan had sent them on September 13, 2017. Why, then, did the Judge punish him?

Plaintiff had fired Ms. Dugan on September 11, 2017. Plaintiff had actually fired her prior to that, but she worked for the qui tam lawyers and ignored Plaintiff...so did they. Plaintiff has dozens of emails showing this, too, that he would be happy to provide the Court of Appeals. The District Court would refused to take motions to fire her from Plaintiff because "he was represented by counsel".

Plaintiff made arrangements to pick up the documents stored in the qui tam lawyers office to protect them. Dugan slipped in and took them on the morning of September 12. Plaintiff had 12 years worth of original documents stored in plastic sleeves, recordings of his father telling him stories before he passed away in March. All of those "disappeared". They have never been seen again and the Court would not order Dugan to give those back and refused to issue a subpoena to defense counsel for their return. Ms. Dugan involved in a proceeding to be disbarred for this, but the District Court could not see fit to sanction her?

Dugan took, and either gave to defense counsel or destroyed, dozens of original

documents that Plaintiff had preserved in plastic sleeves. Most of those were original documents for which no copy exists. They were in the locked office at Leiman and Johnson to protect them until they could be copied. Some of those were obvious evidence in this case, as with drafts of "statements" bearing different dates and altered stories, a letter sent to the Oregon Employment Department by Agate admitting they had ordered Plaintiff to clean his cubical on August 19, 2013, knowing he was in a cast and on crutches, but Woods claiming that Agate had provided a garbage can in Brooks' cubical.

On September 12, Plaintiff wrote an Ex Parte communication to the Court, and informed the Judge that he had lost trust in Ms. Dugan, that her fellow qui tam lawyers had recommended Plaintiff file Oregon State Bar and PLF complaints about Dugan, and try to get PLF to repair the case she had damaged. The Court immediately sent that to Ms. Dugan. Dugan in turn, took all of the evidence, including privileged strategy documents, notes, work product, correspondence about ongoing federal investigations, and sent them to defense counsel. The Court sent an Ex Parte communication to the attorney that was about!

Plaintiff discovered that the September 13 "memory stick" had been sent out via Federal Express Overnight, late in the afternoon, after the court sent Dugan the Ex Parte communication and after letting her know that t it was going to allow him to proceed Pro Se the next morning. The envelope was an extra large legal sized document folder that weighed a lot more than a memory stick. Plaintiff asked for a subpoena from Federal Express for that in a legal document, showing that defense counsel had lied about what they received. The Court refused.

The District Court failed to provide for accommodations for a disabled litigant and caused grievous and life threatening injuries in Violation Of The ADA and Section 504 Of The Rehabilitation Act

Plaintiff had been injured on the job. Both feet were broken, he had a detached retina, had developed cancer and had an underlying medical conditions; Epstein-Barr which led to chronic bladder and kidney infections and a mass in the lower lobe of his right lung. Plaintiff was fired by Trillium two days after giving providing a demanded MRI and filling out the paperwork for Worker's Compensation medical help for a crushed left foot that happened because Trillium

ordered him to do custodial work, even though he was in a cast and on crutches for a broken right foot.

Trillium executives altered medical records that were pertinent to this case at Slocum Orthopedic. Plaintiff produced insurance records, original doctor chart notes, and eye witness declarations that he was in a wheelchair when altered records had him walking. Eye witnesses and records show a surgeon at Slocum telling Plaintiff he had to have surgery to avoid permanent damage his right foot and plaintiff telling the surgeon that Trillium executive Patrice Korjenek threatened to fire Plaintiff if he took time off work for surgery. The District Court would not permit records or declarations about that. The District Court refused to issue a subpoena or Protective Order for those records when, provably, they were being altered! The District Court permitted defense counsel to not merely attempt to misrepresent that happening, it permitted them to represent MODA, Trillium, and Slocum, in refusing to comply with Plaintiff's legal HIPAA record requests under 45 CFR § 164.524.

The District Court brazenly and openly took the side defense counsel and state officials with whom they have a primary conflict of interest.

The Oregon District Court ended this case in the face of evidence and declarations about unlawful activity by state actors and Trillium executives who do favors for state executives.

The on the job injuries were never taken care of. Plaintiff had to pay, out of pocket, for surgery to his right foot. The injuries to the left foot were much worse and he was referred to the Foot and Ankle Clinic in Seattle for surgery. The estimated cost was $70,000, including surgery, physical therapy, and hospital costs. Plaintiff could not afford that.

As a consequence, plaintiff's left foot, especially, swells after standing on it or even sitting for more than 60 to 90 minutes.

Judge Russo ordered plaintiff to "unravel" condensed and sometimes out of sequence scanned PDF files, assemble single document files from those, rescan them and copy them to a memory stick and computer, and write a privilege log. Everything in those files had, including evidence for a qui tam case, every document plaintiff ever filed with the EEOC, BOLI, Oregon OSHA, OSHA, the US Department of Labor, attorney-client emails and correspondence, attorney-client work product, Pro Se work product in other cases, tax and medical documents,

recordings, all of that stolen from Plaintiff and surreptitiously given to Defendant. Plaintiff and his doctors wrote the court asking for accommodations, additional time, for that standing up scanning for hours harmed Plaintiff. Plaintiff and the other qui tam attorneys asked Ms. Dugan about what she had sent and she lied to them. She was hired by them, was a member of their team and was supposed to help them and Plaintiff, not steal from them and give everything she could lay hands on to Defendants.

Plaintiff still has the original memory sticks and notes, locked in a safe. The first memory stick is from September 21, 2017, is accompanied by an email, and claims this is what he sent to Stoel Rives. The other memory stick is fromStoel Rives on October 20, 2017, which is purported to be the memory stick Ms. Dugan sent them on September 13, 2017. The differences between these is enormous and the District Court refused to even look at them. They not only prove Ms. Dugan trying to wreck Plaintiff's OSHA and EEOC proceedings, the qui tam case, and this case, they show her deliberately wrecking investigations, even providing defense counsel with precisely the same evidence that federal investigators had. The result of that was Trillium's parent company closing down shells under investigation.

Plaintiff could figure out from Defense filings that Dugan had given them his Court strategy documents, notes, and evidence, and filed a motion with the court to have those returned to Plaintiff and to have original documents for which no copy existed returned to Plaintiff.

Judge Russo refused that and Plaintiff was given three weeks to take 5.2 GB of PDF files that contained as many as 20 documents, print those out, separate them into individual files, scan them, and write a privilege log for them.

The cost of toner, paper, memory sticks, cost Plaintiff over $2000 for the smallest memory stick provided by Defense counsel. That was money Plaintiff needed for medicine, doctors, housing, and basic living expenses. Second, desperately trying to avoid sanctions by a Judge who was acting like she was an agent for the defense and state. That landed plaintiff in the emergency room on October 24, 2017, in urgent care centers on October 31 and November 3, 2017, in doctors offices on November 3 and twice on November 7. Plaintiff was sent to see several doctors and a specialist for increasing paralysis and pain on November 3 7, and 10, 2017.

Motions from Plaintiff and letters and telephone calls from doctors were ignored by the District Court. The result was back and neck injuries caused by Court **negligence**.

- there is an extension of disk material seen anteriorly at the level of L2/L3 and posteriorly at L5/S1
- L2/L3 anterior extension of disk material which extends into the retroperitoneum at the level of the aorta and cava...
- L4/L5 broad based disk bulge
- L5/S1 broad based disk bulge

The injuries to the neck are even worse. The disk and vertebra at C5/6 are severe and are internally decapitating Plaintiff. Please, look at the MRI set is provided as **Exhibit 6.**

Plaintiff is providing the MRI's as **Exhibit 5 and 6**. These are provided to show gross negligence by the Court. That is bolstered by doctor's chart notes that confirm that these injuries happened as a direct result of Court actions and judicial misconduct[**Exhibit 8**].

The Oregon Court was asked to provide counsel, provide some kind of accommodations on multiple occasions. Plaintiff wrote an Interlocutory Appeal pleading for relief by the Ninth Circuit that was blocked by Judge Russo. Instead, the District Court caused permanent and life threatening harm to Plaintiff.

Plaintiff's insurance is now through his wife's work. She is a public school teacher. School teachers are insured through OHP, MODA Health. MODA uses eviCore/CareCore for utilization/benefits management. In Oregon, Trillium acted as eviCore when Plaintiff's doctors were trying to get services for the damage done to his spine and back. The spinal damage effected the brain stem, which led to high temperatures, impaired or completely missing automatic reflexes (1+ in the knees and 0 in the ankles, paralysis of the left side). Trillium denied medical services for over a year, while symptoms grew steadily worse. Plaintiff asked for the court's intervention, because this was obviously continued retaliation. By December 1, 2018, Plaintiff had lost the use of his left hand completely. He had to dictate documents for this case into an iPad and have them edited by friends. Magistrate Judge Russo, and, then, Magistrate Judge Kasubhai refused to provide accommodations.

Plaintiff ended up in the emergency room on December 1, 2018. The ER unit admitted him directly to the hospital to circumvent Trillium's denying care and ran a series of more than

20 tests while keeping Plaintiff hospitalized for four days. Plaintiff was released into the care of ER doctors and ended up in surgery for the neck injuries on January 17, 2019.

Plaintiff experienced a "cardiac event" while on the operating table, his heart stopped. The heart restarted with atrial flutter [**Exhibit 8.** The pooling of blood led to a clot, [**Exhibit 8,** D. Diemer result] which ended up in plaintiff's leg...by sheer luck avoiding a stroke. Subsequently Plaintiff experienced more than 60 a. flutter events coupled with interleaved atrial fibrillation [**Exhibit 8**], and forcing Plaintiff into taking 12 different drugs just to permit his neck to heal up enough so he can have heart surgery. Coupled with this, too, Plaintiff has nerve damage that has made swallowing difficult and, at times, impossible.

All of that stems from District Court negligence between October 22 and November 15, 2017, and subsequent refusal to provide for accommodations.

Subsequent to those injuries, Plaintiff asked the court to appoint counsel. The court made one small attempt and appointed a Pro Bono attorney for six hours to draft an Amended Complaint by a well known employment attorney. Judge Aiken dismissed the Amended Complaint in her order of May 14 (or May 17) . However, for a Court to prohibit a disabled, impoverished, Pro Se litigant, to be access to counsel to draft an amended complaint acceptable to the court flies in the face of multiple Supreme Court cases and is another denial of Due Process.

In Garay v. Novartis Pharmaceuticals Corp., 13-3762-CV, the Second Circuit issued a decision that overturned the Eastern District of new York dismissal of Garay's age discrimination case:

> *it erred in denying [the plaintiff] leave to amend her complaint on futility grounds. As a general rule, leave to amend should be freely given, and a pro se litigant in particular should be afforded every reasonable opportunity to demonstrate that she has a valid claim. We have thus held that a pro se complaint should not be dismissed without the Court granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated. An amendment to a pleading is futile if the proposed claim could not withstand a motion to dismiss pursuant to Rule 12(b)(6).*

Plaintiff wrote the Court that he was more than willing to file an amendment to a complaint that the court wished, but that he was unable to do so without assistance; and Plaintiff

asked for assistance. Plaintiff looked at the work Mr. Crispin had done, however, and it looked like ever other complaint Plaintiff has seen that was acceptable to Courts. Plaintiff suspects that the District Court was applying subjective standards. Mr. Crispin is **a very** respected employment attorney that does not make many errors. Plaintiff is supplying that Amended Complaint, however, with this Appeal. **[Exhibit 12]**

Exhibit 13 is a photograph of Plaintiff's foot after standing for 90 minutes doing scanning. The District Court Judge ridiculed that evidence. The right foot had surgery. Plaintiff had to pay for that. Surgical costs for the left foot are $70,000 which Plaintiff cannot afford. That injury was clearly a result of harassment for whistleblowing and happened on the job. Agate went to great lengths to destroy documents with regard to that, but there are still records and witnesses of it.

Again, what possesses a District Judge to throw out an already proven claim for medical costs for an on the job injury? That happens when the District Judge is retaliating against Plaintiff for opposing her bullying and when she is helping state political fiends. This begs for a federal investigation.

Additional Errors By The Court; Summary; Mistrial, Rule 59 and Rule 60

In her first order, Judge Russo wrote repeatedly about this being a five year old case and she blamed Plaintiff for that. When Judge Russo received the case it was a year and a half old and had been held up by repeated motions to extend time by defense counsel.

Plaintiff, in 2015, attempted to get discovery started, resorting in trying to compel discovery. Defendant's filed flurries of motions and stalled. When Plaintiff managed to get the Court to order a discovery conference, Stoel Rives Attorney Ryan Gibson discovered that Plaintiff had records of Trillium and it's President, Dr. Thomas Wuest, engaged in an elaborate scheme to commit fraud by misusing CPT codes. Plaintiff described in documents how that scheme worked, and Plaintiff showed exactly how to detect those patterns.

The following day Plaintiff was contacted by a state employee, Sandra K. Hilton, who worked for the Secretary of State's Audit Division, wanting those records. This is odd because

the last time Plaintiff spoke with that office was on February 15, 2012, more than three and a half years before. Plaintiff informed the court of this. Nothing was done except Mr. Gibson left and Stoel Rives stalled the case with motions to extend time, and a flurry of time wasting motions.

Judge Kasubhai ranted about Plaintiff having had five lawyers and filed 20 motions, all of which are provably factually incorrect assertions by a Magistrate Judge that did nothing more than muddy the waters in this case.

Plaintiff had two attorney's. One attorney Plaintiff retained. The other, Ms. Dugan, was hired by qui tam attorney's. And that attorney, Ms. Dugan, met with Plaintiff exactly one time. A third, Mr. Crispin, and excellent attorney, was retained for six hours by the Court.

The Motions were required individual motions for six declarations, three legally made telephone recordings and Court demanded cover sheets in a particular format for each of these separately.

The District Judge's accepting them places her in the position of basing her decision on a non-existent document, writings of a unlawfully emplaced Magistrate Judge that has no legal authority and amounts to poisoning a case already damaged by District Court mishandling. Per Lubben v. Selective Service System Local Board No. 27, 453 F.2d 645 (First Circuit Court of Appeals) "A court must vacate any judgement entered in excess of its jurisdiction" or in case of fraud to the court. In 6:14-cv-01424-AA, on multiple grounds, the Order to Dismiss should be vacated, an order for a new trial issued, and this case removed from the Oregon District Courts. Again, under Rule 60(b)(4) a "...judgement is a void judgement if the that rendered judgement lacked jurisdiction of the subject matter, or of the parties, or acted in a matter inconsistent with due process". Plaintiff will be drafting such a motion with friends this next week and filing it.

Defense counsel routinely misleads the Court and is rewarded for it. Plaintiff cannot under stand this. In 6:14-cv-01424-AA Defense counsel misrepresented the requirements of CPT code, 20680. They were so successful at this that the record of a transcript of a hearing on June 16, 2017, that the Judge is seen arguing the Defendant's case for them.

Judge McShayne: "... in your briefing that procedure code applies to the removal of hardware during a surgical procedure and that there could be more than one piece of hardware. I suppose there could be multiple pieces of hardware being removed from a patient."
Ms. Keating: "Right. Exactly. And that was one example, potentially, of another explanation for why this is not duplicative billing."

The problem is 20680 can be used only one time for an implant, no matter how many punctures it takes to tighten or remove it (typically four). In their Brief, Trillium's counsel deliberately misrepresented the CMS rules about that procedure, so much that a federal judge not only argued for them, he allowed them to override federal law in deciding the case.

Defendant's are state contractors that are experts in their knowledge of those CPT codes; indeed, could not be state contractors if they were not experts. Per CMS and AAPC:

*"20680, **describes a unit of service that is reported only once provided the original injury is located on one site, regardless of the number of screws, plates, rods or incisions**. An example would be the removal of a single implant system, which may call for "stab" or multiple incisions (eg, intramedullary (IM) nail and several locking bolts). Multiple use of code 20680 would be appropriate only when the hardware removal was performed for another fracture in a different anatomical site unrelated to the first fracture (eg, ankle and humerus)..."*

All of the claims billing records in the examples used a single main DX code, which would have disallowed even two billing claims for 20680, but those claims records have it billed seven or more times, often with the facility as the primary surgeon and Agate's own President as the assistant surgeon. Now, 20680 does not permit an assistant surgeon and using the facility code and hiding the identity of any surgeon involved in a surgery is a felony under 42 U.S. Code § 1320a(1), (5), and (i) . Plaintiff notes that the statute of limitations for charging Agate and that doctor for that felony still has not expired. Likewise, under Rule 60, "fraud upon the court by an officer of the court", that case can and should be reopened.

Worse, the judge dismissed the case because plaintiff could not meet a spurious standard set by Aiken. She required evidence of fraud within a six year period of **filing** the case when the actual federal rule is within six years of reporting the fraud to federal investigators....and that happened when plaintiff met with CMS and HHS investigators on July 1, 2014. Even then, the

supervisors of those investigators did not listen and Plaintiff filed the qui tam case, 6:14-cv-01424-AA, on September 3, 2014, as the request of one of the CMS investigators.

In fact, the time bar on whistleblower retaliation claims under FCA appears to be either **three years or six years from <u>when the government learned of the false claim</u>** in a ruling by the Eleventh Circuit Court of Appeals, **not** when the plaintiff learned of it (5:13-cv-02168-RDP; United State ex rel Billy Joe Hunt v Cochise Consultancy, Inc. and the Parsons Corporation).

The U.S. Supreme Court upheld that decision in Cochise Consultancy, Inc. v. United States ex rel. Hunt, No. 18-315, 2019 WL 2078086 (U.S. May 13, 2019). In its decision, the Supreme Court essentially added four years on the time available for private suits to be brought by whistleblowers/relators under the False Claims Act ("FCA"), regardless of whether the Government decides to intervene.

Finally, and the most troubling thing to Plaintiff's mind, is an altered fraudulent declaration purportedly signed by him, which is swears under penalty of perjury he did not sign. The docket number in 6:14-cv-01424-AA/MC is #55. The signature appears to be genuine and Plaintiff is guessing that it was cut from another document. The filing for that is by a Court appointed Pro Bono lawyer. That declaration materially effected the qui tam case.

Under Rule 60, Plaintiff is asking that this case be reopened.

A District Court Judge is simply not permitted to argue for either side in a case, especially when they are proven wrong. In the mess created by Defense Counsel misleading the Court and the District Court apparent anxiously looking for any excuse to dismiss a case that impacted their corrupt state government, the Court managed to make itself look ridiculous and incompetent. Plaintiff appeals the dismissal of 6:14-cv-01424-AA/MC based on fraud, mistakes and ignorance by the court in not understanding CMS regulations and case law. That case needs to be re-opened under Rule 90 in a new venue, free from the machinations of Oregon, also.

Defense counsel did exactly the same thing in Plaintiff's U.S. Department of Labor case. They managed to game the sur reply system with teams of lawyers, one them filing while another waited for a filing by Plaintiff and filed a response. They misled the ALJ into believing that BOLI did not take whistleblower cases and cannot cross file them. Well, as any Oregon resident knows, BOLI in fact has filed and cross filed whistleblower retaliation claims.

In that series of claims, Agate double and triple billed for anesthesia (01400, R370 and as R250); previously billed medication (J1885, R250). In the nine examples Brooks showed a pattern of fraud, showed how Agate perpetuated that fraud, and wrote about the exact amount of fraud. For just those nine examples, the fraudulent billing was in excess of $30,000. Just the series for that one doctor claims fraud totaled over $2 million dollars through 2007. The fraud continued through August 2013, and Plaintiff saved records of that on his workstation and reported it to Oregon officials (OHA).

Prayer For Relief

- Plaintiff asks for a new trial and a different venue free from the influence of Oregon.
- Plaintiff asks that Stoel Rives and all experts witnesses be disqualified in accordance with the Rico v. Mitsubishi Motors Corporation; and specifically for violations of ABA Rule 1.6(b)(6), Rule 8.4(c), Rule 4.4(b), and for Rules 3.3 and Rule 3.4 .
- Plaintiff asks for the involvement of the Federal Bureau of Investigation for felony alteration of Plaintiff medical records at Slocum Orthopedic which resulted in serious, permanent health consequences, and shortened Plaintiff's life by years
- Plaintiff asks for the involvement of the Federal Bureau of Investigation to investigate malware/spyware use by Defendant's, unlawful intrusions, wiretaps, Internet hacking and cell phone hacking, for trespass, threats and acts of violence directed against Plaintiff and members of his family.
- Plaintiff asks for the involvement of the Federal Bureau of Investigation to unlawful acts against Oregon Health Plan patients by the state of Oregon. This shall include any records pertaining to patient profiling, medical redlining, the sale of patient medical records, fraudulent billing, and the alteration and use of records in order to provide medically assisted suicide instead of patient care
- Plaintiff asks for the return of all records stolen from him and sent deliberately or accidentally to defense counsel.
- Plaintiff asks or the return of all records stolen from him by Ms. Dugan and still in her possession

- Plaintiff asks for a full accounting of the whereabout of his records, keepsakes and property.
- Plaintiff asks that the state if Oregon be required to provide Plaintiff with a full accounting of the filing he did with Oregon's Bureau of Labor and Industries. In particular, Plaintiff wants any notes, paperwork, recordings with regard to his filings with BOLI and an explanation as to why BOLI failed to file those complaints in a timely manner.
- Plaintiff asks for the appointment of counsel.
- Plaintiff asks for sanctions against both the Portland Office of Stoel Rives, the Oregon Employment Department, and the Oregon Department of Labor, especially BOLI.

Oregon OSHA and BOLI, in legally recorded telephone conversations, show that they botched their contract with the federal government and failed to file and competently handle complaints and claims by Plaintiff. If They had handled injury claims, Workers Comp claims, FMLA claims, Plaintiff would not have incurred life threatening injuries. Tens of thousands of patients would not have needlessly suffered and the United States of American would not have paid out hundreds of millions of dollars in fraudulent claims.

Plaintiff, under advise from BOLI, deliberately filed Civil Rights complaints against Defendant for profiling patients based on race, language, sex, age, disability, religion, National origin, and children's status as foster children. Those are legitimate Title VII claims that Plaintiff asserted on behalf of those patients and suffered retaliation for that Act. That said, under Title VI, the state of Oregon and that includes Magistrate Judges in communication with state actors, enjoy no immunity for damages inflicted on plaintiff or those OHP patients.

Michael T. Books
Plaintiff in Pro Se

APPENDIX B

US DISTRICT COURT FOR THE DISTRICT OF OREGON

6:15-cv-00983

Brooks v Agate Resources, et al

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

MICHAEL T. BROOKS,

Plaintiff,

v.

AGATE RESOURCES, INC., dba,
Trillium Community Health Plan,

Defendant.

No. 6:15-cv-000983-MK
Judgment

AIKEN, District Judge:

The Court has adopted the Findings and Recommendations of the Magistrate Judge (doc. 198) granting defendant's Motion to Dismiss (doc. 137). Accordingly, this action is dismissed, with prejudice.

IT IS SO ORDERED.

Dated this 14 day of May 2019.

Ann Aiken
United States District Judge

U.S. District Court

District of Oregon

Notice of Electronic Filing

The following transaction was entered on 5/17/2019 at 10:02 AM PDT and filed on 5/14/2019
Case Name: Brooks v. Agate Resources
Case Number: 6:15-cv-00983-MK
Filer:
WARNING: CASE CLOSED on 05/14/2019
Document Number: 213

Docket Text:
JUDGMENT:. The Court has adopted the Findings and Recommendations of the Magistrate Judge (doc. 198) granting defendant's Motion to Dismiss (doc. 137). Accordingly, this action is dismissed, with prejudice. (Mailed to Pro Se party on 5/17/2019.) Signed on 5/14/2019 by Judge Ann L. Aiken. (rdr)

6:15-cv-00983-MK Notice has been electronically mailed to:

Michael T Brooks mibrooks@mac.com

Reilley D. Keating reilley.keating@stoel.com. dmholland@stoel.com. docketclerk@stoel.com

Stephen H. Galloway shgalloway@stoel.com. dmholland@stoel.com. docketclerk@stoel.com

6:15-cv-00983-MK Notice will not be electronically mailed to:

The following document(s) are associated with this transaction:

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

MICHAEL T. BROOKS,

Plaintiff,

v.

AGATE RESOURCES, INC., dba,
Trillium Community Health Plan,

Defendant.

No. 6:15-cv-000983-MK
ORDER

AIKEN, District Judge:

On March 22, 2019, Magistrate Judge Mustafa Kasubhai issued his Findings and Recommendations ("F&R") (doc. 198) recommending that defendant's Motion to Dismiss (doc. 137) be granted and plaintiff's amended complaint (doc. 135) with prejudice. 22, 2019. This case is now before me. *See* 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

When either party objects to any portion of a magistrate judge's F&R, the district court must make a *de novo* determination of that portion of the magistrate

judge's report. *See* 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore Business Machines, Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert denied*, 455 U.S. 920 (1982). Plaintiff has filed timely objections[1] (doc. 200), and defendant has filed a timely response to those objections (doc. 202). Thus, this Court reviews the F&R *de novo*.

Having reviewed the objections and responses, F&R, as well as the entire file in this case, the Court finds no error in the thorough order of the Magistrate Judge. Thus, the Court adopts the F&R (doc. 198) in its entirety. Accordingly, defendant's Motion to Dismiss (doc. 137) is GRANTED.

Further, since submitting his objections to the F&R, plaintiff has also filed what is styled as a Motion for Mistrial and New Trial (doc. 203) pursuant to Fed. R. Civ. Pro 59. Importantly, there has been no jury or bench trial in this matter, nor has a final judgment been entered. Plaintiff's motion fails as matter of law and is accordingly DENIED. Plaintiff's request for a change of venue is also denied as jurisdiction is proper in the District of Oregon.

In the motion for new trial, plaintiff continues to raise complaints about this case being assigned to a Magistrate Judge, and he requests that this Court vacate "all orders, motions and work done by Magistrate Judges." Pl.'s Mot for New Trial at 29. Plaintiff argues that he never consented to have this case heard by a magistrate

[1] The Court does not consider plaintiff's second "response" (doc. 211) as it was untimely, and the Court did not grant plaintiff leave to file supplemental briefing beyond what is allowed in the Local Rules.

judge, and it is true that full consent has not been given by the parties. The Court notes, however, that the District of Oregon's Local Rules "designates every Magistrate Judge to conduct all pretrial proceedings authorized by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72, without further designation or assignment." LR 72-1. The Court also randomly assigns newly filed civil cases to both Magistrate Judges and District Judges. *See* L.R. 16-1(a). Thus, in accord with Fed. R. Civ. P. 72, magistrate judges may preside in cases and issue non-dispositive orders on pretrial matters, even when consent is not given. However, when dealing with dispositive motions in cases where consent has not been given, Magistrate Judges must issue a F&R for the District Court's consideration. Fed. R. Civ. P. 72(b) An F&R is not a final order, and when objections are made by either party the district court must review the objected portions of the F&R under a *de novo* standard.

These procedures have been followed in this case. This case was initially assigned to Magistrate Judge Coffin, and later Magistrate Judge Russo and finally Magistrate Judge Kasubhai. All magistrate judges have entered non-dispositive orders regarding pre-trial matters. Plaintiff was free to appeal those orders to the District Court pursuant to Fed. R. Civ. P. 72(a), which he did on two occasions. (docs. 180 and 190). Further, when considering defendant's motion to dismiss, the Magistrate Judge issued a timely F&R, which is now before this Court. Thus, because this routine practice is authorized under Fed. R. Civ. P. 72 and 28 U.S.C. § 636, plaintiff's request that this Court strike all previous decisions by the Magistrate Judges in this case are denied.

As noted above, the Court ADOPTS Magistrate Judge Kasubhai's F&R (doc. 198) in its entirety. Accordingly, defendants Motion to Dismiss (doc. 137) is GRANTED, and plaintiff's Amended Complaint (doc. 135) is dismissed, with prejudice.

IT IS SO ORDERED.

Dated this 14th day of May 2019.

Ann Aiken
United States District Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 1 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL T. BROOKS,

Plaintiff-Appellant,

v.

AGATE RESOURCES, INC., DBA Agate Healthcare (Oregon ABN 695284-96), DBA Apropo Benefits Management, LLC, DBA Employers Health Alliance, LLC, DBA Health Policy Research Northwest, DBA Lane Home Medical, LLC, DBA Lane Individual Practice Association, Inc., DBA Trillium Advantage, DBA Trillium Community Health Plan, DBA Trillium Community Health Plan, Inc., DBA Trillium Community Health Plan, LLC, DBA Trillium Coordinate Care Organization, Inc., DBA Trillium Medicare, DBA Trillium Sprout,

Defendant-Appellee.

No. 19-35547

D.C. No. 6:15-cv-00983-MK
District of Oregon,
Eugene

ORDER

The court's records reflect that the notice of appeal was filed during the pendency of a timely-filed motion listed in Federal Rule of Appellate Procedure 4(a)(4), and that motion is still pending in the district court. The June 26, 2019 notice of appeal is therefore ineffective until entry of the order disposing of the last such motion outstanding. *See* Fed. R. App. P. 4(a)(4). Accordingly, proceedings in this court are held in abeyance pending the district court's resolution of the

JW/Pro Se

pending May 24, 2019 motion. *See Leader Nat'l Ins. Co. v. Indus. Indem. Ins. Co.*, 19 F.3d 444, 445 (9th Cir. 1994).

Within 14 days after the district court's ruling on the pending motion, appellant shall file a written notice in this court: (1) informing this court of the district court's ruling; and (2) stating whether appellant intends to prosecute this appeal.

To appeal the district court's ruling on the post-judgment motion, appellant must file an amended notice of appeal within the time prescribed by Federal Rule of Appellate Procedure 4.

The Clerk shall serve this order on the district court.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Joseph Williams
Deputy Clerk
Ninth Circuit Rule 27-7

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