

No.

**IN THE UNITED STATES SUPREME COURT**

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Lee Pederson,

Petitioner/Plaintiff,

vs.

**PETITION FOR A**

Phillip Frost, Cocystal Pharma, Inc.,

**WRIT OF CERTIORARI**

and Daniel Fisher,

Respondents/Defendants

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ON A PETITION FOR A WRIT OF CERTIORARI TO

THE EIGHTH CIRCUIT COURT OF APPEALS

Date: May 8, 2022

Petitioner / Plaintiff

Lee Michael Pederson

Pro se

In forma pauperis

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## INTRODUCTORY STATEMENT

Respondent Phillip Frost is the leader of a white-collar gang that conducted a pump-and-dump (“P&D”) securities fraud at BioZone Laboratories, Inc. (now dba Respondent CoCrystal Pharma, Inc.) beginning in about September of 2013. Petitioner Lee Pederson and Respondent Daniel Fisher were damaged when Frost fraudulently took over BioZone prior to the P&D. Pederson and Fisher worked together from mid-2014 to about early 2017 to expose Frost’s frauds at BioZone and other companies. Fisher agreed to provide Pederson with documents and testimony to support Pederson’s planned litigation against Frost. Pederson initiated a first Minnesota lawsuit for fraud against Frost, CoCrystal and other defendants in late 2017 (*Pederson I*). However, **Fisher refused to provide Pederson with promised documents and testimony in *Pederson I* because Frost and CoCrystal paid Fisher \$800,000 to withhold such documents and testimony from Pederson.** Because of the lack of Fisher’s documents and testimony, Pederson lost his case in *Pederson I*. After becoming aware of the \$800,000 payment, Pederson initiated the present Minnesota case (*Pederson II*) in 2019. Pederson brings claims against Frost and CoCrystal for tortious interference with a business relationship. Pederson brings a claim against Fisher for unjust enrichment.

## QUESTION PRESENTED FOR REVIEW

Does Minnesota have the power to exercise specific personal jurisdiction over Respondents/Defendants Phillip Frost and CoCrystal Pharma, Inc. under *Calder v Jones*, where the Respondents/Defendants intentionally damaged Petitioner/Plaintiff Lee Pederson’s previous lawsuit in Minnesota Federal District Court by paying a potential witness (Respondent/Defendant Daniel Fisher) to withhold promised documents and testimony from Pederson in the previous case?

## PARTIES

All parties appear in the caption of the case on the cover page.

Petitioner Lee Pederson is a resident of Minnesota.

Respondent Phillip Frost is a resident of Florida.

Respondent CoCrystal Pharma, Inc. is a Delaware corporation with a principal place of business in Washington State.

Respondent Daniel Fisher is a resident of California.

## RELATED CASES

*Pederson v. Frost, CoCrystal and Fisher*, No. 19-cv-01777, U.S. District Court for the District of Minnesota. Judgment entered January 6, 2021.

*Pederson v. Frost, CoCrystal and Fisher*, No. 21-1260, U.S. Court of Appeals for the Eighth Circuit, Judgment entered December 29, 2021. Petition for rehearing denied February 8, 2022.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was December 29, 2021.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February 8, 2022, and a copy of the order denying rehearing appears at Appendix D.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

### Fourteenth Amendment Due Process Clause:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

Please do not dismiss this case as just another crackpot conspiracy theory. The facts of this case are outrageous and complex, but they are true and well-documented. The facts include:

1. Billionaire Phillip Frost bribed a potential witness in a Minnesota federal court case.
2. A primary motive for Frost was to damage Pederson's lawsuit against Frost.
3. Another primary motive was to conceal Frost's securities frauds.
4. At the time of the bribery, Frost enjoyed a mostly untarnished reputation as a businessman and philanthropist. (You can read about Frost on his Wikipedia page.)
5. In reality, Frost is the leader of a nationwide securities fraud enterprise (the "Frost gang").
6. On September 7, 2018, the SEC charged Frost with securities frauds in the case of *SEC v Honig* (SDNY).
7. Frost paid about \$5.5 million to settle the SEC's claims against him.
8. Lawsuits related to Frost gang securities frauds have so far resulted in disclosed settlements of more than \$30 million. There have also been undisclosed settlements. Other litigation is pending.
9. Investigations into the Frost gang by the SEC and DOJ are continuing.<sup>1</sup>

## I. SUMMARY OF THE ARGUMENT

The Due Process Clause of the Fourteenth Amendment to the United States Constitution permits personal jurisdiction over a defendant in any state with which the defendant has certain minimum contacts such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Calder v Jones*, 465 U.S. 783 (1984). In *Calder*, the Supreme

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<sup>1</sup> See pages 14-16 of ECF 112.



Court held that jurisdiction was proper based upon the effects of their intentional conduct in California. The Supreme Court noted that petitioners were not charged with untargeted negligence, but rather their intentional, and allegedly tortious, actions were expressly aimed at California, and under the circumstances, petitioners must have reasonably anticipated being sued there.

In order for a defendant to be subject to personal jurisdiction under *Calder*, a defendant must (1) commit an intentional act (2) that is expressly aimed at the forum state and (3) causes actual harm that the defendant knows is likely to be suffered in the forum state.

The facts of the present case show that Frost and CoCrystal paid Fisher \$800,000 in return for Fisher agreeing to renege on Fisher's obligation to Pederson to provide promised documents and testimony. This tortious interference damaged Pederson's litigation against Frost in Minnesota. Frost intended and caused actual harm to Pederson that Pederson suffered in Minnesota. Therefore, the Defendants are subject to jurisdiction in Minnesota.

## II. BASIC FACTS

Pederson brought a first lawsuit for fraud against Defendants Phillip Frost, CoCrystal and others in Minnesota in 2017 (*Pederson I*). As part of a business collaboration between Pederson and Fisher, Defendant Daniel Fisher had agreed to provide documents and testimony to Pederson in support of *Pederson I*. The Defendants paid Fisher about \$800,000 to induce Fisher to withhold the promised documents and testimony from Pederson. As a result, Pederson's case in *Pederson I* was damaged. *Pederson I* was dismissed by for lack of personal jurisdiction by the District Court and the Eighth Circuit affirmed.<sup>2</sup>

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<sup>2</sup> *Pederson v. Frost*, 951 F.3d 977, 980-81 (8th Cir. 2020)

Pederson brought the present lawsuit (*Pederson II*) against Frost and CoCrystal for tortious interference with a business relationship and against Fisher for unjust enrichment.

Plaintiff Lee Pederson and Defendant Dan Fisher were both harmed when Defendant Phillip Frost fraudulently took control of BioZone Laboratories, Inc. (now Defendant Cocrysal) in 2011. Frost is the leader of a Nationwide Securities Fraud Enterprise (“NSFE”) that used BioZone for a pump-and-dump (“P&D”) securities fraud that began trading in September of 2013. In 2014, Pederson and Fisher began a collaboration to expose the frauds of Frost and his NSFE. The collaboration continued until about early 2017. Fisher was in litigation against Frost’s NSFE the entire duration of the collaboration. In 2017, Fisher agreed to settle his \$295,000 claim against Frost’s NSFE for \$1.176 million. Fisher’s settlement with Frost and Frost’s NSFE comprised the following elements:<sup>3</sup>

- (1) Fisher agreed to withhold documents and testimony from Pederson’s use in Pederson’s Minnesota litigation against Frost and Frost’s NSFE in *Pederson I*.
- (2) Fisher ended his collaboration with Pederson to expose the frauds of the Frost gang.
- (3) Fisher withdrew his SEC whistleblower complaint against Frost.
- (4) Fisher withdrew his complaints to the FBI against Frost.
- (5) Fisher provided Frost with a sworn statement (“Fisher’s sworn statement”) containing demonstrably false statements relating to Frost’s frauds.
- (6) Fisher dismissed his \$295,000 litigation claim against Frost’s NSFE.
- (7) Frost and CoCrystal provided \$1.176 million in consideration to Fisher.

Fisher agreed to the settlement in early 2017 and the settlement was finalized in February of 2018. The SEC initiated the case of *SEC v Honig* against Frost on September 7, 2018. The

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<sup>3</sup> The Amended Complaint refers to the settlement as a bribe.

public and the courts were almost completely unaware of the existence of Frost's NSFE until after Frost's bribery of Fisher was completed and *SEC v Honig* was filed.

### III. EXPANDED DISCUSSION OF THE FACTS

A google search of -Phillip Frost Barry Honig fraud- will produce hundreds of thousands of hits with headlines such as "SEC Charges Microcap Fraudsters for Roles in Lucrative Market Manipulation Schemes" (SEC press release, September 7, 2018); "SEC Charges Against Phillip Frost Might Just Be the Tip of the Iceberg" (*Barron's*, September 10, 2018); "Miami Billionaire Phillip Frost Accused of Additional Financial Schemes in New Lawsuit" (*Miami New Times*, January 4, 2019); "Ex-Teva chairman Phillip Frost pays \$5.5M to settle 'pump-and-dump' charges" (*fiercepharma.com*, January 2, 2019); "Miami Billionaire Charged In \$27 Million Fraud Scheme" (*celebritynetworth.com*, September 20, 2018); "Ex-Teva Chairman, Blockchain Investor Accused of Pump-and-Dump Scheme" (*Wall Street Journal*, September 7, 2018); "The Lawyer at the Center of the SEC Pump-and-Dump Case" (*Barron's*, October 4, 2018); "OPKO Health to Pay \$16.5 Million, Resolving Pump-and-Dump Claims" (*bloomberglaw.com*, June 30, 2020); and so on.

All of the media stories listed above were published after the SEC brought securities fraud charges against the "Frost gang" on September 7, 2018. Prior to that date, Frost enjoyed a mostly untarnished reputation as a billionaire philanthropist, biotech executive and investor. However, with the filing of charges by the SEC, the details of Frost gang pump-and-dump ("P&D") securities frauds at numerous companies over many years began to become public. The events described in the present case occurred before Frost and his associates were labeled as "Fraudsters" by the SEC.

Frost's NSFE (the "Frost gang") uses a Victim Suppression System ("VSS") to attack and neutralize their victims, skeptics and critics.<sup>4</sup> The VSS is used to conceal evidence of Frost gang frauds. The VSS has sued journalists to discourage media coverage of the gang's frauds. The VSS uses litigation to delay and prevent accountability for their frauds. The VSS uses corporate resources controlled by the Frost gang to drive up the costs for its victims who try to assert their rights. Actions of the VSS have resulted in significant law enforcement delays against the gang.<sup>5</sup>

Frost's VSS was critical in influencing Fisher's decision to accept the \$800,000 bribe. The VSS forced Fisher to spend all his time and much of his personal finances on legal battles with the gang from 2012 through 2017. Although the Frost gang damaged Pederson and Fisher in 2011 and 2012, the SEC did not bring charges until September 7, 2018. When Fisher decided to accept the bribe in early 2017, the SEC was still over a year away from filing charges. At that time in 2017, it seemed entirely possible to both Pederson and Fisher that the SEC would never bring charges. By the time the SEC did bring charges, Fisher had already taken the \$800,000 bribe and thrown in his lot completely with the Frost gang – including participating in VSS actions against Pederson.

Public perception of Frost and the Frost gang is considerably different now than it was in 2017. After the filing of *SEC v Honig* on September 7, 2018, there has been a flood of litigation against the Frost gang. This litigation has resulted in much new information about Frost gang

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<sup>4</sup> The VSS is described in the Amended Complaint in Pederson III and at ECF 76-33 of the present case.

<sup>5</sup> The fraudulent takeover of BioZone happened in 2011. The SEC did not bring charges against the Frost gang until 2018.

frauds becoming public. As a result of the new information, Pederson has filed a third lawsuit against Frost gang members and associates related to the bribery of Dan Fisher (*Pederson III*).<sup>6</sup>

The following chronological table lists some of the litigation involving the 10 “bribery defendants” named in *Pederson II* and *Pederson III*. PF is Phillip Frost, OP is Opko Health, BH is Barry Honig, MB is Michael Brauser, HK is Harvey Kesner, JH is Jane Hsiao, SR is Steve Rubin, CO is CoCrystal/BioZone, BK is Brian Keller, and DF is Dan Fisher. The table shows just some of the many lawsuits related to securities frauds where the Bribery Defendants have been named as defendants.

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<sup>6</sup> *Pederson v. Kesner et al.* U.S. District Court for the District of Minnesota, Court file no. 21-02256

Case / (total # of defendants) / Initiation date / status	PF	OP	BH	MB	HK	JH	SR	CO	BK	DF
<i>Pederson I</i> / (4) / October 2017 / Dismissal affirmed by 8 <sup>th</sup> Cir.	X	X						X	X	
<i>SEC v Honig</i> / (20) / September 7, 2018 / \$11.3 M in settlements so far	X	X	X	X					X	
<i>MabVax v Sichenzia</i> / (10) / Sept 10, 2018 / Undisclosed settlement					X					
Opko class action / (2) / Sept 14, 2018 / Settled for \$16.5 M	X	X								
CoCrystal Class action / (15) / Sept 20, 2018 / Settled for \$1.265 M	X		X	X				X	X	
Opko Deriv. Action / (11) / October 2018 / Settled for \$3.1 M	X	X				X	X			
<i>Wendt v Frost</i> / (18) / Dec 31, 2018 / Undisclosed settlement	X	X	X	X		X	X			
<i>MabVax v Honig</i> / (30) / April 8, 2019 / Some undisclosed settlements <sup>7</sup>	X	X	X	X			X			
<i>Pederson II</i> / (3) / July 8, 2019 / Present case	X							X		X
<i>Pederson III</i> / (7) / October 2021 /		X	X	X	X	X	X		X	

Since 2018, the Frost gang has been subject to numerous other lawsuits and law enforcement investigations and actions related to securities frauds conducted by gang members

<sup>7</sup> According to Opko's most recent SEC Form 10-K, Frost, FGIT, Opko and Rubin reached a tentative settlement with MabVax in January, pending approval of the Delaware Bankruptcy Court. The Bankruptcy Court docket shows that the settlement was approved. The San Diego Superior Court docket shows that the claims against Frost, FGIT, Opko and Rubin were dismissed in April. Terms of these settlements were not disclosed. MabVax's case against the remaining 26 defendants is ongoing.

and associates. The SEC has subpoenaed three Frost gang companies where charges have not been brought yet (PTE, RIOT, AWSM). In addition to *SEC v Honig*, successful law enforcement actions include a settlement with the SEC by TEUM,<sup>8</sup> a settlement between Irth Communications and the SEC,<sup>9</sup> and a settlement Between Laidlaw & Company with FINRA.<sup>10</sup> There are other public indications that both the SEC and DOJ have active investigations related to Frost gang frauds.<sup>11</sup>

The Frost gang used fraudulent means to take over BioZone in 2011. The victims of the takeover, including Pederson, relied on Frost's reputation in their belief that the takeover was a legitimate business operation. Pederson resigned in 2012 when he came to understand that the takeover was an essentially fraudulent operation. The P&D began at BioZone in September of 2013, and Pederson filed a whistleblower complaint with the SEC in December of 2013. Pederson teamed up with Fisher in 2014 to investigate and expose Frost gang frauds. However, in 2017 Fisher gave up hope that the SEC or DOJ would enforce the law against the Frost gang. After five years of litigation, Fisher apparently concluded that "if you can't beat 'em, join 'em." Fisher took an \$800,000 bribe and joined forces with the gang.

Frost's public reputation was almost completely intact when Pederson initiated *Pederson I* in about October 2017. In fact, it appeared to Pederson that Frost intended to rely on a "Twiqbal" defense if Pederson focused on the securities frauds aspects of the Frost gang in *Pederson I*. At the time, the SEC had not taken any enforcement action and Fisher had reneged on his promise to provide Pederson with much-needed documents and testimony. Therefore, it would have been easy for Frost to argue that Pederson's claims in that Frost and his associates

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<sup>8</sup> ECF 26-17 in *Pederson III*.

<sup>9</sup> ECF 26-29 in *Pederson III*.

<sup>10</sup> ECF 26-13 in *Pederson III*.

<sup>11</sup> See pages 14-16 of ECF 112.

comprised a Nationwide Securities Fraud Enterprise (“NSFE”) were implausible. Pederson’s nightmare scenario was that *Pederson I* would be Twiqballed out of court and the Feds would never take any enforcement action – a distinct possibility at the time in early 2018.

Without any documents and testimony from Fisher, and without any enforcement action from the SEC, Pederson could not show that Minnesota had jurisdiction over Frost in *Pederson I*. Frost’s bribery of Fisher succeeded initially.

By the time Pederson initiated *Pederson II*, *SEC v Honig* had been filed and any Twiqbal defense was out of the question for Frost. However, Fisher had joined with the Frost gang’s VSS operation. During *Pederson II*, Frost repeatedly misrepresented the long and complex tangle of existing Frost gang litigation, especially *Pederson I*. Frost and Fisher used a “tail-wagging-the-dog” strategy by filing Rule 11 motions against Pederson, with the implication that the jurisdictional issue was a foregone conclusion. The District Court granted the Defendant’s motions for summary judgment, and even imposed Rule 11 sanctions against Pederson.

The Eighth Circuit affirmed in a per curium opinion, writing that, “We find that defendants’ other contacts with Minnesota—their settlement of a California real estate lawsuit, which allegedly harmed Pederson in Minnesota, and their alleged participation in nationwide securities schemes—were also insufficient to establish personal jurisdiction.” The Eighth Circuit’s opinion did not mention any of the specific terms of the settlement between Fisher and Frost, even though those terms included the central jurisdictional fact of Fisher’s agreement to withhold documents and testimony from Pederson in Pederson’s Minnesota lawsuit against Frost (*Pederson I*) for an \$800,000 consideration. Further, the *Pederson II* opinion did not mention the fact that Frost had intended that the settlement would damage Pederson’s *Pederson I* lawsuit.



#### IV. PEDERSON III

While *Pederson II* was pending at the Eighth Circuit, ongoing Frost gang-related litigation continued to produce newly available documents and evidence. On August 9, 2021 in *Kesner v Buhl*,<sup>12</sup> the August 11, 2017 “Sworn Statement of Daniel Fisher” (aka “Fisher’s sworn statement”) was filed as an exhibit.<sup>13</sup> The contents and context of Fisher’s sworn statement clearly implicated other members and associates of the Frost gang in the bribery of Fisher.<sup>14</sup>

Based on the newly available information in Fisher’s sworn statement, Pederson initiated *Pederson III* on about September 13, 2021.<sup>15</sup> *Pederson III* involves the same nucleus of operative facts as *Pederson II*, i.e., the bribery of Fisher by the Frost gang. Based on the newly available evidence,<sup>16</sup> *Pederson III* names seven additional “bribery defendants” to the three “bribery defendants” named in *Pederson II*.

Because the jurisdictional facts are essentially the same in *Pederson II* and *Pederson III*, Pederson indicated to Frost’s attorney<sup>17</sup> that Pederson would not oppose a motion to stay *Pederson III* pending the appeal of *Pederson II*. However, the Frost gang pushed ahead with a Motion to Dismiss and a new Motion for Rule 11 sanctions in *Pederson III*. A motion hearing was held on February 14, 2022. As of May 8, 2022, the Minnesota District Court has not issued a ruling on the Frost gang’s motions in *Pederson III*.

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<sup>12</sup> *Kesner v Buhl*, SDNY Case no. 1:20-cv-03454

<sup>13</sup> ECF 145-3 (Exhibit C) in *Kesner v Buhl*.

<sup>14</sup> See Pederson’s October 14, 2021 Motion to Supplement the Record at the Eighth Circuit.

<sup>15</sup> U.S. District Court for the District of Minnesota, Court file no. 21-02256

<sup>16</sup> In addition to Fisher’s sworn statement, the newly available evidence includes the “MabVax discovery document” which was filed in *MabVax v. Honig* (San Diego Superior Court) on October 18, 2021.

<sup>17</sup> In *Pederson II*, Frost is represented by attorney Joseph Dixon. Dixon represents Frost gang defendants Opko, Rubin and Hsiao in *Pederson III*.

## V. THERE IS NO SIGNIFICANT PRECLUSION OR ESTOPPEL FROM *PEDERSON I*

There is no preclusion in this case from *Pederson I* regarding the central issue of jurisdiction. The nucleus of operative facts in this case involves the bribery of Fisher by the Frost gang, which took place in the 2017-2018 timeframe during the pendency of *Pederson I*. The nucleus of operative facts in *Pederson I* involved frauds against Pederson by the Frost gang during the fraudulent takeover of BioZone, which took place in the 2011-2012 timeframe.

There is no mention of the word “bribery” in *Pederson I* because Pederson was unaware of the bribery when the Amended Complaint was filed in that case. On the other hand, Pederson’s Amended Complaint in this case (*Pederson II*) includes the words bribery, bribe, bribed and bribing 72 times.

Throughout the proceedings in this case, the Respondents/Defendants have tried to confuse the facts. Over and over, they have repeated that the present case is essentially the same case as *Pederson I*. They have taken this approach to divert attention away from the central fact, namely that this case is about the Frost gang’s bribery of Dan Fisher to damage Pederson’s case in *Pederson I*.

The Respondents/Defendants have employed several techniques to sow confusion and distract attention away from the facts of this case.

- They repeatedly have told and implied to the Minnesota and Eighth Circuit Courts that the facts in the cases (*Pederson I* and *Pederson II*) are essentially the same.
- They have distorted the record and tried to confuse facts.<sup>18</sup>
- They have taken statements out of context.
- They have argued for a variety of estoppel theories that do not apply.

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<sup>18</sup> Several examples are listed at page 9 of ECF 112.

-- They have used a “tail-wagging-the-dog” strategy, filing motions for Rule 11 sanctions and thereby implying that the issue of jurisdiction is a foregone conclusion. This strategy is based on the false premise that the jurisdictional facts are the same in both *Pederson I* and *Pederson II*.

Examples of the respondents intentionally confusing facts abound. Page 2 of Frost’s and CoCrytal’s Reply in Support of Motion to Dismiss<sup>19</sup> says, “Both *Pederson I* and *Pederson II* allege the same tort.” This is clearly false. *Pederson I* involved frauds that took place in 2011-2012. *Pederson II* involves a bribery scheme that took place in 2017-2018. At page 3 the Reply says, “The jurisdictional facts have not changed.” Again, this is clearly false. At pages 3-4 the Reply says, “every allegedly new fact that Plaintiff claims jurisdiction was available during the pendency of *Pederson I*.” In fact, the bribery scheme took place during the pendency of *Pederson I*, and Pederson did not become aware of the \$1.176 million payment to Fisher until months after the hearing on the Defendants’ Motion to Dismiss. Further, Pederson was not aware that Fisher withdrew his complaints about the Frost gang to the SEC and DOJ until *Pederson I* was on appeal.

Pederson did make an unskillful statement early in the *Pederson II* proceedings that the Respondents seized on by taking out of context. Page 2 of the R&R (Appendix C) relies on Pederson’s unskillful statement, saying,

“Pederson agrees with Frost “that the personal jurisdiction analysis is essentially the same” for both complaints. Pl.’s Mem. 9. The outcome of the appeal thus bears directly on the Court’s analysis of personal jurisdiction over the Defendants in this action.”

Pederson’s statement was made in the context of Defendants’ motion to stay *Pederson II* while *Pederson I* was pending at the Eighth Circuit. Pederson meant that there would automatically be jurisdiction found in *Pederson II* if jurisdiction was found in *Pederson I*.

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<sup>19</sup> ECF 106.

Pederson did not mean that there would be no jurisdiction in *Pederson II* if jurisdiction was not found in *Pederson I*. After all, the two cases involve completely different nuclei of operative facts. In any event, the court did not find any estoppel from Pederson's unskillful statement.

In adopting the R&R, the District Court Judge wrote (see Appendix C):

"Lee Michael Pederson, a patent lawyer, brought this lawsuit as a *pro se* plaintiff in 2019 alleging causes of action for tortious interference with a prospective economic advantage and quasi-contract/unjust enrichment and quantum meruit against former business associates. **A substantially similar lawsuit brought by Pederson was dismissed** for lack of personal jurisdiction in 2018, and the Eighth Circuit affirmed the dismissal in 2020. Defendants move to dismiss this lawsuit and for Rule 11 sanctions. **The Court finds that Pederson has not alleged any new facts** to support the exercise of personal jurisdiction or change the jurisdictional analysis in the second lawsuit, and therefore recommends that Defendants' motions be granted."<sup>20</sup> (bold added)

This excerpt from the District Court Order indicates that the court falsely concluded that the jurisdictional facts in *Pederson II* were the same as in *Pederson I*.

In its per curium opinion (Appendix A), the Eighth Circuit wrote.

"We find that Pederson is precluded from relitigating whether his telephone and email contact with, and prior legal representation of, defendants or their agents constituted sufficient minimum contacts to establish personal jurisdiction over them in the District of Minnesota, as this court previously decided they were not. See *Pederson v. Frost*, 951 F.3d 977, 980-81 (8th Cir. 2020) (holding these contacts were insufficient to establish constitutionally required minimum contacts)"

Pederson does not object to the above conclusion by the Eighth Circuit. However, Pederson is not trying to relitigate the facts of *Pederson I*. The present case is based on a new set of facts, namely, the bribery of Fisher.

To repeat, the nucleus of operative facts in this case involves the bribery of Fisher by the Frost gang, which took place in the 2017-2018 timeframe during the pendency of *Pederson I*.

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<sup>20</sup> Page 1 of the Order of the District Court (Appendix B).

The nucleus of operative facts in *Pederson I* involved frauds against Pederson by the Frost gang during the fraudulent takeover of BioZone, which took place in the 2011-2012 timeframe.

## VI. DE NOVO REVIEW

A de novo review of the issue of jurisdiction by the Supreme Court will conclude that Minnesota has jurisdiction over all of the bribery defendants. To conduct such a thorough de novo review, the Supreme Court will have to revisit some shortcuts and errors made by the Eighth Circuit in *Pederson II*.

First, the Supreme Court must view Pederson's allegations "in a light most favorable to the plaintiff" and factual conflicts must be viewed in the plaintiff's favor. *Epps v. Stewart Info. Servs. Corp.*, 327 F.3d 642, 647 (8th Cir. 2003). The Eighth Circuit completely ignored Pederson's detailed allegations of the bribery and substituted its own conclusion of fact by mischaracterizing Frost's payment of \$800,000 to Fisher in exchange for Fisher withholding documents from Pederson as "their settlement of a California real estate lawsuit."

Pederson's Amended Complaint in this case includes the words bribery, bribe, bribed and bribing 72 times. The terms of the Fisher-Frost gang settlement are described in detail in the Amended Complaint, declarations and exhibits. It is clear that Frost paid Fisher to withhold documents from Pederson with the intent damage Pederson's case in *Pederson I*. A de novo review of this case must address Pederson's specific allegations.

Second, the Supreme Court should reverse the Eighth Circuit's ruling that denied all the Motions to supplement the record in the present case with newly available documents from *Pederson III*. The Frost gang goes to extreme lengths to conceal their frauds. The bribery of

Fisher is just one example. As a result of the Frost gang's efforts to conceal information, facts about Frost gang frauds come out slowly over time. Important newly available documents come to light on a regular basis.

The settlement agreement between Fisher and the Frost gang that is at the heart of this case has never been made public. This is not surprising, since that settlement document describes the bribery of Fisher.<sup>21</sup> The terms of the bribery agreement have become apparent to Pederson over time and from a variety of sources, as follows.

- Pederson learned that Fisher would not provide documents and testimony when Fisher told Pederson so in early 2017.
- Pederson learned that Fisher had agreed to withdraw his complaints to the SEC and DOJ from a news story by journalist Teri Buhl that was updated to include this information in January of 2019.<sup>22</sup>
- Pederson learned that Fisher received \$1.176 million in the settlement from CoCrystal's filings with the SEC over a time span from 2017-2018.
- Fisher's sworn statement is dated August 11, 2017, but it did not become public until it was filed as an exhibit in the case of *Kesner v Buhl* on August 9, 2021.<sup>23</sup>

At the Eighth Circuit, motions were made to introduce several documents into the record by judicial notice. Frost and Fisher filed separate motions to introduce the complaint in *Pederson III*, and Pederson did not object to this motion. Pederson filed motions to introduce

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<sup>21</sup> The bribery of Fisher comprises one or more federal crimes (See ECF 76-10). The statutes of limitations have not expired on these crimes. Documents produced in *SEC v Honig* and elsewhere indicate that SEC and DOJ investigations of the Frost gang are ongoing.

<sup>22</sup> <https://www.teribuhl.com/2017/02/09/california-doj-investigating-honig-and-the-frost-group-2/>

<sup>23</sup> See Pederson's Motion to Supplement the Record filed at the Eighth Circuit on October 14, 2021.

Fisher's sworn statement and the MabVax Discovery Document, which was filed in the case of *MabVax v Honig* on October 18, 2021. Pederson requests that all these documents be admitted into the record by judicial notice.

Third, the Rule 11 sanctions imposed on Pederson by the District Court and the Eighth Circuit must be reversed. Pederson has legitimate claims against each of the Respondents/Defendants, so the Rule 11 sanctions are clearly inappropriate. The Respondents/Defendants obtained rulings for such sanctions by using a "tail wagging the dog" legal strategy.<sup>24</sup>

Fourth, neither the District Court nor the Eighth Circuit addressed the issue of Minnesota's jurisdiction over Respondent/Defendant Fisher. However, Minnesota does have the power to exercise jurisdiction over Fisher for all the reasons outlined in the Amended Complaint, including Fisher's purposeful availing of the benefits and protections of Minnesota law by using Pederson's status as a Minnesota attorney to protect communications between Fisher and Pederson from discovery by the Frost gang during the course of their collaborations.

#### REASONS FOR GRANTING THE WRIT

The Eighth Circuit Court of Appeals has decided an important question of federal law in a way that conflicts with relevant decisions of this Court.

Minnesota has a clear interest in protecting the integrity of legal proceedings within Minnesota. The facts of the present case (*Pederson II*) are that Frost and CoCrystal intentionally damaged Pederson's previous Minnesota lawsuit (*Pederson I*) by bribing Fisher to withhold promised documents and testimony. It does not offend traditional notions of fair play and

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<sup>24</sup> The "tail-wagging-the-dog" strategy is described in detail at ECF 30 in *Pederson III*.

substantial justice for Minnesota to exercise specific personal jurisdiction over the Respondents/Defendants.

The specific facts in the present case, from the 2017-2018 timeframe, are that:

(1) Fisher agreed with the Frost gang to withhold promised documents and testimony from Pederson's use in Pederson's Minnesota litigation against Frost and Frost's NSFE in *Pederson I*.

(2) Fisher ended his collaboration with Pederson to expose the frauds of the Frost gang.

(3) Fisher withdrew his SEC whistleblower complaint against Frost.

(4) Fisher withdrew his complaints to the FBI against Frost.

(5) Fisher provided Frost with a sworn statement ("Fisher's sworn statement") containing demonstrably false statements relating to Frost's frauds.

(6) Fisher dismissed his \$295,000 litigation claim against Frost's NSFE.

(7) Frost and CoCrystal provided \$1.176 million in consideration to Fisher.

Just because the bribery was partly disguised as a settlement in litigation between Fisher and the Frost gang does not negate the central fact that Fisher was paid to withhold documents and testimony from Pederson in *Pederson I*.

These facts fully support findings that (a) Frost's and CoCrystal's tortious interference with Fisher's promise to provide documents and testimony to Pederson in *Pederson I* damaged Pederson's litigation in Minnesota; (b) Frost's bribery of Fisher was expressly aimed at Minnesota. In fact, the bribe happened while Pederson was litigating against Frost in Minnesota; and (c) Frost intended and caused actual harm to Pederson that Pederson suffered in Minnesota. Therefore, under *Calder*, the Defendants are subject to jurisdiction in Minnesota.



### CONCLUSION AND REQUEST

Petitioner respectfully requests that the petition for a writ of certiorari be granted.

Respectfully submitted,

Date: May 8, 2022.

Signed:

A handwritten signature in black ink, appearing to read "Lee Padua". The signature is written in a cursive, flowing style.