

1                                   IN THE CIRCUIT COURT OF THE STATE OF OREGON  
2                                   FOR MULTNOMAH COUNTY

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4 <b>DAVID KOENIG</b>	11 Case No.: 23CV15424
5                   Plaintiff	12 <b>PLAINTIFF’S OBJECTION TO</b>
6                   vs	13 <b>SUPPLEMENTAL JUDGMENT AND</b>
7 <b>EVANS CLINCHY</b>	14 <b>MONEY AWARD RE: JENNIFER</b>
8 <b>JENNIFER CLINCHY</b> and	15 <b>CLINCHY’S AND EVANS CLINCHY’S</b>
9 <b>BRIANNA (LOLA) McKISSEN</b>	16 <b>SPECIAL MOTIONS TO STRIKE</b>
10                   Defendants	17

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19 Defendants J. Clinchy and E. Clinchy through their counsel Michael Fuller filed on November  
20 1st, 2023 a Supplemental Judgment and Money Award for \$84,717.25. This is an extortionate  
21 amount of money for this case, considering that defense attorney Ms. Vaughn petitioned for  
22 \$9,339.65 and plaintiff attorney Mr. Mohan billed me a total of \$14,085.20.

23

24 I am not a lawyer, and I lack any legal representation or advice on how to fight against this, as  
25 well as any legal knowledge of what the court would consider reasonable form or content to state  
26 my objections. The exact reasons that I am writing to you with no legal support are because Mr.  
27 Fuller unethically and dishonestly intimidated and coerced my former counsel Mr. Mohan to the  
28 point where he could no longer represent me, and because I cannot afford a new counsel.

29

1 In our hearing about the special motions to strike, the judge showed no interest in nor tolerance  
2 for me discussing Mr. Fuller's bad faith litigation conduct that required me to report him to the  
3 Oregon State Bar Client Assistance Office (CAO) for ethics violations. I beg the court to  
4 reconsider this, because continuing to ignore the massive problems with Mr. Fuller's conduct  
5 leaves me in a hopeless position and turns justice upside-down. I am including as exhibits the  
6 ethics complaint that I submitted about Mr. Fuller to the CAO on August 10th, 2023 and the  
7 follow-up documents that I submitted to the CAO on October 19th, 2023.

8

9 There is a large conflict here between the letter of the law, in terms of how ORS 31.150 and ORS  
10 31.152 are written, and the spirit of the law, in terms of what anti-SLAPP motions are supposed  
11 to be used for and when it is reasonable and just to award defense attorneys fees. Anti-SLAPP  
12 motions and the resultant award of defense attorneys fees are supposed to be used to discourage  
13 frivolous lawsuits from being filed and to knock them out of court quickly. There was nothing  
14 frivolous about this lawsuit, a statement which I made at the end of the hearing, and the Judge  
15 specifically said that she did not dispute that.

16

17 While I mean no disrespect or challenge to the Judge's legal authority to strike all of the claims,  
18 as she did on August 16th, 2023, I humbly ask the Judge to reflect on how she approached the  
19 hearing and whether the decision she came to was the best one. At the beginning of the hearing,  
20 the Judge told me that she read the defendants' motions in full but did not completely read my  
21 response and that she was already inclined to support the defendants' motions before I presented  
22 any oral arguments.

23

1 The Judge was right to strike all of the Conspiracy claims, because civil conspiracy is not a  
2 recognized claim in Oregon law. While I do not agree with the decision to strike the Intentional  
3 Interference With Economic Relations claim, I can accept that the legal basis that the Judge used  
4 to strike it was reasonable.

5

6 However, the decisions to strike the Defamation and Intentional Infliction of Emotional Distress  
7 claims were neither reasonable nor just. At the core of this case were six defamatory documents  
8 written by the defendants, (Exhibits 1-4, 8-9 of PLAINTIFF’S RESPONSE TO DEFENDANTS’  
9 SPECIAL MOTIONS TO STRIKE) and two documents written by plaintiff which thoroughly  
10 demonstrated that defendants intentionally defamed plaintiff with statements that were matters of  
11 fact, not opinion, and which they knew to be false. (Exhibits 5-6, 10 of PLAINTIFF’S  
12 RESPONSE TO DEFENDANTS’ SPECIAL MOTIONS TO STRIKE) Plaintiff’s arguments  
13 were corroborated by a large amount of evidence that included many text messages and emails  
14 from the defendants themselves.

15

16 Furthermore, defendants’ use of their defamatory statements went far beyond their use in “a  
17 disciplinary process.” At least one of the defendants shared at least some of the documents with  
18 people who were not involved in the disciplinary processes at all. Defendants also used the  
19 documents and the disciplinary processes they triggered to wage a political war between different  
20 Scrabble organizations in a way that damaged plaintiff’s reputation and opportunities to play  
21 Scrabble much more widely than within the tournaments and authority of those organizations.  
22 Plaintiff was even denied an opportunity to play in a tournament in Malaysia, although all of the

1 organizations that had disciplinary processes about him only oversaw Scrabble in the USA and  
2 Canada.

3

4 The reasons in the last paragraph should have invalidated any qualified immunity entitlement of  
5 the defendants. However, the primary reason the Judge dismissed the Defamation claim was  
6 qualified immunity, even though the defense counsels never mentioned qualified immunity in  
7 their arguments. Plaintiff was not given any opportunity to argue against qualified immunity,  
8 because the Judge did not present this rationale until after she had given her decision about the  
9 motions.

10

11 The Judge also dismissed the Intentional Infliction of Emotional Distress claim on the basis that  
12 “Defendants’ alleged conduct and statements did not constitute an extraordinary transgression of  
13 the bounds of socially tolerable behavior.” However, it is plaintiff’s belief that the Judge had not  
14 even read the entirety of plaintiff’s Exhibits 1-10, because of the Judge’s comment that plaintiff’s  
15 evidence for defamation was only hearsay and because of what plaintiff perceived to be the  
16 Judge’s surprise when plaintiff mentioned the hundreds of text messages of defendant McKissen  
17 that showed she was lying.

18

19 Again, I mean no disrespect to the Judge, but I do not believe she was adequately prepared to  
20 decide that the defendants had not transgressed the bounds of socially tolerable behavior because  
21 she had not completely read the relevant documents. I also fully recognize my own fault in only  
22 getting the printouts of my response to the special motions to the Judge on the afternoon before  
23 the hearing.

1

2 The court’s judgment does not alter the underlying reality of this case; that the socially  
3 intolerable behavior of the defendants has resulted in plaintiff suffering massive reputational  
4 damage and PTSD and being unable to work for almost the last two and a half years; that  
5 plaintiff has acted in impeccably good faith throughout this case while the Clinchys and Mr.  
6 Fuller have committed bad faith litigation conduct throughout this case, including Mr. Fuller  
7 outright lying to the Judge in our only in-person hearing; and that the plaintiff was making a  
8 completely reasonable attempt to defend himself from the monstrous attacks of the defendants by  
9 filing this case. When plaintiff has already been so badly abused by the defendants, and the court  
10 allows the defendants to walk away with no penalty, and plaintiff is punished even more by an  
11 award of defense attorney fees, it is not merely a miscarriage of justice. It is a case of rewarding  
12 abusers and punishing their victim.

13

14 I am not aware of any legal ability that I have to appeal the decision to grant the special motions  
15 that caused this case to be closed. Even if I was, I lack the legal representation and the money to  
16 continue this fight in the courts. However, I ask the court to take a small step toward a more fair  
17 outcome by awarding Mr. Fuller \$0.01 in legal fees, which is exactly as much as he deserves.

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19 November 3rd, 2023.

20

/s/ David Koenig

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Plaintiff, representing *pro se*

**PROOF OF SERVICE**

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I certify that I caused this document to be served via e-mail on:

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November 3rd, 2023.

/s/ David Koenig

[Redacted signature block]

Plaintiff, representing *pro se*