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Hon. Ricardo S. Martinez

7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 ROBERT E. CARUSO AND SANDRA L.  
11 FERGUSON

Case No.: 2:17-cv-00003-RSM

12 Plaintiffs,

RESPONSE TO MOTION FOR PRE-FILING  
ORDER

13 vs.

14 WASHINGTON STATE BAR ASSOCIATION  
15 1933, a legislatively created Washington  
16 association, State Bar Act (WSBA 1933);  
17 WASHINGTON STATE BAR ASSOCIATION  
18 after September 30, 2016 (WSBA 2017):  
19 PAULA LITTLEWOOD, Executive Director,  
20 WSBA 1933 and WSBA 2017, in her official  
21 capacity; ROBIN LYNN HAYNES is the  
22 president of the WSBA 1933 and WSBA 2017,  
23 in her official capacity; DOUGLAS J. ENDE,  
24 Director of the WSBA 1933 and WSBA 2017  
25 Office Of Disciplinary Counsel, in his official  
26 capacity; WSBA 1933/WSBA 2017 BOARD  
27 OF GOVERNORS, namely: BRADFORD E.  
28 FURLONG-President-Elect (2016-2017), *et al.*,

Defendants.

**INTRODUCTION**

The Washington State Bar Association (WSBA) and its lawyers have perpetrated a fraud on the court and the trial judge, The Honorable Ricardo S. Martinez. The fraud was advanced in

1 Defendants' Motion to Dismiss and Opposition to Plaintiffs' Motions in for Summary Judgment  
2 and Preliminary Injunction. ELC # 16. The fraud was successful; so much so, Judge Martinez  
3 joined in the fraud and became an active participant in the fraud. He made the case his own.  
4

5 The motion for pre-filing order motion is a continuation of the fraud. The motion builds  
6 on the fraud; it seeks to perpetuate a fraud.

### 7 **STATEMENT OF FACTS**

8 On September 1, 2017, the Washington Supreme Court adopted General Rule 12.2. The  
9 rule is titled "Washington State Bar Association: Purposes, Authorized Activities, and Prohibited  
10 Activities." On January 1, 2017, amendments to the Bylaws of the WSBA adopted by the  
11 WSBA Board of Governors on September 29-30, 2016, became effective.  
12

### 13 **STANDARDS**

14 The court considers the following five substantive factors to determine "whether a party  
15 is a vexatious litigant and whether a pre-filing order will stop the vexatious litigation or if other  
16 sanctions are adequate":  
17

18 (1) the litigant's history of litigation and in particular whether it entailed  
19 vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing  
20 the litigation, e.g., does the litigant have an objective good faith expectation of  
21 prevailing?; (3) whether the litigant is represented by counsel; (4) whether the  
22 litigant has caused needless expense to other parties or has posed an unnecessary  
23 burden on the courts and their personnel; and (5) whether other sanctions would  
24 be adequate to protect the courts and other parties.

25 *Ringgold-Lockhart v. Cnty. of L. A.*, 761 F.3d 1057, 1062 (9th Cir., 2014).

### 26 **DISCUSSION**

#### 27 **I. Cases**

28 The cases which the joint defendants discuss cannot are not frivolousness or harassing.

A. *Eugster v. Wash. State Bar Ass'n*, No. CV 09-357, 2010 WL 2926237 (E.D. Wash.  
July 23, 2010) *aff'd*, 474 F. App'x 624 (9th Cir. 2012) ("Eugster II").

1 In this case, Eugster was being threatened with discipline by the WSBA. Eugster had  
2 concluded from his previous experience with WSBA Discipline System that it violated a  
3 lawyer's right to procedural due process of law under the Fifth and Fourteenth Amendments to  
4 the United States Constitution. The WSBA dismissed the grievance it was pursuing. The case  
5 became moot. It was dismissed.  
6

7 B. *Eugster v. Wash. State Bar Ass'n*, No. C15-0375, 2015 WL 5175722 (W.D. Wash.  
8 Sept. 3, 2015) *aff'd*, 684 Fed. App'x 618 (9th Cir. 2017), *cert. denied*, 137 S. Ct. 2315 (2017)  
9 ("Eugster III");  
10

11 In this case, Eugster asked the court to overrule *Lathrop v. Donohue*, 367 US 820 (1961).  
12 The trial court did not overrule the case. On appeal to the 9<sup>th</sup> Circuit, a panel of the court said it  
13 could not overrule the case because since it was a decision of the Supreme Court, only the  
14 Supreme Court could overrule *Lathrop v. Donohue*. Eugster timely filed a petition for writ of  
15 certiorari to the United States Supreme Court. The petition was denied.  
16

17 Just after Eugster III was filed in March of 2015, the WSBA reinstated investigation of  
18 a grievance which had already been investigated for several months by a WSBA discipline  
19 counsel. The investigation was over. Despite this, the WSBA sent out an investigator and  
20 replaced the previous discipline counsel with another. New discipline counsel in the fall  
21 indicated she was going to seek authority to gain an order from a Review Committee of the  
22 Disciplinary Board. Eugster IV was filed in state court; it was too early to file the case in  
23 District Court.  
24

25 When the Discipline Counsel went to the Review Committee, Eugster filed Eugster V in  
26 District Court.  
27  
28

1 Under the law, the state and district courts have concurrent jurisdiction.

2 *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1151 (9th Cir. 2007).

3 C. *Eugster v. Wash. State Bar Ass'n*, 198 Wash. App. 758 (2017) *rev. denied*, 189  
4 Wash.2d 1018 (2017) (“Eugster IV”);

5  
6 The Spokane Superior Court dismissed the case because it said it did not have jurisdiction  
7 over a Civil Rights Action under 42 U.S.C. Section 1983. The order of dismissal was not a  
8 decision on the merits as required by *res judicata* standards.

9 D. *Eugster v. Littlewood*, No. 2:15-CV-0352, 2016 WL 3632711 (E.D. Wash. June 29,  
10 2016) (“Eugster V”);

11 In this case, the District Court dismissed the case on the basis of the order in Eugster V.  
12 The court had no business doing this. The order was not an order on the merits, as described  
13 above.  
14

15 E. *Eugster v. Wash. State Bar Ass'n*, No. 2:16-cv-01765 (W.D. Wash. 2016) (“Eugster  
16 VI”);

17 Eugster voluntarily dismissed this case on the basis a non-suit under Fed. R. Civ. P.  
18 41(a)(1)(A).

19 F. *Caruso and Ferguson v. WSBA et al*, No. 2:17-cv-00003 (W.D. Wash. 2017).

20 The decisions in this case, the decision against Caruso and the decision against Stephen  
21 Kerr Eugster Pro se, are the product of a fraud on the court. See the draft complaint under Fed.  
22 R. Civ. P. 60 (d)(3). Thus, no matter what this court or the court of appeals may say, the  
23 decisions are void. They may be attacked under Rule 60 (d)(3) regardless of what the court of  
24 appeals might do or not do.  
25

26 G. *Eugster v. Supreme Court of Wash.*, No. 17-2-00228-34 (Thurston Cnty. Super. Ct.  
27 2017) (“Eugster VII”).  
28

1 WSBA Defendants threatened Eugster with sanctions. Eugster took a non-suit.  
2 After Defendants moved to dismiss, Eugster took a non-suit under CR 41 (a) -- voluntarily  
3 dismissal.

4  
5 H. *Eugster v. Littlewood*, No. CV-00392 (E.D. Wash. 2017) (“Eugster VIII”);

6 This action is based on the WSBA as an integrated association of lawyers, limited  
7 practice officers, and limited license legal technicians. Such an organization is subject to strict  
8 constitutional scrutiny.

9 I. *Eugster v. Wash. State Bar Ass'n*, No. 18-2-00542-1 (Spok. Cnty. Super. Ct. 2018)  
10 (“Eugster IX”);

11  
12 This action seeks to have the Superior Court direct the WSBA to provide Eugster with  
13 the email addresses of the members of the WSBA so that he can communicate with them  
14 regarding WSBA matters. Eugster as a member has a right to such records under the common  
15 law of Washington.

16  
17 J. *Eugster v. Littlewood*, No. 18-2-01360-34 (Thurston Cnty. Super. Ct. 2018) (“Eugster  
18 X”);

19 This action seeks to test the constitutionality of the Supreme Court and its controlled  
20 WSBA all as outlined in General Rule 12.2 “Washington State Bar Association: Purposes,  
21 Authorized Activities, and Prohibited Activities.”

22  
23 K. *Eugster v. Wash. State Bar Ass’n*, No. 18-2-01561-2 (Spok. Cnty. Super. Ct. 2018)  
24 (“Eugster XI”).

25 This is a personal injury action against the WSBA and others. Discovery is about to  
26 begin. A jury demand has been made. A status conference has been called by the judge assigned  
27 to the case. It will take place on May 18, 2018.  
28

1 **II. De Long Standards**

2 Before imposing such an order, the court must: (1) confirm the offending party has notice  
3 and an opportunity to be heard before the order is entered; (2) compile an adequate record for  
4 review; (3) make substantive findings of frivolousness or harassment; and (4) draft an order that  
5 is “narrowly tailored to closely fit the specific vice encountered.” *De Long*, 912 F.2d at 1147-48;  
6 *Molski*, 500 F.3d at 1063-65.  
7

8 **III. Good Faith Expectation of Prevailing**

9 Eugster has a good faith expectation of prevailing. Any integrated bar association which  
10 consists of lawyers, limited practice officers, and limited license legal technicians, infringes on  
11 the fundamental rights of a lawyer regarding the First, Fifth and Fourteenth Amendments to the  
12 United States Constitution. Such infringements will not be allowed if they fail to pass strict  
13 constitutional scrutiny.  
14

15 **IV. Pre-Filing Order**

16 The pre-filing order is to “narrowly tailored to closely fit the specific vice encountered.”  
17

18 Their proposed order is as follows:

19 Now, therefore, it is hereby ORDERED that Eugster is enjoined from filing  
20 any of the following without prior leave of this Court:

21 (1) any lawsuit in federal court against the WSBA, its employees, or agents;

22 (2) any lawsuit in state court challenging Washington’s bar system; and

23 (3) any claims in federal or state court arising from one of Eugster’s prior  
24 federal suits challenging Washington’s bar system.

25 This injunction applies to Eugster as a party and in his role as an attorney.

26 In the future, if Eugster wishes to obtain leave of this Court to file such a  
27 lawsuit, he must specify clearly, separately, and at the outset what  
28 distinguishes the contemplated suit from all of his prior suits. He must further

1 present a short description of the legal basis for each claim to be pursued, with  
2 brief citation to legal authorities in support.

3 If Eugster fails to comply with the conditions of this pre-filing Order, he may  
4 be subject to further sanctions, including but not limited to, a requirement that  
5 he post adequate surety to indemnify opposing parties, monetary penalties, and  
6 punishment for contempt of court.

6 ***Comments***

7 The following are too broad and ill-defined:

- 8 (1) any lawsuit in federal court against the WSBA, its employees,  
9 or agents;
- 10 (2) any lawsuit in state court challenging Washington's bar  
11 system; and
- 12 (3) any claims in federal or state court arising from one of  
13 Eugster's prior federal suits challenging Washington's bar system.

14 The following is too broad and ill-defined.

15 In the future, if Eugster wishes to obtain leave of this Court to file such a  
16 lawsuit, he must specify clearly, separately, and at the outset what  
17 distinguishes the contemplated suit from all of his prior suits. He must  
18 further present a short description of the legal basis for each claim to be  
19 pursued, with brief citation to legal authorities in support.

19 This language – “and at the outset what distinguishes the contemplated suit from  
20 all of his prior suits” is concerning. The court has shown a distinct lack of  
21 understanding of the standards and requirements of res judicata and claim preclusion.

22 Additionally, the court has also shown a complete disregard of the transactional  
23 facts concept of res judicata. As far as the court has been concerned, there is no  
24 difference between the transactional facts of the cases; The basic different transactional  
25 facts found in the cases are:

- 26 (1) an integrated bar association,
- 27
- 28

1 (2) an integrated “WSBA” as an association of lawyers, limited practice officers,  
2 and limited license legal technicians, and

3 (3) a GR 12.2 “WSBA” as an association of lawyers, limited practice officers,  
4 and limited license legal technicians.  
5

6 The basic difference must be understood. One cannot have a discussion of res  
7 judicata or preclusion without such understanding.

8 Finally, Eugster will be filing a Fraud on the Court Complaint. A draft is  
9 attached. This complaint, the topic of the action, and the details thereof should not be  
10 subject to a pre-filing order.  
11

12 **CONCLUSION**

13 The motion must be rejected in its entirety.

14 May 14, 2018

15 Respectfully submitted,

16 EUGSTER LAW OFFICE PSC

17 s/ Stephen Kerr Eugster  
18 Stephen Kerr Eugster, WSBA #2003  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 14, 2018, I electronically filed the foregoing with its attachment with the Clerk of the District Court using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. I also certify that on May 14, 2018, by previous agreement of counsel, I emailed, the preceding document with its attachment to counsel listed below at their respective e-mail addresses.

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May 14, 2018  
s/Stephen Kerr Eugster  
STEPHEN KERR EUGSTER

ROUGH DRAFT OF COMPLAINT

Fed. R. Civ. P. 60 (d)(3)

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STEPHEN KERR EUGSTER,

Plaintiff,

VS.

WASHINGTON STATE BAR  
ASSOCIATION, a legislatively created  
Washington association (WSBA); PAULA  
LITTLEWOOD, WSBA Executive Director;  
PAUL J. LAWRENCE; JESSICA A.  
SKELTON; TAKI V. FLEVARIS; and the  
HON. RICARDO S. MARTINEZ,

Defendants.

Case No.:

COMPLAINT  
Fed. R. Civ. P. 60 (d)(3)

Plaintiff alleges:

**JURISDICTION AND VENUE**

1. Plaintiff brings this action under Fed. R. Civ. P. 60 (d)(3) and also 60 (b) (3) and (3), (4), and (6).
2. The venue is proper in this Court under 28 U.S.C. § 1391(b) because it is the judicial district where Defendants reside, and "in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. §§ 1391(b), 128(a)(1).

**PARTIES**

- 1 3. Plaintiff, Stephen Kerr Eugster, (Eugster) is a resident of Spokane, Spokane County,  
2 Washington; he is a member of the Washington State Bar Association (WSBA) and has  
3 been practicing law in the state of Washington ever since the fall of 1970.
- 4 4. The Washington State Bar Association has offices in King County, Washington; it does  
5 business throughout Washington including especially Spokane County.
- 6 5. Defendant Paula Charis Littlewood (Littlewood), is a resident of King County,  
7 Washington and the Executive Director of the WSBA.
- 8 6. Defendant Paul J. Lawrence (Lawrence), is a resident of King County, Washington, and a  
9 lawyer representing WSBA defendants.
- 10 7. Defendant Jessica Anne Skelton (Skelton), is a resident of King County, Washington, and  
11 a lawyer representing WSBA defendants.
- 12 8. Defendant Taki V. Flevaris (Flevaris), is a resident of King County, Washington, and a  
13 lawyer representing WSBA defendants.
- 14 9. Defendant Ricardo S. Matinez is a judge of United States District Court Western District  
15 of Washington.

#### 19 COMMON FACTS

- 20 10. In late 2016 early 2017, Plaintiff was retained by Robert E. Caruso and Sandra L.  
21 Ferguson to represent them in action against the Washington State Bar Association and  
22 others.
- 23 11. Action on their behalf was filed by Plaintiff, as the lawyer for Mr. Caruso and Ms.  
24 Ferguson.
- 25 12. Defendant Washington State Bar Association, when the action was commenced, was,  
26 despite its name an association of legal services providers which consisted of lawyers  
27  
28

1 admitted to the bar of the Supreme Court of Washington, limited practice officers, and  
2 limited license legal technicians.

3 13. Mr. Caruso and Ms. Ferguson claims were made under the Civil Rights Act for  
4 violation of their rights of freedom of association and non-association under the First and  
5 Fourteenth Amendments to the United States Constitution.  
6

7 14. Mr. Caruso and Ms. Ferguson also made claims under the Civil Rights Act for  
8 violation of their rights of rights of procedural due process of law under the under the  
9 Fifth and Fourteenth Amendments to the United States Constitution. Defendants to the  
10 action were the Executive Director of the WSBA, Paula C. Littlewood and others. Ms.  
11 Littlewood and the other Defendants were represented by Paul J. Lawrence, Jessica A.  
12 Skelton, and Taki V. Flevaris, partners in Pacifica Law Group LLC.  
13

14 15. On February 23, 2017, Plaintiff, as the lawyer for Mr. Caruso and Ms. Ferguson,  
15 conferred by telephone to discuss the case with the attorneys for Ms. Littlewood and the  
16 to the others.  
17

18 16. During the conference call, Plaintiff explained the case, which had then been amended,  
19 to Mr. Lawrence, Ms. Skelton, and Mr. Flevaris and made it a point to emphasize that the  
20 WSBA of the case was an association of lawyers, limited practice officers, and limited  
21 license legal technicians.  
22

23 17. In response, Mr. Lawrence told Plaintiff, in the presence of Ms. Skelton, and Mr.  
24 Flevaris, that if Plaintiff proceeded with the action they would seek fees from him  
25 personally.  
26

27 18. The lawyers in a day or two of the telephone conference agreed to a schedule for  
28 dispositive motions in the case.

1           19. Motions for Mr. Caruso and Ms. Ferguson were filed first as agreed. They  
2 consisted of a motion for summary judgment and a motion for preliminary injunction.

3           20. On behalf of the WSBA, Ms. Littlewood and others, attorneys Lawrence, Skelton,  
4 and Flevaris filed a "Motion to Dismiss and Opposition to Plaintiffs' Motions for Summary  
5 Judgment and Preliminary Injunction (herein "Motion to Dismiss and Opposition to Motions.").

6           21. At the beginning ("Introduction") of the Motion to Dismiss and Opposition to  
7 Motions the WSBA attorneys, Mr. Lawrence, Ms. Skelton, and Mr. Flevaris said this:  
8

9           In this lawsuit, a disgruntled lawyer who has been disciplined on multiple  
10 occasions for professional misconduct continues his meritless crusade against  
11 Washington's bar system. Within the past two years alone, Plaintiffs' counsel  
12 Stephen K. Eugster ("Eugster") has filed four prior pro se lawsuits against  
13 Defendant the Washington State Bar Association ("WSBA") and its officials;  
14 each such lawsuit was meritless and dismissed at the pleadings stage.<sup>1</sup> This  
15 lawsuit is no different, even though this time Eugster has enlisted two other  
16 disciplined lawyers as named plaintiffs, in the effort to obtain yet another  
17 round of judicial review of his frivolous arguments. Many of the arguments  
18 Plaintiffs make here are exactly the same arguments that this Court already  
19 rejected as meritless when Eugster brought them on his own behalf.<sup>2</sup> These  
20 arguments have no more merit when brought on behalf of others. This Court  
21 should reject Eugster's attempt to file another lawsuit alleging the same  
22 baseless claims. [Footnotes omitted.] Motion to Dismiss and Opposition to  
23 Motions at 1.

24           22. In the "Conclusion" of the Motion to Dismiss and Opposition to Motions, the WSBA  
25 lawyers said this:

26           This case is one in a long line of frivolous attempts by Plaintiffs' counsel to  
27 upend Washington's bar system, including the Washington Supreme Court's  
28 disciplinary system. Enlisting other lawyers to serve as named plaintiffs does  
not change the outcome. As with counsel's prior suits, the claims presented are  
meritless and should be dismissed with prejudice. Motion to Dismiss and  
Opposition to Motions at 24

29           23. About 21 days after the Response to Defendants' Motion to Dismiss, the WSBA and its  
30 attorneys filed a motion seeking fees from Plaintiff Stephen Kerr Eugster.

1 24. The results of the preceding motions by the WSBA and their attorneys were a dismissal  
2 of the claims of Mr. Caruso and Ms. Ferguson and an award of fees more than  
3 \$28,000.00 against Stephen Kerr Eugster, personally.  
4

5 25. Plaintiff attorney for Mr. Caruso and Ms. Ferguson filed a notice of appeal to the 9th  
6 Circuit Court of Appeals. The appeal is pending on the basis of the filing of Petitions for  
7 Rehearing En Bank.

8 26. Ms. Ferguson withdrew from the appeal at the outset.

9 27. Mr. Caruso proceeds with the appeal. Plaintiff is his attorney.  
10

11 28. Plaintiff, Stephen Kerr Eugster, pro se, filed an appeal regarding the fees order against  
12 him. This appeal is separate from the Caruso appeal.

### 13 **FRAUD ON THE COURT**

14 29. Fraud on the Court May Raised on Appeal. Fraud on the court may be raised for the first  
15 time on appeal. *Hendricks & Lewis PLLC v. Clinton*, 766 F.3d 991, 1000 (9th Cir. 2014)  
16 ("we are free to consider this argument for the first time on appeal").  
17

18 30. Standards. Fraud on the court is fraud which defiles the court, so the court cannot  
19 perform its function impartially.

20 Fraud upon the court should, we believe, embrace only that species of  
21 fraud which does or attempts to, defile the court itself, or is a fraud perpetrated  
22 by officers of the court so that the judicial machinery can not perform in the  
23 usual manner its impartial task of adjudging cases that are presented for  
adjudication.

24 7 J. Moore & J. Lucas, MOORE'S FEDERAL PRACTICE § 60.33 at 515 (2d ed.1978).

25 31. Fraud on the court consists of "conduct" which has the following elements:

- 26 1) [Conduct] on the part of an officer of the court; that 2) is directed to the  
27 judicial machinery itself; 3) is intentionally false, willfully blind to the  
28 truth, or is in reckless disregard of the truth; 4) is a positive averment or a

1 concealment when one is under a duty to disclose; and 5) deceives the  
2 court. [Citations omitted.]

3 *Johnson v. Bell*, 605 F.3d 333, 339 (6th Cir. 2010). See also, *Williamson v.*  
4 *Recovery Ltd. P'ship*, 826 F.3d 297, 302 (6th Cir. 2016). One who seeks to establish  
5 fraud on the court has the burden of proving existence of fraud on the court by clear and  
6 convincing evidence. *Id.*

7  
8 32. Beginning and Purpose of the Fraud. The purpose of the fraud on the court by the  
9 lawyers for the WSBA Defendants was to cause the Court to dismiss the case brought by  
10 Plaintiffs Robert E. Caruso and Sandra L. Ferguson and to cause the Court to order Pro se  
11 Eugster to pay substantial attorney fees to the WSBA.

12  
13 33. The beginning of the “conduct” of the fraud is found the “Motion to Dismiss Plaintiffs’  
14 Claims and Opposition to Plaintiffs’ Motions for Summary Judgment and Preliminary  
15 Injunction.” ER 518, Dkt. # 16. The lawyers for the WSBA Defendants and the Court  
16 and its Trial Judge refer to the motion as “Defendants’ Motion to Dismiss” or “Motion to  
17 Dismiss.” The conduct of the fraud is the subject of Defendants the “Motion to Dismiss.”  
18 The lawyers for the WSBA Defendants introduce the fraud in the Introduction to the  
19 motion first paragraph.

20  
21 34. The lawyers and the WSBA Defendants, by virtue of the fraud, (1) obtained dismissal of  
22 all Appellant Caruso’s claims, and (2) obtained Orders against Pro se Eugster for  
23 significant attorney’s fees.

24  
25 35. Two of the parts of the Conduct making up the fraud will be discussed in this part. The  
26 are “3) [Conduct which] is intentionally false, willfully blind to the truth, or is in reckless  
27 disregard of the truth” and “4) [Conduct which] is a positive averment or a concealment  
28 when one is under a duty to disclose.” See Elements 3 and 4 supra at page 14.

1 36. These two conduct elements are addressed here:

2 [1] In this lawsuit, a disgruntled lawyer who has been disciplined on multiple  
3 occasions for professional misconduct continues his meritless crusade against  
4 Washington's bar system.

5 The purpose of the foregoing is that the lawyers for and of the WSBA is to paint Pro se Eugster  
6 in a bad light, as an enemy of the WSBA, who is engaging meritless crusade against the WSBA  
7 “bar system.” The lawyers hope to play on notions that a lawyer who has been disciplined on  
8 “multiple occasions” which is not true, it was only twice, and each time the discipline process  
9 used against Pro se Eugster was in violation of Eugster’s right to due process of law under the  
10 Fifth and Fourteenth Amendments.  
11

12 37. The lawyers suggest to the court that Pro se Eugster is a materialist and that his  
13 material purpose is to “upend” the WSBA and the WSBA discipline system. This is  
14 grossly wrong. Pro Se Eugster did not bring the actions for purposes of destruction of the  
15 WSBA. They were brought for the purposes of advancing his fundamental constitutional  
16 rights; they were brought for the purposes of justice.  
17

18 38. The cases were not brought for the gratification of a mean materialist purpose.  
19 Absolutely not, they were brought because such efforts are what Pro se Eugster has  
20 always tried to do, to fulfill the responsibilities of a Washington lawyer.  
21

22 39. Pro se Eugster has devoted a substantial part of his career and his personal income  
23 and assets to the efforts to advance and preserve public interests, the public trust, and the  
24 advancement of his duties as an officer of the court. Eugster Law Office, Some of Steve  
25 Eugster’s Past Efforts and Involvements.[http://eugsterlaw.com/?page\\_id=38](http://eugsterlaw.com/?page_id=38)  
26

27 40. The lawyers of the WSBA Defendants led by WSBA Executive Director, also a  
28 lawyer, have defamed Pro se Eugster. Indeed, they defamed not only Pro se Eugster,



1 they, by their conduct, have defamed the practice of law in Washington. They profane  
2 the lofty purposes and ideals of the WSBA itself.

3  
4 41. [2] Within the past two years alone, Plaintiffs' counsel Stephen K. Eugster  
5 ("Eugster") has filed four prior pro se lawsuits against Defendant the Washington State  
6 Bar Association ("WSBA") and its officials; each such lawsuit was meritless and  
7 dismissed at the pleadings stage. [Footnote omitted.]

8  
9 42. The lawyers spend a section in the motion on Pro se Eugster's prior lawsuits  
10 involving the WSBA. They fail to mention the WSBA, at the time of the lawsuits and  
11 still today, in those lawsuits, is an integrated bar association whose only members are  
12 lawyers admitted to the bar of the Supreme Court of Washington. It was this sort of bar  
13 association, an integrated bar association which the subject of *Lathrop v. Donohue*, 367  
14 U.S. 820 (1961).

15  
16 43. The four prior suits filed in the last two years the court is talking about – the  
17 lawsuits which they say were “meritless and dismissed at the pleadings stage,” are  
18 discussed below.

19  
20 44. It is a great fraud on the court and defamation of Pro se Eugster for the lawyers  
21 for WSBA Defendants to claim the were dismissed at the pleading stages of the actions  
22 and that the issues which were raised were held by the court to be without merit. The  
23 lawsuits though “dismissed at the pleading stage” were not dismissed because they were  
24 meritless, but instead dismissed on jurisdictional grounds of each court. The dismissals  
25 were not based on merit, they were based on non-merit reasons, jurisdiction, and false res  
26 judicata conclusions.

27  
28 45. a. Eugster III. *Eugster v. Wash. State Bar Ass'n*,

1 46. No. C15-0375JLR, 2015 WL 5175722

2 47. (W.D. Wash. Sept. 3, 2015) This case was not meritless and it was not dismissed  
3 because it was meritless. It was dismissed because but because Pro se Eugster's request  
4 to overrule Lathrop v. Donohue, supra, was denied. Pro Se Eugster advanced, in essence,  
5 that Lathrop had been over time, overruled. The argument advanced was similar to that  
6 advanced in Levine v. Heffernan, 864 F.2d 457 (7th Cir. 1989). This Court said it could  
7 not overrule Lathrop because it was a decision by the Supreme Court and that the Court  
8 could not overrule the Supreme Court. Pro se Eugster petitioned the Supreme Court for a  
9 writ of certiorari. ER 1, continuing at 14. The writ was not granted.  
10

11  
12 48. b. Eugster IV.Eugster v. Wash. State Bar Ass'n,

13 49. No. 15204514-9 (Spok. Cnty. Super. Ct. 2015) Eugster IV was not meritless  
14 and was not dismissed because it was meritless. ER 81, Notice of Appeal with Order.  
15 Eugster IV was dismissed because the Trial Judge said the court did not have jurisdiction.  
16 See the Order ER 83-86.  
17

18 50. This case is not over. It was appealed to Division III of the Court  
19 of Appeals. The court held the Superior Court had jurisdiction. Eugster v WSBA, #  
20 34345-6-III, May 2, 2017. A Petition for Discretionary Review to the Washington  
21 Supreme Court has been filed concerning other actions of the Court of Appeals on a point  
22 which was in excess of the court's appellate jurisdiction.  
23

24 51. c. Eugster V.Eugster v. Littlewood,

25 52. No. 2:15-CV-0352-TOR, 2016 WL 3632711

26 53. (E.D. Wash. June 29, 2016) Eugster V was not meritless and it was not dismissed  
27 because it was meritless. ER 88, Notice of Appeal and Order. Eugster V was dismissed  
28

1 because the Trial Judge took it upon himself to say, using the order of dismissal in  
2 Eugster IV. Id. at ER 91.

3 54. d. Eugster VI. Eugster v. Wash. State Bar Ass'n,

4  
5 55. No. 2:16-cv-01765 (W.D. Wash.) This case was certainly not meritless. The  
6 court did not say it was meritless. They say it was dismissed at the pleadings stage. But,  
7 that is not true. It was not dismissed; Pro se Eugster filed a non-suit. The non-suit was  
8 filed pursuant to Rule 41(a)(1)(A)(I) (“Voluntary Dismissal” “without court order” with  
9 “notice of dismissal before the opposing party serves either an answer or motion for  
10 summary judgment”). The Trial Judge does not decide anything regarding the notice of  
11 dismissal. The non-suit was not subject to a trial judge act.  
12

13 56. [3] This lawsuit is no different, even though this time Eugster has enlisted two  
14 other disciplined lawyers as named plaintiffs, in the effort to obtain yet another round of  
15 judicial review of his frivolous arguments.  
16

17 This is false. There is nothing in the record which says Pro se Eugster enlisted the Plaintiffs so  
18 that they were “named plaintiffs” for Pro se Eugster. This has been denied in declarations by Pro  
19 se Eugster, Plaintiff Caruso and Plaintiff Ferguson. Respectively, ER 625, Dkt. # 24, ER 635,  
20 Dkt. # 25 and ER 637, Dkt. # 26.  
21

22 57. [4] “Many of the arguments Plaintiffs make here are exactly the same arguments  
23 that this Court already rejected as meritless when Eugster brought them on his own  
24 behalf.”

25 The arguments Pro se Eugster made and Plaintiffs have made are not “exactly the  
26 same arguments the Court previously rejected as meritless.” This is false and obviously  
27 absurd. The arguments are not the same. ER 184, Dkt. # 1, Complaint, and ER 234, Dkt.  
28

1 # 4, Amended Complaint. They are not the same because the arguments in the instant  
2 case are directed to the WSBA as an integrated association of lawyer, Limited Practice  
3 Officers and Limited License Legal Technicians. In the Pro Se Eugster cases, defendant  
4 was the WSBA, which was then an integrated association of lawyers only.  
5

6 58. [5] These arguments have no more merit when brought on behalf of others.

7 The arguments are not the same. The case at hand is one addressing the constitutionality of a  
8 “bar association” which is not a single member association. It is a multi-member association.

9 The arguments are not the same because the facts are not the same.  
10

11 59. [6] This Court should reject Eugster's attempt to file another lawsuit alleging the  
12 same baseless claims. [Footnotes omitted.] Dkt. # 16 at 1.

13 This is false; what is alleged in this case are claims which are not the same. In addition, the  
14 claims in the Pro Se Eugster cases were not meritless. They were not dismissed because the  
15 claims lacked merit. They were dismissed because the courts said the court did not have  
16 jurisdiction. See discussion above.  
17

### 18 **Conclusion of the Motion to Dismiss**

19 60. [7] “This case is one in a long line of frivolous attempts by Plaintiffs' counsel to  
20 upend Washington's bar system, including the Washington Supreme Court's disciplinary  
21 system.”  
22

23 See the discussion above beginning a page \_\_\_\_

24 61.[8] “Enlisting other lawyers to serve as named plaintiffs does not change the outcome.”

25 It is a lie to say Pro se Eugster enlisted other lawyers. See \_\_\_\_ above.

26 62. [9] “As with counsel's prior suits, the claims presented are meritless and should be  
27 dismissed with prejudice.”  
28

1 This is certainly not true. The Complaint and Amended Complaint establish the claims  
2 presented in this case are not meritless. See [4] above.

3 63. Elements of Fraud on Court Are Met. Fraud on the court consists of “conduct” which  
4 has the following elements:

5 64. “1) [Conduct] on the part of an officer of the court.”

6 The lawyers for, and of the WSBA, are officers of the court.

7 65. “2) is directed to the judicial machinery itself.”

8 The fraud is found a critical pleading filed as part of an agreement by the court and the parties to  
9 consider dispositive motions. The WSBA’s pleading was Defendants’ Motion to Dismiss  
10 Plaintiffs’ Claims and Opposition to Plaintiffs’ Motion for Summary Judgment and Preliminary  
11 Injunction. Further, the Trial Judge of the Court further assisted in advancing the fraud.

12 66. “3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the  
13 truth”

14 See above beginning at page 17 and following.

15 67. “4) is a positive averment or a concealment when one is under a duty to disclose”

16 See above beginning at page 17 and following.

17 68. “5) deceives the court”

18 The conduct deceived the Court. The actions of the lawyers and the  
19 Trial Judge serve as a basis for the orders issued by the court.

20 Actions of the Trial Judge Compound and Establish the Extent of the Fraud. Some of the actions  
21 the Trial Judge took in this regard are discussed in the following paragraphs.

22 69. Isolation of Motion to Dismiss Plaintiffs’ Claims and Opposition to Plaintiffs’  
23 Motions for Summary Judgment and Preliminary Injunction. The Trial Judge  
24

1 erroneously isolated the WSBA Motion to Dismiss, considered it "first." ER 639, Dkt. #  
2 28 at 3, lines 8-9. And, then the judge ignored the Plaintiffs' Motions which were  
3 scheduled for hearing on the same day as the Motion to Dismiss, all part of the  
4 scheduling order plan. ER 492, Dkt. # 14. See further discussion of this at 36, infra.

5  
6 70. Next, after ruling on the Motion, he "denied" Plaintiffs' Motion for  
7 Summary Judgment and Motion for Preliminary Injunction, saying (only saying, as there  
8 was no analysis or reckoning with the motions and their related supporting materials), the  
9 motions were "moot." ER 639, Dkt. 281 and 9.

10  
11 71. The judge, in effect, dismissed the motions. The dismissals worked to the  
12 advantage the WSBA and its lawyers. As we shall see below, the dismissals were in  
13 error. See discussion at 41.

14  
15 72. b. Order Granting Motion to Dismiss, May 11, 2017. The Trial Judge's  
16 Order Granting Motion to Dismiss is replete with evidence the fraud deceived the Court.

17  
18 73. c. "Motion to Dismiss?" The Court uses the term "Motion to Dismiss" for  
19 the motion. It failed to tell us the motion was not simply a motion to dismiss. The name  
20 of the motion is this: "Motion to Dismiss Plaintiffs' Claims and Opposition to Plaintiffs'  
21 Motions for Summary Judgment and Preliminary Injunction."

22  
23 74. d. Legal Standard Used. The Trial Judge used standards for a Rule 12(b)(6)  
24 motion. ER 638, Dkt. # 28 at 3. This was quite an advantage to the WSBA Defendants.  
25 The standards which should have been used are those for summary judgment. The Court  
26 has no right to use Rule 12(b)(6) standards because the Trial Judge selected to consider  
27 the Motion to Dismiss Plaintiffs Claims and Motions. There was no intention to apply  
28 any other standards such as those applicable to summary judgments and motions for

1 preliminary injunction. After all, the court said the Motion to Dismiss would be  
2 considered "first."

3 75. The standards were those for summary judgment. All the motions were heard at  
4 the same time. The motion to dismiss was not a discrete motion to dismiss as the judge  
5 would have us believe. It was opposition to the Plaintiffs' Motion for Summary  
6 Judgment and Motion for Preliminary Injunction. All of the motions were before the  
7 court for hearing.  
8

9 76. Court Refused to Consider Plaintiffs' Response to Defendants' Motion to Dismiss. The  
10 judge did not consider the Plaintiffs' response to statements about Pro se Eugster in the  
11 WSBA's Motion to Dismiss, etc. The judge wrote:  
12

13 The Court will not address tangential facts and arguments raised by the parties and will focus  
14 instead on the key legal questions in Defendants' entirely dispositive Motion to Dismiss.

15 [Emphasis added.]

16 77. The Trial Judge ignores what Pro se Eugster said in Plaintiffs' Response to the Motion to  
17 Dismiss. The judge shows he is not going to let considerations and argument on the  
18 points rise to his consciousness because the "tangential issues" so called were the very  
19 grounds upon which the judge was making his decisions.  
20

21 78. The fact of the matter is this: The Plaintiffs clearly and with significant specificity  
22 described at length in their Complaint and Amended Complaint, the unfairness of the  
23 discipline system. ER 184, Dkt. # 1, ER 234, Dkt. # 4.. Furthermore, there was  
24 significant discussion of the law of strict scrutiny and how it applied to the various  
25 infringements of Plaintiffs' fundamental constitutional rights. See, e.g., Amended  
26 Complaint.  
27  
28

1 79. These matters were also discussed in the Motion for Summary Judgment and Motion for  
2 Preliminary injunction. ER 274, Dkt. # 8.

3 80. What the foregoing establishes is that the trial judge was assisting in the fraud of the  
4 court perpetuated by WSBA and its lawyers. The foregoing also shows the trial judge  
5 was "making the case his own case" – that his involvement was personal toward Pro se  
6 Eugster. More of this personal involvement is seen in the judges orders directed against  
7 Pro se Eugster.  
8

9 81. Order on Fees, May 23, 2017. In the "Background" section of the Order, the  
10 judge said:  
11

12 The Court was able to dismiss all of Plaintiffs' claims based on these arguments without  
13 further analysis. See Id. As to Plaintiffs' remaining claims that Defendants' actions violated  
14 procedural due process and constitutional scrutiny, the Court found that "Plaintiffs' due process  
15 and constitutional scrutiny claims fail under the law cited by Defendants," that "Plaintiffs make  
16 no effort to argue otherwise," and that instead Plaintiffs devoted "nearly all of their brief to  
17 addressing tangential issues raised by Defendants."  
18

19 82.ER 631, Dkt. # 33 at 4.

20 83.23. The Court found that dismissal with prejudice was warranted because "Plaintiffs  
21 have given the Court no reason to believe they are capable of alleging facts sufficient  
22 under the law, given that Plaintiffs have previously amended their Complaint and given  
23 their counsel's familiarity with the law surrounding this issue." Id.  
24

25 84.24. The judge took it upon himself to say he "was able to dismiss all of Plaintiffs'  
26 claims without further argument." This shows a bias toward Pro se Eugster. Id.  
27  
28



1 That "Plaintiffs make no effort to argue otherwise," and that instead Plaintiffs devoted  
2 "nearly all of their brief to addressing tangential issues raised by Defendants."Id.

3  
4 85. Order of June 19, 2017.

5 86. The assertions in the Motion to Dismiss were picked up in this order. The court  
6 simply agreed with what the WSBA and its lawyers said about Pro se Eugster in their  
7 Motion. These statements were not true then and they are not true in the order. The court  
8 said it was ignoring them, but it was not; it had adopted them and considered Pro se  
9 Eugster's response to be irrelevant. ER 730, Dkt. # 46.

10  
11 TRIAL JUDGE PARTICIPATED IN THE FRAUD: TURNED THE CASE INTO HIS OWN  
12 CASE

13 Perhaps the most disturbing aspect of this case is this: The Trial Judge allowed,  
14 accepted, and expanded the defamatory statements. The Trial Judge then made the  
15 statements his own. The facts establish after that the trial judge made the case against Pro  
16 se Eugster his own case.

17  
18 87. The Trial Judge, Ricardo S. Martinez, was complicit in the wrongdoing of the  
19 WSBA and its lawyers. Furthermore, the judge made the case against Pro se Eugster into  
20 his own case, and as a result, went beyond his jurisdiction. His actions also violated 28  
21 U.S.C. § 455(a). The judge's conduct of complicity began soon after WSBA Defendants'  
22 lawyers filed Defendants' Motion to Dismiss Plaintiffs' Claims and Opposition to  
23 Plaintiffs Motions for Summary Judgment and Preliminary Injunction.

24  
25 **Trial Judge Does Not Have Immunity for His Actions.**

1 88. The Trial Judge does not have immunity for his acts of complicity and making the  
2 case his own. Such actions were not within his judicial role. *Gregory v. Thompson*, 500  
3 F.2d 59 (9th Cir. 1974).

4  
5 89. In *Gregory v. Thompson*, the Ninth Circuit elucidated what is meant by a judge's  
6 judicial role and which is not his judicial role. The Court said:

7 90. [w]hen courts have spoken of immunity for acts within the jurisdiction of a judge,  
8 they have declared that the doctrine insulates judges from civil liability 'for acts  
9 committed within their judicial jurisdiction,' or 'for acts within (their) judicial role,'  
10 *Pierson v. Ray*, 386 U.S. at 554, 87 S. Ct. at 1218, or for 'their judicial acts.' *Bradley v.*  
11 *Fisher*, 80 U.S. (13 Wall.) at 351. Thus judicial immunity does not automatically attach to  
12 all categories of conduct in which a judge may properly engage, but only to those acts  
13 that are of a judicial nature.  
14

15  
16 **Trial Judge Complicity and Making the Case His Own.**

17  
18 91. The Trial Judge undertook certain actions in the unique setting of this case which  
19 were not judicial actions. Rather, they were actions personal to the judge. These actions  
20 also establish that the Court acted upon the fraud perpetrated by the lawyers for the  
21 WSBA Defendants, thus meeting the 5th element for the determination of whether a  
22 fraud has been committed. See discussion above beginning at page 25.

23  
24 92. The Trial Judge Did Not Have Jurisdiction 28 U.S.C. § 455. Under § 455(a), recusal is  
25 mandatory in "any proceeding in which his impartiality might reasonably be questioned."

26 93. Under 28 U.S.C. § 455(b), a judge is expected to disqualify himself whenever any  
27 of the five statutorily-prescribed criteria can be shown to exist in fact; even if no motion  
28

1 or affidavit seeking such relief has been filed, and regardless of whether a reasonable  
2 person would question the judge's impartiality.

3  
4 94. In 1994, the U.S. Supreme Court held that "Disqualification is required if an  
5 objective observer would entertain reasonable questions about the judge's impartiality. If  
6 a judge's attitude or state of mind leads a detached observer to conclude that a fair and  
7 impartial hearing is unlikely, the judge must be disqualified." [Emphasis added]. *Liteky*  
8 v. U.S., 510 U.S. 540, 564 (1994).

9  
10 95. Courts have repeatedly held that positive proof of the partiality of a judge is not a  
11 requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition*  
12 *Corp.*, 486 U.S. 847 (1988) (what matters is not the reality of bias or prejudice but its  
13 appearance). **PRAYER FOR RELIEF**

14 Plaintiff requests that

- 15  
16 1. The court declare the decision in the case to be void ab initio.  
17 2. Award Plaintiff his costs.  
18 3. Award Plaintiff his attorneys fees if such are allowed for actions of this kind.  
19 4. Grant such other relief which to the court deems proper or authorized by law.

20 May 14, 2018

21 Respectfully submitted,

22  
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