DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER, COLORADO Address of Court: 1437 Bannock Street Denver, CO 80202	DATE FILED: December 7, 2021 12:38 PM FILING ID: 5737FFDEC319F CASE NUMBER: 2020CV34319
Plaintiff: ERIC COOMER, Ph.D. v. **Defendants**: DONALD J. TRUMP FOR PRESIDENT, INC., *et al.*	▲ **COURT USE ONLY** ▲
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DEFENDANTS HERRING NETWORKS, INC., D/B/A ONE AMERICA NEWS NETWORK, AND CHANEL RION'S MOTION TO RECUSE

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There is one unmistakable conclusion to be drawn from the Court's November 21, 2021 Order Regarding Plaintiff's Motion for Expedited Relief from the OAN Defendants' Evidentiary Objections (the "Nov. 21 Order"): The Court has profound disdain for defendants Herring Networks, Inc., d/b/a One America News Network ("OAN"), and Chanel Rion ("Rion," together with OAN, the "OAN Defendants") and their counsel, and it is inappropriate and unfairly prejudicial for the Honorable Marie Avery Moses to continue as the judge in this case. The OAN Defendants do not seek recusal lightly — indeed, their attorneys have never sought recusal before[1] ,— but they cannot receive due process and fair treatment for their clients when the Court has repeatedly, *sua sponte*, threatened their out-of-state attorneys with revocation of their *pro hac vice* admissions and sanctions for even the slightest perceived missteps. The law firm of Vedder Price P.C. and the attorneys who have entered their appearances in this case have unblemished reputations, including service to the legal community and the under-served, and none of the Vedder Price P.C. attorneys of record has ever been subject to disbarment or discipline (or had a client be sanctioned) before taking on this case. *See infra* pp. 13-14. The difference in this case, it seems, is that these attorneys are representing the OAN Defendants, and the Court has a clear distaste for the OAN Defendants and anyone associated with them.

But the Court's personal views should play no role in whether the OAN Defendants are afforded due process and are able to vindicate their First Amendment rights while proceeding with counsel of their choosing. The Nov. 21 Order, particularly when coupled with the Court's earlier orders and conduct, makes it impossible for the OAN Defendants' attorneys to continue effectively advocating for their clients without threat of imminent censure by the Court. Accordingly, Judge

[1] *See* Declaration of Blaine C. Kimrey ("Kimrey Decl."), attached as **Exhibit A**, at ¶ 8 Declaration of Jeanah Park ("Park Decl."), attached as **Exhibit B**, at ¶ 8; Declaration of Bryan K. Clark ("Clark Decl."), attached as **Exhibit C**, at ¶ 8).

Moses should recuse herself.

Certification Pursuant to C.R.C.P. 121 § 1-15(8): Undersigned counsel has conferred with counsel for plaintiff Dr. Eric Coomer ("Dr. Coomer"), who opposed the relief requested.

I. Factual and procedural background

The Nov. 21 Order was the culmination of a series of events reflecting Judge Moses' bias that began almost immediately upon her taking over this case from Judge Rappaport. Since June 2021, it has been clear that there is one set of rules for Dr. Coomer and a separate set of rules for the defendants. The timeline is as follows:

- **June 8, 2021:** In one of Judge Moses' first actions, the Court *sua sponte* reversed Judge Rappaport's May 21, 2021 Order rejecting anti-SLAPP discovery. The Court not only allowed discovery, but allowed sweeping discovery that included significant document productions and depositions of every defendant, flying in the face of the anti-SLAPP statute's purpose (efficiency in light of the First Amendment). (Kimrey Decl. ¶ 10).
- **July 2, 2021:** The Court found "probable falsity" as to defendant Joseph Oltmann's statements regarding the antifa conference call before holding an evidentiary hearing on the issue. (Kimrey Decl. ¶ 11; Transcript of July 2, 2021 Hearing, 39:2-4).
- **July 7, 2021:** The Court found that Oltmann was "not credible" and reiterated that his statements regarding the antifa conference call were "probably false." (Kimrey Decl. ¶ 12; Transcript of July 7, 2021 Hearing, 91:3-7).
- **August 10, 2021:** Despite concerns for his personal safety and the availability of safe and effective virtual depositions, the Court ordered Oltmann to appear in person for his deposition on August 11, 2021. (Kimrey Decl. ¶ 13).

- **August 23, 2021:** Despite ordering the defendants to respond to extensive discovery, the Court denied certain defendants' request for reciprocal discovery. (Kimrey Decl. ¶ 14).
- **August 29, 2021:** The Court sanctioned Oltmann and his counsel for his failure to appear at the deposition on August 11, 2021, and other discovery missteps, but the Court changed its position on whether the deposition must occur in person and allowed the rescheduled deposition to occur virtually. (Kimrey Decl. ¶ 15).
- **September 7, 2021:** The Court *sua sponte* issued an order designating Dr. Coomer's ***entire deposition*** confidential pursuant to the protective order, even though no party had requested such confidentiality. (Kimrey Decl. ¶ 16).
- **September 17, 2021:** In the OAN Defendants' lead counsel Blaine Kimrey's first appearance before the Court, Judge Moses took him to task for stating: "To us this is not like a summary judgment procedure, because anti-SLAPP motions, they're decided without any discovery and things that occurred since our motions were filed that we could not have known, . . . such as Mr. Coomer ***imploding [in] the New York Times***." (Kimrey Decl. ¶ 17; Transcript of September 17, 2021, 16:9-12). The Court also declined the OAN Defendants' request to extend the date for the anti-SLAPP hearing to allow for more discovery of Dr. Coomer because "with anti-SLAPP, the requirement is that we get this to hearing as quickly as possible." (Kimrey Decl. ¶ 18; Transcript of September 17, 2021, 11:15-17). But this is clearly inconsistent with the Court's allowing Dr. Coomer to engage in four months of fulsome one-way discovery, and it fails to acknowledge that the purpose of an expedited anti-SLAPP procedure is to benefit the ***defendant***, not the plaintiff.
- **September 22, 2021**: The Court denied the defendants' request to take the depositions of ***nine declarants*** who were undisclosed by Dr. Coomer until their declarations were filed in

support of Dr. Coomer's omnibus anti-SLAPP response. (Kimrey Decl. ¶ 19). The Court blamed the defendants for their "failure to pursue the available avenues of discovery in a timely manner," even though the identities (or even existence) of eight of the declarants were not know to the defendants until September 17, 2021 and even though some defendants had asked for, and been denied, discovery twice. (*Id.*). The Court also stated, without describing what information it was referring to, that the OAN Defendants' motion seeking discovery contained confidential information that was not redacted and stated that the briefing should have been filed as "suppressed." (*Id.*). The only document that was "suppressed" on the docket by the Clerk as a result of the order was a transcript of the September 17, 2021 hearing, which is not confidential. *See* Docket No. D98938CEAED81.

- **September 24, 2021:** The Court *sua sponte* issued an order reiterating the designation of Dr. Coomer's ***entire deposition*** confidential. (Kimrey Decl. ¶ 20).
- **October 7, 2021:** The Court denied the unopposed *pro hac vice* application of Vedder Price P.C. associate Julia Koechley because it was inadvertently filed under seal. (Kimrey Decl. ¶ 11). The Court noted that multiple documents had been filed as "suppressed" by the OAN Defendants since October 1, 2021, and questioned whether this was a "clerical error, or if counsel is flagrantly misrepresenting the scope of the Omnibus Protective Order." (*Id.*). As the OAN Defendants explained in a motion for partial reconsideration, a clerical error by local counsel Richard Westfall's paralegal led to the inadvertently suppressed filings, and there was no strategic advantage to be gained by filing, for instance, *pro hac vice* applications under seal. (*Id.*). In response to the Court's Order, the OAN Defendants refiled as public all documents that previously had been filed inadvertently

under seal. *See* Docket Nos. FA5B431D4E222, 9A5225FE807AA, DB730634B4821, 46E7E99E65106, 562EA1B47FCF5, B9EAF95E6523D, 3F5C201A5F888.

- **October 8, 2021:** The Court entered an order ***granting*** in large part the OAN Defendants' motion to set aside the protective order and unseal documents, including lifting the protective order on Dr. Coomer's deposition, but used that order to make its first threat to revoke the *pro hac vice* status of Vedder Price attorneys. (Kimrey Decl. ¶ 22). The Court's Order claimed that the OAN Defendants (1) misrepresented the Court proceedings, (2) used their pleadings to intimidate others, and (3) misapprehended the state-wide procedures regarding court access. (*Id.*). As discussed below, none of those positions has merit.
- **October 11, 2021:** The OAN Defendants filed a motion for partial reconsideration, asking the Court to reconsider its positions about purported improprieties by the OAN Defendants, strike those portions of the October 8, 2021 Order that unfairly threaten the OAN Defendants with sanctions, and grant the OAN Defendants' request that the Court and/or Clerk immediately render public certain documents. (*See* Kimrey Decl., ¶ 22; Docket No. A59AB061BB54B). With respect to the first point, the motion explained that because Mr. Westfall's paralegal was new to the case, she filed some documents as "suppressed" that the attorneys at Vedder Price did not request to be "suppressed." (*Id.*). And because Vedder Price did not have full access to the docket, the OAN Defendants' attorneys did not recognize that these documents had been suppressed by the paralegal at filing. (*Id.*). Counsel thought that the Court and/or its Clerk had suppressed the documents. (*Id.*). With respect to the second point, the OAN Defendants explained that their assertions of fact and law were simply advocacy, not intimidation. (*Id.*). And with respect to the third point, the

motion explained that counsel understood the state-wide requirements and despite the confusion caused by the paralegal's inadvertent clerical error, there remained many documents on the docket that were improperly sealed. (*Id.*).

- **October 11, 2021:** The Court entered its Civility Order, which included a list of words and phrases that counsel should not say, such as "in an effort to mislead the court," "outrageous," "absurd," and "ridiculous." (Kimrey Decl. ¶ 23).
- **October 11, 2021:** The Court entered an order again denying the defendants the right to take discovery of Dr. Coomer's declarants before the anti-SLAPP hearing, claiming that defendants did not seek discovery in a timely manner, even though they had no way of knowing what witnesses Dr. Coomer would present and even though some defendants had already been denied reciprocal discovery twice. (Kimrey Decl. ¶ 24). The Court adopted an incorrect evidentiary standard for the upcoming anti-SLAPP hearing, concluding that: "The Court will not be weighing the evidence presented by the parties or resolving conflicting factual claims. The Court's inquiry is limited to whether Plaintiff has stated a legally sufficient claim and made a *prima facie* factual showing sufficient to sustain a favorable judgment. 'It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law.' *Baral v. Schnitt*, 1 Cal. 5th 376, 384–85, 376 P.3d 604, 608 (2016)." (*Id.*). Such a standard is inconsistent with the applicable law and plainly would favor Dr. Coomer.
- **October 12, 2021:** The Court sanctioned Oltmann for again, holding that "Defendant Oltmann shall not be permitted to contest Plaintiff's evidence or claims regarding the source, manner or timing of Defendant Oltmann's receipt of information regarding Plaintiff's Facebook posts" and requiring him to pay fees and costs. (Kimrey Decl. ¶ 25).

- **October 13, 2021:** The anti-SLAPP hearing began. The Court allotted 6.5 hours of argument to the ***single plaintiff*** and 7.5 hours to the ***14 defendants***. (Kimrey Decl. ¶ 27).
- **October 14, 2021:** The Court threatened Kimrey with the Civility Order for stating that OAN did not reach Dr. Coomer for comment because Dr. Coomer "was in hiding at the time, and if he went to his door, he'd show up with a shotgun," even though Dr. Coomer put that very same information in a declaration that had been submitted to the Court. (Kimrey Decl., ¶ 28; Transcript of anti-SLAPP Hearing Volume II, 373:8-374:12).
- **October 25, 2021**: The Court entered an Order allowing Dr. Coomer ***150 pages*** for his proposed findings of fact and conclusions of law and limiting each defendant group to ***20 pages***, plus a 20-page joint filing, if they could reach an agreement. (Kimrey Decl. ¶ 34).
- **November 3, 2021:** The Court denied two motions by the OAN Defendants (including the October 11 motion for partial reconsideration) without explanation, simply stamping "Denied" on the top of the motions. (Kimrey Decl. ¶ 35).

While all of these actions were deeply unfair and demonstrative of bias against ***all*** defendants, the Nov. 21 Order is what transformed this from a difficult case to a case that is impossible for the OAN Defendants' counsel to effectively litigate on behalf of their clients as long as the judge remains the same. In the Nov. 21 Order, the Court denied thousands of good faith evidentiary objections based solely on the number of objections, accused four Vedder Price attorneys of "misconduct," again threatened to revoke the *pro hac vice* of the admissions of the Vedder Price attorneys, attempted to divide the OAN Defendants' legal team by suggesting that junior lawyers should refuse to put their names on pleadings, and *sua sponte* awarded attorneys' fees and costs as sanctions against the OAN Defendants. *See generally* Nov. 21 Order. The Court's Nov. 21 Order left the OAN Defendants with no choice but to seek recusal.

II. Argument

A. Legal standard

Disqualification of a judge is governed by Colorado Rule of Civil Procedure 97. It provides that "[a] judge shall be disqualified in an action in which [s]he is interested or prejudiced. . . ." C.R.C.P. 97. "The test for disqualification under this rule is whether the motion and supporting affidavits allege sufficient facts from which it ***may reasonably be inferred*** that the judge is prejudiced or biased, or appears to be prejudiced or biased, against a party to the litigation." *Bruce v. City of Colorado Springs*, 252 P.3d 30, 36 (Colo. App. 2010) (emphasis added). The judge must accept factual statements in the motion and affidavit as true, even if it believes they are false. *Id*.

"'Prejudice' is not easily defined [s]ince it is a mental condition or status, a certain 'bent of mind' it cannot be demonstrated, ordinarily, by direct proof. Prejudice in the present procedural context has been described by our court as 'a leaning toward one side of a question involved, from other considerations than those belonging to it, or a bias in relation thereto which would in all probability interfere with fairness in judgment.'" *Smith v. Dist. Ct. for Fourth Judicial Dist., State of Colo., Division 6*, 629 P.2d 1055, 1057 (Colo. 1981) (internal citations omitted). "When assessing the grounds for disqualification raised in a motion, the judge must consider the Code of Judicial Conduct as well as the statutes and procedural rules." *Zoline v. Telluride Lodge Ass'n*, 732 P.2d 635, 639 (Colo. 1987) (citing *Smith v. Beckman*, 683 P.2d 1214, 1216 (Colo. App. 1984)).

B. The Court's *sua sponte* threats of revoking counsel's *pro hac vice* admissions constitute unfair prejudice.

The Court's repeated, *sua sponte* threats of revoking counsel's *pro hac vice* admissions are entirely unsupported and demonstrate a clear bias against the OAN Defendants and their counsel. Even if the Court's substantive rulings are not tainted by this bias, the OAN Defendants will be (and already have been) unfairly prejudiced by the Court's actions because OAN Defendants'

counsel cannot effectively advocate for their clients out of fear that the Court will assert an unjustified basis to disqualify them from the case. The OAN Defendants obviously would be unfairly prejudiced if the Court deprived them of their choice of counsel without justification, *see In re Estate of Myers*, 130 P.3d 1023, 1025 (Colo. 2006), but even if the Court never acts on its threats, the threats have already caused OAN Defendants' counsel to consider reining in their appropriate, ethical, and well-founded advocacy for fear of having admissions revoked to the unfair prejudice of the OAN Defendants. (Kimrey Decl. ¶ 47). To fulfill their ethical obligations to their clients and effectively advocate for them, counsel must be able to take the actions that they feel are justified and appropriate based on the facts, the law, and the applicable rules of professional responsibility. It is inappropriate for them to also be required to consider what arguments the Court might disagree with so strongly that it will disqualify counsel, or what commonly used legal terms the Court might deem "uncivil." At present, the Court's orders have so severely limited their ability to represent the OAN Defendants that the attorneys at Vedder Price P.C. are considering whether to withdraw from this case if this motion is denied. (Kimrey Decl. ¶ 47).

The Colorado Supreme Court has repeatedly held that conduct similar to what Judge Moses has engaged in here constitutes unfair prejudice and warrants recusal. In *Klinck v. District Court*, 876 P.2d 1270, 1277 (Colo. 1994), the court held that disqualification was required when a judge interrupted counsel during a hearing to accuse him of improprieties, reprimanded him in open court when he commented on the court's delay, and advised him to keep co-counsel "on a short leash." The court found that there was sufficient evidence of "an absence of the impartiality necessary to assure . . . a fair trial." *Id.* at 1277. Similarly, in *Goebel v. Benton*, 830 P.2d 995, 998 (Colo. 1992), the court held that disqualification was required when a judge "made several, on the record, derogatory references to the petitioners and their counsel" and "made rulings based on his own

social philosophy," among other things. The court held that "the judge's actions or comments have compromised the appearance of fairness and impartiality such that the parties or the public are left with a substantial doubt as to the ability of the judge to fairly and impartially resolve pending litigation." *Id.* at 999. In *Brewster v. Dist. Ct. of the Seventh Jud. Dist*., 811 P.2d 812, 814 (Colo. 1991), the court found disqualification was required when the judge made disparaging remarks about counsel and issued contempt orders that were not supported by the record.

There can be no doubt that the Court's repeated threats to revoke the *pro hac vice* admission status of the Vedder Price P.C. attorneys, coupled with its suggestion that any Vedder Price lawyers disagreeing with a pleading should remove their names from the signature block, is the Court's effort to keep counsel "on a short leash." It is difficult to imagine a shorter leash, given the Court's repeated threats, the Civility Order, and the Court's rehashing of inconsequential filing errors that have already been explained and resolved. Moreover, the Court has repeatedly made disparaging remarks about the attorneys at Vedder Price P.C. that are either entirely without justification or based on past clerical errors that have since been explained to the Court and resolved. Yet the Court has refused to acknowledge those facts, instead repeating its inaccurate claims of misconduct and using them as support for escalating rhetoric against the OAN Defendants' counsel.

As set forth at length in the OAN Defendants' contemporaneously filed motion to set aside the Nov. 21 Order and incorporated here by reference, the Court's claim that the OAN Defendants' evidentiary objections were asserted in bad faith is without merit. Similarly flawed are the Court's assertions about counsel's lack of civility, which are based solely on concerns about Kimrey's use of the word "imploding" in the September 17 hearing, and the use of the word "alleged" in the title of the evidentiary objections. Under no standard would the use of two innocuous words constitute a basis for withdrawing the *pro hac vice* admissions of the OAN Defendants' counsel. Indeed, the

Court is so quick to assume OAN Defendants' counsel are acting in bad faith that the Court admonished Kimrey under the Civility Order during the hearing on October 14, 2021, after Kimrey said OAN did not reach Dr. Coomer for comment because Dr. Coomer "was in hiding at the time, and if he went to his door, he'd show up with a shotgun," despite the fact that Dr. Coomer has ***admitted*** to that fact and voluntarily put that information in a declaration that had been submitted to the Court. *See* Kimrey Decl., ¶ 28; Transcript of anti-SLAPP Hearing Volume II, 373:8-374:12.

The Court's threats to revoke the *pro hac vice* admissions of the lawyers from Vedder Price are unjustified, and the OAN Defendants are adversely impacted by those threats because of the impact on their counsel's ability to fully and effectively advocate for the OAN Defendants. These threats reflect the Court's deep unfair prejudice against the OAN Defendants and their counsel.

C. The Court's arbitrary and capricious handling of the evidentiary objections constitutes unfair prejudice.

The Court also demonstrated its unfair prejudice against the OAN Defendants by arbitrarily and capriciously denying thousands of good-faith evidentiary objections simply because the Court's "bent of mind" led it to conclude that the sheer volume of objections meant that they were asserted in bad faith. As set forth at length in the accompanying motion to set aside the Nov. 21 Order, which is incorporated by reference, the OAN Defendants' objections were not asserted in bad faith and were not frivolous. Rather, the Court demonstrated a tremendous amount of bias against the OAN Defendants and their counsel, assuming the worst despite being given no reason to do so. The OAN Defendants question whether the Court could have given a fulsome analysis to more than 5,000 evidentiary objections in just four days, as the Court has claimed (for reference, it took 10 timekeepers more than 460 hours to review the evidence and prepare the objections). (Kimrey Decl. ¶ 38). Any analysis that could have been done in that time period was necessarily hasty and proceeded on the unfair assumption that the vast majority of the objections were

frivolous just because of their length.[2]

The handling of the objections was particularly troubling because (1) the OAN Defendants had expressly addressed the likely length of the evidentiary submission with the Court on October 14, 2021, but were nonetheless told to assert all objections in paragraph-by-paragraph form (Kimrey Decl. ¶¶ 29-33), (2) Dr. Coomer's counsel failed to adequately meet and confer with the OAN Defendants' counsel before filing the motion, *see* Transcript of July 2, 2021 Hearing, Docket No. FAD883C25BE15, at Exh. 12, at 7:5-8 ("I will take this opportunity to remind everybody that deferral is -- conferral is not just making a phone call saying, do you object? Conferral is attempting to work out the differences of opinion."); *Anderson v. Holguin, Jr.*, 2018 WL 11222764, *1 (Colo. Dist. Ct. April 20, 2018) (holding that a good-faith effort to confer requires "holding meaningful negotiations" and denying motion for failure to adequately meet and confer), (3) there was no "emergency" that required Dr. Coomer to seek expedited relief, yet the Court allowed him to do so and ordered the OAN Defendants to file a response within 48 hours, and (4) Dr. Coomer's motion did not even ask the Court to summarily deny all of the OAN Defendants' objections. The proper course was for the parties to fill out the evidentiary chart as ordered by the Court and submit it on November 29, 2021. The Court could have then ruled on the objections thereafter. Instead, the Court *sua sponte* and without justification denied thousands of objections (while deeming 239 potentially meritorious and giving seven examples of objections the Court apparently disagrees with but that weren't even highlighted as objectionable by Dr. Coomer) and sanctioned the OAN Defendants.

With its Nov. 21 Order, the Court has essentially adopted a rule against OAN that states,

[2] When the Court ultimately ruled on the remaining evidentiary objections on December 5, 2021, it ended up sustaining only ***17*** of the OAN Defendants' more than 5,000 good faith objections.

"If you object and I disagree with you, I'll sanction you." Typically, if a judge disagrees with an objection, the judge overrules it (with specificity, not in omnibus fashion). A judge does this so the appellate court can consider what objections were properly sustained, what were properly denied, and whether those rules are reversible error. *See Hall v. Time Warner, Inc.,* 153 Cal. App. 4th 1337, 1347-48 (2007) ("Rulings on evidentiary objections involve an exercise of discretion, and it is the trial court's responsibility to rule on the objections in the first instance."). Notably, anti-SLAPP appeal is as of right, and review by the appellate court is *de novo*. *See* C.R.S. 13-20-1101(7). The Court, of course, is aware of this — in its December 5, 2021 rulings on Dr. Coomer's objections to the OAN Defendants' evidence, the Court overruled 26 of Dr. Coomer's 32 objections (in other words, 81 percent of them), but did not accuse him of bad faith, claim the objections were frivolous, or seek to sanction him.

The Court's one-sided handling of the evidentiary objections is therefore further evidence of unfair prejudice.

D. The Court's unprecedented behavior constitutes unfair prejudice.

The Court's actions in this case are unprecedented in the experience of OAN Defendants' counsel and unfairly prejudice the OAN Defendants by making it impossible for counsel to fulfill their obligations to the OAN Defendants without risking unwarranted censure of counsel and sanctions to the clients. The Court's actions have been so extreme and so unpredictable that the OAN Defendants' counsel have no ability to discern how the Court will react to arguments in the future. The three shareholders at Vedder Price P.C. accused of misconduct in the Nov. 21 Order, Blaine Kimrey, Jeanah Park, and Bryan Clark, have been practicing for 23, 19, and 13 years respectively, are collectively admitted to practice law in 19 jurisdictions around the country, and have been collectively admitted *pro hac vice* in at least 41 additional jurisdictions nationwide.

(Kimrey Decl. ¶¶ 4-6; Park Decl. ¶¶ 4-6; Clark Decl. ¶¶ 4-6).[3] None of them has ever previously been subject to disbarment or discipline, or has had a client sanctioned. (Kimrey Decl. ¶ 7; Park Decl. ¶ 7; Clark Decl. ¶ 7). Throughout their careers, they have provided services both to the legal community and the community at large. (Kimrey Decl. ¶ 3; Park Decl. ¶ 3; Clark Decl. ¶ 3). In their practices, the Court's actions here are completely unprecedented.

Because of the seriousness of the Court's allegations, Vedder Price P.C. has brought this matter to its General Counsel, Michael R. Mulcahy, a litigator with nearly 30 years of experience. (Declaration of Michael Mulcahy ("Mulcahy Decl."), attached as **Exhibit D**, at ¶¶ 1-3). Mulcahy has reviewed the objections asserted by the OAN Defendants as well as the Nov. 21 Order and sees no evidence that the objections were asserted in bad faith or were frivolous. (Mulcahy Decl. ¶¶ 4-6). Vedder Price P.C. supports this motion for recusal. (Mulcahy Decl. ¶ 7).

Moreover, as set forth in greater detail in the accompanying motion to set aside the Nov. 21 Order (which is incorporated by reference), the Court simply disregarded the statutory requirements for awarding fees and costs, sanctioning the OAN Defendants *sua sponte*, without letting them address the applicable statutory factors, without holding an evidentiary hearing, and without making any findings of facts or conclusions of law related to the statutory requirements.

Thus, the Court's unprecedented and unsupported actions demonstrate further unfair prejudice against the OAN Defendants and their counsel that warrants recusal.

E. The Court's conduct presents significant concerns under the Colorado Code of Judicial Conduct.

The Court's conduct, as described in detail above, raises a number of concerns under the

[3] Given the Court's threats related to "conflation of conduct" (Nov. 21 Order, p. 9), fourth-year associate Julia Koechley's name has been removed from the signature block on this pleading, even though she supports the relief sought.

Colorado Code of Judicial Conduct that must be considered as part of this recusal motion. *See Zoline*, 732 P.2d at 639. Those issues are set forth in the chart below:

APPLICABLE RULE	**CONCERNS IN THIS CASE**
Rule 1.2: "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."	The Court's one-sided handling of this case and unprecedented threats and sanctions do not promote the public confidence in the impartiality of the Court and create, at minimum, the appearance of impropriety.
Rule 2.2: "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially."	The Court's demonstrable bias raises genuine concerns about its ability to handle this case fairly and impartially.
Rule 2.3(A): "A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice."	As reflected above, the Court has demonstrated a clear and unfair prejudice against the OAN Defendants and their counsel.
Rule 2.8(B): "A judge shall be patient, dignified, and courteous to litigants, . . . lawyers, . . . and others with whom the judge deals in an official capacity. . . ."	The Court's unreasonable threats to the OAN Defendants' counsel based on word choice and inadvertent clerical errors outside their control are plainly inconsistent with this rule.

Because of these significant issues under the Code of Judicial Conduct, recusal is appropriate.

III. Conclusion

For the foregoing reasons, the Honorable Marie Avery Moses should recuse herself from this matter.

Respectfully submitted December 7, 2021,

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of December 2021, a true and correct copy of the foregoing was electronically served via the Integrated Colorado Courts E-Filing System (ICCES) and has been e-served via ICCES on all counsel of record.

s/ Richard A. Westfall