STATE OF WISCONSIN | CIRCUIT COURT BRANCH 10 | DANE COUNTY

CATHERINE CONRAD *et al.*

Plaintiffs,

vs. Case No. 13-CV-941

ANDREA RUSSELL, *et al.*,

Defendants,

RODNEY RIGSBY,

Plaintiff, Case No. 14-CV-108

vs.

TRAVIS WEST *et al.*,

Defendants.

DEFENDANTS' COMBINED MEMORANDUM OF LAW IN SUPPORT OF MOTIONS TO DISMISS AND FOR SANCTIONS

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> Plaintiffs' suit was ill-conceived from the beginning, brought without any serious investigation of the law and extended long past the time that plaintiffs should have realized its lack of merit. In addition, their statement in their briefs in opposition to defendants' motion for fees support defendants' observations that plaintiffs were primarily interested in settling the case for a large sum.
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> *Conrad et al. v. Bendewald et al.*,
> Case No. 3:11-cv-00305-bbc, Dismissal Order
> (W.D. WI, November 12, 2012 (J. Crabb))

> If you look at the individual claims, they all are without [m]erit. They don't even have arguable merit. And any reasonable person – and, again, not necessarily a law trained person, but any reasonable person – would know that.
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> *Neri et al. v. Pinckney Holdings, LLC et al.*,
> Dane County Case No. 13-CV-75, Motion Hearing
> (March 19, 2013 (Branch 1, J. Markson))

INTRODUCTION

The words written above are not unfamiliar to Plaintiff Rodney Rigsby. He was a plaintiff in both cases, and the words of Judges Crabb and Markson were as true then as they are now. Mr. Rigsby is a serial, strike-suit litigant. At its most basic level, as defined by Black's Law Dictionary, a strike suit is an action "often based on no valid claim, brought either for nuisance value or as leverage to obtain a favorable or inflated settlement." The problem, of course, is that Mr. Rigsby's unlawful conduct is not merely obnoxious. It is expensive and damaging to those individuals upon whom he sets his sights and it consumes the precious resources of the courts.

This memorandum of law addresses the motions to dismiss and for sanctions filed by Defendants Travis West, James Statz, and SBG Law, S.C. (the "SBG Defendants"). With respect to the dismissal motion, Mr. Rigsby's claims are wholly barred by the doctrine of *res*

judicata. Mr. Rigsby knows this, as the doctrine has been thoroughly explained to him by a significant number of the members of Dane County bar, as well as by both the Dane County Circuit Court and US District Court of the Western District of Wisconsin. Even if that were not the case, his claims are each individually barred as well. Mr. Rigsby knows this as well.

Beyond the dismissal motion, the defendants also seek the imposition of sanctions. Mr. Rigsby has a reputation as a difficult and prolific plaintiff in the courts of Wisconsin. Defendants believe that it is likely that the Court is already of this reputation to an extent, but suspect that the Court may not be aware of just how abusive his conduct has been. This memorandum is at least the third of its kind, comprehensively setting forth the lengthy factual history of Mr. Rigsby's abuse of the legal system in his effort to improperly attain personal gain (the other two, as discussed below, include a sanctions motion filed with Branch 1 of the Dane County Circuit Court and a sanctions motion filed with District 4 of the Wisconsin Court of Appeals). The statement of facts reads like a Machiavellian novel and lays bare just why the courts of Wisconsin have imposed hundreds of thousands of dollars of judgments for attorneys' fees and costs upon Mr. Rigsby. Unfortunately, his unlawful and abusive conduct has continued wholly unabated.

If nothing else, the defendants suggest that even if the Court was previously aware of Mr. Rigsby's penchant for such bad faith conduct, the statement of facts will make clear just how bad matters have become. According, Mr. Rigsby's conduct makes him liable for the imposition of mandatory monetary sanctions under Section 895.044. Further, the Court should also exercise its power under Section 802.05 to impose non-monetary sanctions, including without limitation 1) barring Mr. Rigsby from filing any additional actions against the Defendants named in this suit until he pays any monetary sanctions granted hereunder, and 2) barring Mr. Rigsby from filing

any additional actions in Dane County Circuit Court without first posting an appropriate security or bond pursuant to Section 814.27.

STATEMENT OF FACTS

A. The Original Lawsuit, Dane County Case Nos. 13-CV-941 and 13-SC-1232

On January 31, 2013, Mr. Rigsby's business partner Catherine Conrad initiated Dane County Case No. 13-SC-1232, asserting a claim for breach of contract against Defendants Andrea Russell, Ell Russ, LLC, and ARA Design Collections, LLC (the "Russell Defendants"). Affidavit of Travis James West in Support of Motion for Sanctions ("West Aff."), ¶ 2, Exh. A (13-SC-1232 Complaint). The Russell Defendants hired SBG Law as counsel, who in turn filed a responsive pleading denying the claims of Ms. Conrad, asserting counterclaims against Ms. Conrad, and asserting third-party claims against Mr. Rigsby and his company, RigRad Studios & Syndication, LLC ("RigRad"). West Aff., ¶ 3, Exh. B (13-CV-941 Amended Answer). The Russell Defendants' claims sought relief that exceeded the jurisdictional limit of the small claims court, which resulted in the re-assignment of the case to Branch 10 and the issuance of a large claims case number, 13-CV-941. (Case Nos. 13-SC-1232 and 13-CV-941 are collectively hereinafter referred to as the "Original Action").

Ms. Conrad subsequently amended her original complaint, joining Mr. Rigsby as a plaintiff and asserting additional claims. West Aff., ¶ 4, Exh. C (13-CV-941 Amended Complaint). The amended complaint re-alleged the original claim for breach of contract, and also asserted claims for defamation, negligent misrepresentation, and unjust enrichment. *Id.* In support of his claims, Mr. Rigsby alleged the Russell Defendants executed a contract pursuant to which Mr. Rigsby and RigRad served as business consultants to the Russell Defendants. *Id.* at p. 1-2, 5-10. He claims that in the context of that relationship he assisted the Russell Defendants

with the development of business strategies and the development of intellectual property. *Id.*. In particular, he claims that he was solely responsible for the development of logos to be used by the Russell Defendants, and that Ms. Russell "had no original ideas of her own or vision and rarely did her homework . . ." *Id.* at p. 2. Mr. Rigsby expected that the Russell Defendants would renew their relationship with him as a business consultant at the conclusion of the parties' initial contract; however, by that time the relationship of the parties had deteriorated and the Russell Defendants refused to execute a new contract extending the relationship. *Id.* at pp. 5-10.

The majority of Mr. Rigsby's claims alleged in the Original Action sought to recover alleged damages incurred as a consequence of the demise of the parties' relationship. The one exception to this was his claim for defamation, which instead sought to recover claimed damages that Mr. Rigsby perceived he incurred because the Russell Defendants asserted claims against him in their third-party complaint. *Id.* at pp. 4-5. As the Russell Defendants would later discover, and as discussed below, Mr. Rigsby has a history of inappropriately claiming that the lawfully permitted litigation efforts of opposing parties and counsel entitle him to recover damages.

On July 30, 2013, the Dane County Circuit Court dismissed Mr. Rigsby's claims with prejudice. West Aff., ¶ 5, Exh. D (13-CV-941 Dismissal Order (7/30/13)). On that same date the Court also ordered judgment to be entered as to RigRad in the amount of $72,944.89. West Aff., ¶ 6, Exh. E (13-CV-941 Judgment (7/30/13)). At a hearing held on January 13, 2014, the Court granted the Russell Defendants' motion for voluntary dismissal of their remaining claims against Mr. Rigsby and Ms. Conrad. West Aff., ¶ 7, Exh. F (13-CV-941 Transcript (1/13/14)) at p. 14 ("the motion for dismissal is granted").

B. The Collateral Action, Dane County Case No. 14-CV-108

On January 10, 2014, Mr. Rigsby filed a second action in the Dane County Circuit Court, Dane County Circuit Court Case 14-CV-108 (the "Collateral Action"). West Aff., ¶ 8, Exh. G (14-CV-108 Complaint). In addition to naming the Russell Defendants as defendants again, Mr. Rigsby also named the "SBG Defendants" (together with the Russell Defendants, the "Defendants"), who served as counsel to the Russell Defendants in the Original Action, as well as the separate insurers for the SBG Defendants and Russell Defendants. *Id.*[1]

The Collateral Action lists five causes of action: violation of Section 893.53; violation of his right to privacy pursuant to Section 995.50; invasion of privacy; breach of fiduciary duty; and unjust enrichment. The claims set forth in the Collateral Action are based upon the same transaction as the claims asserted in the Original Action. That is, Mr. Rigsby argues that he is entitled to recover damages because the Russell Defendants failed to meet his expectations with respect to his business consulting relationship with them. He also argues again that the litigation strategy employed by the Russell Defendants in the Original Action entitle him to recover as well.

In light of the frivolous nature of the Collateral Action, on February 24, 2014, the SBG Defendants filed a motion to dismiss Mr. Rigsby's second lawsuit. West Aff., ¶ 9, Exh. H (14-CV-108 Motion to Dismiss).

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1 In the Original Action, Mr. West of SBG Law served as counsel for the Russell Defendants. Mr. Rigsby's Collateral Action is particularly audacious and offensive in that it names Mr. Statz as a defendant as well. Mr. Statz, who is a largely a transactional and real estate attorney, did not participate in the defense of the Russell Defendants in the Original Action. It appears that his only sin for which Mr. Rigsby now seeks to exact a penance was sending the Court a letter to inform the Court that Mr. Rigsby had been repeatedly contacting various other attorneys at SBG Law once it became clear to him that Mr. West was successfully defending the Russell Defendants.

C. Mr. Rigby's History of Strike Suit Litigation and Abuse of the Legal System

Mr. Rigsby has a lengthy history as a plaintiff in the state and federal courts of Wisconsin. In the 1990s, he attempted to trademark "St. Louis Rams" a month after the Rams' owner announced that he was moving the team to St. Louis from Los Angeles – and then proceeded to sue the National Football League for $100 million in alleged damages. *See Johnny Blastoff, Inc. v. Los Angeles Rams Football Co.*, 188 F.3d 427, 430-31 (7th Cir. 1999). Following the predictable loss of his suit before Judge Crabb in the Western District of Wisconsin, he appealed the case to the 7th Circuit Court of Appeals which – also predictably – affirmed the district court's decision. *Id.*

Since 2011, Mr. Rigsby, together with perpetual-plaintiffs Catherine Conrad and Quincy Neri, have developed a cottage industry of filing frivolous lawsuits in Southern Wisconsin. Those named by Mr. Rigsby as parties to these suits generally do not typically just include the individuals or companies against which Mr. Rigsby purports to have claims, but also the insurers and counsel for those defendants. Moreover, if he fails to prevail in his suit, Mr. Rigsby commonly re-files the action against the same defendants over and over and over again. His history of abusing the legal system has been observed and noted by both the US District Court for the Western District as well as several judges in the Dane County Circuit Court.

1. The Conrad Actions

As is the case with the Original Action and Collateral Action, Mr. Rigsby frequently files such suits with Ms. Conrad, who has locally adopted the stage persona of the Banana Lady.

i. Banana Lady Litigation in the Western District

Mr. Rigsby and Ms. Conrad have filed a number of suits in the US District Court for the Western District of Wisconsin, all of which largely sought to recover payment for the alleged

infringement upon their copyrights. They first filed suit alleging that the Banana Lady (the stage name of Ms. Conrad) lost $1.56 million worth of sponsorship deals when a customer distributed a postcard mailer including a photo of the Banana Lady performing. *See* West Aff., ¶ 10, Exh. I (Corrected Amended Complaint, Case No. 09-cv-049 (W.D. Wis. Sep. 4, 2009)). The case was dismissed by stipulation of the parties on April 14, 2010. West Aff., ¶ 11, Exh. J (Dismissal Order, Case No. 09-cv-49 (W.D. Wis. Apr. 14, 2010)).

Mr. Rigsby and Ms. Conrad next sued Isthmus Publishing over a commercial including a photograph of Mr. Rigsby and the Banana Lady at the 2008 Isthmus Green Day Expo. *See* West Aff., ¶ 12, Exh. K (First Amended Complaint, Case No. 09-cv-566 (W.D. Wis. Jan. 20, 2010)). Again, the case was dismissed pursuant to the stipulation of the parties on May 21, 2010. West Aff., ¶ 13, Exh. L (Dismissal Order, Case No. 09-cv-566 (W.D. Wis. May 21, 2010)).

In 2012 Mr. Rigsby and Ms. Conrad filed yet another federal law suit. This time they agreed to let a customer videotape the Banana Lady as she performed a singing telegram, and then turned around and sued that customer for copyright infringement in federal court. *See* West Aff., ¶ 14, Exh. M (Opinion and Order, Case No. 11-cv-305 (W.D. Wis. July 17, 2012)). On July 17, 2012, Judge Crabb granted the defendants' motion for summary judgment, holding that Mr. Rigsby and Ms. Conrad "failed to adduce any admissible evidence that defendants infringed plaintiffs' copyright or violated a licensing agreement..." *Id.* at p. 7. Before the matter concluded, Judge Crabb gave voice to her observation that would later become well known in the Dane County Circuit Court. The suit filed by Mr. Rigsby and Ms. Conrad "was ill-conceived from the beginning, brought without any serious investigation of the law and extended long past the time that plaintiffs should have realized its lack of merit. In addition, their statements in their brief in opposition to defendant's motion for fees support defendants' observation that plaintiffs

were primarily interested in settling the case for a large sum." West Aff., ¶ 15, Exh. N (Opinion and Order, Case No. 11-cv-305 (W.D. Wis. Nov. 2, 1012)).

ii. Banana Lady Litigation in Dane County

Mr. Rigsby and Ms. Conrad have similarly abused the state legal system by filing numerous baseless lawsuits in Dane County Circuit Court. Excluding the Original and Collateral Actions, Defendants are aware of at least four such cases since 2011. On October 19, 2011, Mr. Rigsby and Ms. Conrad sued eight defendants after someone videotaped the Banana Lady performing a birthday singing telegram for a customer. *See* West Aff., ¶16, Exh. O (No. 11-CV-4650 Amended Complaint). In that action, Mr. Rigsby claimed damages in the amount of $390,000 plus costs and fees. *Id.* The court dismissed the suit, informing Mr. Rigsby that "[t]he long and the short of it is you don't have any claims that warrant any relief, and I dismiss all of them." West Aff., ¶ 17, Exh. P (11-CV-4650 Transcript (12/7/2012)) at p. 13 (J. Foust).

Less than two weeks after filing Case No. 11-CV-4680, Mr. Rigsby and Ms. Conrad filed suit against their own attorneys in Dane County Case No. 11-CV-4860 for "lost earnings . . . [and] lost profits . . . in the amount of $10,000,000," plus another $10 million for their "extensive pain and suffering due to emotional distress." *See* West Aff., ¶ 18, Exh. Q (11-CV-4860 Complaint) at "Request for Relief" section on final two pages. The case was short lived, and the suit was dismissed by order of the court on March 26, 2012. West Aff., ¶ 19, Exh. R (11-CV-4860 Dismissal Order) ("the plaintiffs' cause of action shall be dismissed without prejudice due to the failure to establish personal jurisdiction over the defendants").

The following December they filed Case No. 12-CV-4772, alleging claims against the company that hosts their website (as well as the hosting company's lawyer) – seeking, among other things, damages for their "emotional distress" – after their website went down because they

had failed to pay the host's fees. *See* West Aff., ¶ 20, Exh. S (12-CV-4772 Amended Complaint). The court granted the defendants' motion holding that the "entire lawsuit has to be dismissed for failure to state a claim for a wealth of reasons, not the least being a lack of personal jurisdiction, accord and satisfaction, Mr. Rigsby having no contract recognizable under the statute of frauds for anything involving the [defendants]." West Aff., ¶ 21, Exh. T (12-CV-4772 Transcript (3/11/13)) at p. 16.

Additionally, the court granted the defendants' motion for sanctions, taking note of Mr. Rigsby's practice of repeatedly asserting the same claims over and over again (whether in the same action or in related lawsuits), even when the courts had already ruled against him. West Aff., ¶ 22, Exh. U (12-CV-4772 Transcript (4/23/13)) at p. 19. Mr. Rigsby and Ms. Conrad "have been essentially making the same claims repeatedly in Dane County Circuit Court." *Id.* (J. Sumi). Moreover, she echoed Judge Crabb's earlier observation that Mr. Rigsby and Ms. Conrad's approach to litigation appears to be aimed at leveraging large settlements from the defendants. *Id.* ("Here the plaintiffs have said even in open court this morning and in their prior filings that this could have been settled without a suit if the defendants had paid what [they] asked them to pay.").

This same pattern of abuse has also been observed by the Dane County Circuit Court. For example, in Case No. 12-CV-4166, Judge Markson noted that Mr. Rigsby's filings repeatedly churned his complaint that certain defendants failed to act in good faith because they (successfully) defended against his claims rather than offering to pay him money in settlement to resolve the dispute. West Aff. ¶ 28, Exh. AA at p. 19, 22. *See also* West Aff., ¶ 26, Exh. Y at p. 31 ("You know it's different to be brought into court and have somebody seeking judgments, for in this case millions of dollars, and so forth, and having to defend yourself."); ¶ 64 , Exh. KKK

(hand-scrawled note to defendants demanding payment of $40,000,000); and ¶ 65, Exh. LLL (email demanding payment of $9,450 from Mr. Todd Terry following the successful defense of his clients in the matter of Dane County Case No. 13-CV-377).

It is not lost on Defendants that Mr. Rigsby has similarly signaled his interest to them in inappropriately leveraging such settlements. *See* West. Aff., ¶ 4, Exh. C at p. 13 ("Attorney West never called Plaintiffs' (*sic*) to see where they were at regarding their position and settlement scenarios just went ahead with very little facts about this case and submitted a lengthy brief unnecessarily with claims that have no merit. Russell does not have the funds for a lengthy litigation and is pushing for his own interests"); ¶ 21, Exh. T at p. 18 ("We thought we were going to have a settlement process. Again, that didn't work."); ¶ 8, Exh. G at p. 5 (complaining that Defendants "refus[ed] to settle issues" and instead successfully defended against his claims in the Original Action); ¶ 66, Exh. MMM (threatening to initiate discovery if payment of $5,000 is not made).[2]

Mr. Rigsby and Ms. Conrad next set their sights upon an individual named Grant McLaughlin, as well as his attorneys and insurers. West Aff., ¶ 23, Exh. V (13-CV-377 Transcript (5/13/13)). Mr. McLaughlin was a party to a lawsuit in the US District Court for the

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2 In addition to his threats against Defendants to exploit the legal system in order to leverage a settlement payment, Mr. Rigsby's own complaint in the Collateral Action demonstrates his willingness to threaten the personal and physical security of defendants to reach the same end. *See* Complaint, Exhibit A. These threats included the following:

- "She's [Andrea Russell] going to be in for the ride of her life sooner or later."
- "You [Travis West] are gonna pay the price for in the future"
- "I know exactly what you [Travis West] do every single day, every moment. You don't know who I am, you really don't know who I am."
- "I will make it my life's work to destroy you."
- "Andrea [Russell] is going to pay. Because you [Travis West], you're making Andrea Russell pay for everything you're doing. She is gonna pay. She will pay for every dollar, every nickel, every document you're asking me for. She's going to have to pay it in a different way."

Id.

Eastern District of Wisconsin, *McLaughlin v. SBC Global Services, Inc.*, Case No. 12-cv-501. *Id.* Mr. Rigsby and Ms. Conrad apparently believed that Mr. McLaughlin received settlement monies from this case, and sued him, his insurers, and his attorneys involved in that matter for failing to share those monies with them. *Id.* The court granted the defendants' motion for sanctions, stating that there "is clearly no basis in law in either the original complaint, the amended complaint, or the proposed second amended complaint. Any belief I think that there was a basis of law for this lawsuit against those parties was an unreasonable belief not grounded even in a self-represented party's consideration of the law in a rational way of the law and the facts in this case." *Id.* at p. (J. Colas)).

2. The Neri Actions

Mr. Rigsby's approach to litigation has equally aggressive, unreasonable, and sanctionable in suits he has filed with Ms. Neri. Perhaps the most egregious example of such conduct relates to a series of seven lawsuits that Mr. Rigsby and Ms. Neri have caused to be filed in Dane County and the Western District of Wisconsin – *all of which arise from the same set of fact and are aimed at the same nucleus of defendants.*

i. The First Neri Action – Pending Following Remand

This series of suits started when Ms. Neri, acting *pro se,* filed a lawsuit in the US District Court for the Western District of Wisconsin in 2011. West Aff., ¶ 24, Exh. W (13-AP-1818 Motion for Sanctions) (setting forth history of serial Rigsby/Neri cases)) at pp. 2-3. In that lawsuit, Mr. Rigsby and Ms. Neri alleged that Ms. Neri owned a federal copyright in a piece of glass-blown artwork and that the defendants joined to that action had violated her copyright by publishing and using images of the artwork without giving her proper credit, by "purposely . . excluding and working against [her]," and by acting in intentional disregard of her rights. *Id.* at

p. 3 (quoting Complaint from Case No. 11-cv-429 (W.D. Wis. Aug. 3, 2011). The defendants in the federal action moved for summary judgment and Magistrate Judge Crocker dismissed Mr. Rigsby's claims on September 21, 2012, finding that the claimed copyright was invalid. *Id.* On appeal the Seventh Circuit subsequently reversed the district court's specific legal holding with respect to the validity of Ms. Neri's copyright. *See Neri v. Monroe*, 726 F.3d 989, 993 (7th Cir. 2013). Apparently taking Judge Easterbrook's suggestion to heart, on remand Magistrate Judge Crocker is currently addressing a myriad of other grounds for summary judgment raised by the defendants in their original summary judgment briefs. West Aff., ¶ 24, Exh. W at p. 3, fn 1. It is anticipated that summary judgment will be granted in favor of the defendants again, and that the District Court will re-impose monetary sanctions upon Mr. Rigsby and Ms. Neri.

ii. The Second Neri Action – Dismissed on Claim Preclusion Grounds

Ms. Neri filed a second federal lawsuit approximately one month before the original federal lawsuit was dismissed. *Id.*; *see also* West Aff., ¶ 25, Exh. X (13-CV-75 Brief in Support of Motion for Sanctions) at p. 5 (citing Complaint, Case No. 12-cv-600 (W.D. Wis. Aug 17, 2012)). This second federal suit alleged the same claims made in the original federal lawsuit and added state law claims that arise under Wisconsin law. *Id.* The district court dismissed that lawsuit on October 25, 2012, on grounds of claim preclusion and it declined supplemental jurisdiction over the state law claims. *Id.*, *see also* West Aff., 26, Exh. X (Dismissal Order, Case No. 12-cv-600 (W.D. Wis. Oct 26, 2012)).

Several courts have taken notice of Mr. Rigsby's then-practice of avoiding filing and service fees by having Ms. Neri or Ms. Conrad file lawsuits, and then later amend the complaint to add Mr. Rigsby as a party only after the original plaintiff had been granted leave to proceed *in forma pauperis*. In this instance, the Second Neri Action was dismissed before Mr. Rigsby could

be added. It is not clear whether the Western District has, as yet, discovered this tactic by which Mr. Rigsby exploits the *in forma pauperis* rule; however, the Dane County Circuit Court has recognized and addressed the problem. On March 11, 2013, Judge Sumi ordered "all future filings involving either Ms. Conrad – and these are in Dane County Circuit Court because I don't control other filing but Dane County Circuit Court will be reviewed by a judge, and I will transmit word to the clerk of court's office that those filing are to be reviewed by a judge before any affidavit of indigency is reviewed." West Aff., ¶ 21, Exh. T at p. 18. On March 19, 2013, Judge Markson issued a similar order with respect to filings by Ms. Neri when he held that "neither Ms. Neri nor Mr. Rigsby, who are both parties here and who I'm convinced have now engaged in a pattern of abuse of that process, will not be permitted to file claims here in Dane County without the payment of a fee, and the Clerk of Courts will be asked to have any filing [brought] by Ms. Neri or Mr. Rigsby for which an indigency affidavit is tendered and waiver of the fee is sought, that will not be granted absent a judge reviewing that and making a determination based on this pattern that that would be reasonable under the circumstances." West Aff., ¶ 26, Exh. Y (13-CV-75 Transcript (3/19/13) at p. 26.

iii. The Third Neri Action – Dismissed and Sanctions Granted

In October 2012 (between the dismissals of the first and second federal lawsuits), Ms. Neri and Mr. Rigsby filed a third lawsuit, this time in state court, Dane County Case No. 12-CV-4096.. West Aff., ¶ 24, Exh. W at pp. 7-8. This third suit named as defendants the attorneys and insurers of the original defendants that Mr. Rigsby had been suing in federal court. *Id.* (citing Compl., Case No. 12-cv-4096). The complaint was amended in December 2012 to add claims and parties (including Mr. Rigsby per the strategy outlined above). *Id.* Four of Mr. Rigsby's claims – for violation of privacy, trade libel, and two counts of fraudulent misrepresentation –

arose, directly from the facts that formed the basis for the two previous federal lawsuits. *See Id.* (citing Amended Complaint at ¶¶ 12-20). The fifth claim, for defamation, alleged that the defendants (which included the attorneys that represented the defendants in the federal actions) were jointly liable for the supposedly defamatory statements their attorneys had made while litigating the original federal case. *See Id.* (citing Amended Complaint at ¶¶ 21-24). Mr. Rigsby and Ms. Neri also added a new claim against the attorneys (but not the insurers) for "Fraud on the Court / Misconduct." *See Id.* (citing Amended Complaint ¶¶ 25-26).

On June 11, 2013, Branch 8 of the Dane County Circuit Court dismissed the Third Neri Action and granted the defendants' motions for sanctions. West Aff., ¶ 27, Exh. Z (12-CV-4096 Dismissal Order). In his order, Judge Remington took note of the fact that Mr. Rigsby is not a typical *pro se* plaintiff, and that he is "well educated and articulate and judging from the cogency of [the plaintiff's] briefs, [is a] quick stud[y]." *Id.* at p. 2. While the attributes described by Judge Remington may be redeeming in some circumstances, such was not the case observed in this circumstance: "With each passing defeat, plaintiffs redouble their efforts. Blinded by reality, they come before this court alleging in the amended complaint the same core complaint [as set forth in the federal actions], but widen the scope of those accused of wrongdoing." *Id.*

In his written decision, Judge Remington patiently and plainly explained to Mr. Rigsby why each of his claims lacked merit. *Id.* at pp. 6-7. In particular, the court noted that the claim "against the lawyers and their firms and their insurers is clearly the most troubling part of the case before this court."

> The law in Wisconsin is clear. Like it or not, attorneys and their firms enjoy a privilege that immunizes them from suit when they make statements or take actions in connection with legal proceedings.

Id. at p. 7.

> Plaintiffs simply cannot decide to add to their list of culpable parties the lawyers who are retained to represent the parties in the initial lawsuit. This conclusion should have been objectively apparent to the plaintiffs. Put on notice by the defendant lawyers, clearly plaintiffs double downed their efforts as shown by the detail in their brief. Plaintiffs did their homework and discovered most of the salient case law. But it appears they were blind to the inescapable conclusion that what they were doing was without legal merit, and apparent to this court, was designed to contribute to the vexatious aspect of this lawsuit. The motion filed by these defendants for cost and fees is granted. Even considering the handicap plaintiffs are in by virtue of their self representation (and ignoring for the moment the truth of what the lawyers allegedly said), plaintiffs' pursuit of legal counsel and the law firms is indefensible.

Id. at p. 8.

iv. The Fourth Neri Action – Dismissed and Sanctions Granted

Just three days after filing the Third Neri Action, Mr. Rigsby and Ms. Neri caused to be filed a second lawsuit in Dane County Circuit Court, Dane County Case No. 12-CV-4166. West Aff., ¶ 24, Exh. W, p. 8. This fourth action also sued the attorneys and insurers of the defendants Mr. Rigsby and Ms. Neri had sued in federal court. *Id.* (citing Complaint at ¶¶ 2-16). The complaint stated that the defendants were liable under five different legal theories for their refusal to settle the federal case, as well as for discovery misconduct that the attorneys had allegedly committed during the original federal case. *Id.* (citing Complaint at ¶¶ 30-48). Claims against the attorneys included two new claims – one for "Fraud/Misconduct on the Courts and on Plaintiffs," the other for "Fraudulent Conduct: Violations of Rules of Professional Conduct." *Id.*

On January 16, 2013, the Court granted the defendants' motion for a temporary injunction limiting Ms. Neri and Mr. Rigsby's ability to file additional pleadings before the defendants' motions to dismiss could be addressed. West Aff., ¶ 28, Exh. AA (12-CV-4166 Transcript (1/16/13)) at p. 6 (making the temporary injunction effective immediately). In doing

so, Judge Markson took the time to explain to Mr. Rigsby why each of the claims pled appeared to have no merit. *See Id.* at 2-4. Mr. Rigsby ignored Judge Markson's advice and chose not to withdraw the suit even after receiving this warning.

On January 28, 2013, the court dismissed the Fourth Neri Action and, among other things, ordered Mr. Rigsby to pay the defendants' costs and attorney fees as a sanction for their abuse of the court system. West Aff., ¶ 29, Exh. BB (12-CV-4166 Transcript (1/28/13). Judge Markson concluded that sanctions were mandatory but that it would have exercised its discretion to impose them even if the law did not require it. *Id.* at pp. 24-25 ("Even if it weren't mandatory, I would do that anyway, because these cases are clearly, and without any debate, well beyond what any reasonable person would know is appropriate."). The court also made clear its distaste for having to deal with Mr. Rigsby's vexatious efforts to sue the attorneys of the defendants.

> So the basic principal that underlies all of this is that you can't sue a lawyer for your opponents in a lawsuit because they didn't settle the lawsuit or because you lost the lawsuit. You've attempted to assert various claims that have legal terms and legal concepts attached to them, and I will get to that in just a minute, but I wanted to just very succinctly – I'm not trying to be patronizing – you folks have done a bunch of research here and you know your way around the system – but I'm just saying, that the bottom line is you go to court, you lose, you have your appeal, but you cannot sue the lawyers representing the prevailing parties just because you lost.
>
> If that were - - you can just imagine, if we were to allow lawsuits like that, there would be no end to this. And how could lawyers do their work if when they won and did a good job representing their clients, they then had to face lawsuits from the parties who lost that case and defend themselves there? They were doing their jobs, and in this case got an excellent result for their clients.
>
> The fact that you differ with that result, the fact that you even differ with their methods, the fact that you don't like what they did, you know, I respect your feelings, but it doesn't give rise to a lawsuit.

Id. at pp. 18-19.

In addition to requesting monetary sanctions – which were granted – the defendants in the Fourth Neri Action also requested that the Dane County Circuit Court impose reasonable restrictions on Mr. Rigsby's access to the courts. Judge Markson declined to grant such relief, unsure that the proliferation of cases filed by Mr. Rigsby was significant enough to warrant such a severe sanction. *Id.* at pp. 29-30. Judge Markson also warned Mr. Rigsby that he expected that such sanctions might be granted in the future if Mr. Rigsby continued his inappropriate litigation tactics. *Id.* As discussed further below, Judge Markson's words were prophetic as to what would later occur in at least two future cases.

v. The Fifth Neri Action – Dismissed and Sanctions Granted

Mr. Rigsby and Ms. Neri filed a fifth lawsuit, Dane County Case No. 12-CV-4148, just three days after filing the fourth one. *See* West Aff., ¶ 24, Exh. W pp. 9-10. The heart of the complaint is the plaintiffs' allegation that an insurer for one of the defendants involved in the Neri Actions "breached its duty of good faith and fair dealing that is owed to [its insured] under a professional liability insurance policy by not offering to settle the underlying federal litigation." West Aff., ¶ 30, Exh. CC (12-CV-4181 Order (8/5/13)) at p. 1. The defendants again moved to dismiss and moved for the imposition of sanctions. *Id.*

Judge Gaylord granted the motion to dismiss, citing the very same precedent as cited by Judge Markson with respect to similar claims alleged in the Fourth Neri Action. *See Id.* at p. 3 citing *Kranzusch v. Badger State Mutual Cas. Co.*, 103 Wis. 2d 56, 307 N.W.2d 256 (1981) for the proposition that "a tort victim could not bring a cause of action against the tortfeasor's insurer for bad faith in failing to settle the victim's claim, recognizing that a third-party claim for bad faith would be a significant departure from established tort principles." Judge Gaylord also

granted the defendants motion for sanctions, noting that Mr. Rigsby's claims were "without legal basis" and "nonsensical." *Id.* at p. 4.

vi. The Sixth Neri Action – Dismissed and Sanctions Granted

On January 8, 2013, Ms. Neri filed a sixth lawsuit, Dane County Case No. 13-CV-75, against various persons or entities that all bore some relationship to the facts underlying the original federal action. West Aff., ¶ 14, W, p. 10-11. The pleading alleged six claims seeking to recover at least $3.24 million: fraud, misrepresentation, tortuous interference with contractual relations, tortuous interference with prospective business relations or economic advantage, violation of the right to privacy pursuant to Wis. Stat. § 995.50, and intentional infliction of emotional distress. *Id.* at pp. 12-13 (citing Complaint at ¶¶ 63-74). Predictably, Mr. Rigsby was added as a plaintiff in a subsequent amended complaint.

On March 19, 2013, the Dane County Circuit Court held a motion hearing at which it granted the motions for dismissal filed by the defendants. West Aff., ¶ 26, Exh. Y.

> After having read the decision and reviewing the pleading and the submissions here, it's very clear to me that this should be barred by the res judicata doctrine. But it goes beyond that. If you look at the individual claims, they are all without [m]erit. They don't even have arguable merit. And any reasonable person – and, again, not necessarily a law trained person, but any reasonable person would know that.

Id. at p. 23. In reaching his decision, Judge Markson incorporated by reference the arguments set forth by the defendants in their joint brief in support of their motions to dismiss and for sanctions. *Id.* at p. 24.

In addition to granting the motion to dismiss, Judge Markson also granted the defendants' motion for sanctions. *Id.* at pp. 24-25.

> I am also going to award sanctions as I did in - -

> MR. RIGSBY: I'm sure you are. I am sure you are. Your Honor.
>
> THE COURT: Mr. Rigsby, that's enough, okay? I'm not going to allow you to sit here and interrupt and make these kind of comments. Quite frankly, these kind of comments only underline what I regard as a pattern here of activity that needs to be sanctioned in order to try to get some message across here that this has to end.
>
> What we have is a pattern of litigation that has been commenced without any basis in fact, under circumstances where any reasonable person would know and appreciate that, and simply, I think, to punish people. In the last case it was the lawyers who represented the parties who won in federal court. In this case now it's those same people who were litigants in federal court, won, and now they have to face a lawsuit in state court based on the same thing.

Id. In addition to granting monetary sanctions, Judge Markson fulfilled his own prediction issued at the conclusion of the Fourth Neri Action by imposing limitations upon Mr. Rigsby's ability to access the courts.

> I think I'm persuaded though, I think we're in a different place now than we were back then. We've now - - now I have personal experience with yet another case with the same kind of activities going on. It's persisted despite, at least in my case, a dismissal, an imposition of sanctions, which is highly unusual, but I think justified by the unusual nature of the claims.
>
> And yet it's interesting, Mr. Rigsby, you talk about the defendants bringing case after case against you. There's a certain irony in your putting it that way, because that's exactly what you're doing to them is bringing case after case after case. And they have to defend themselves. You know it's different to be brought into court and have somebody seeking judgments, for in this case millions of dollars, and so forth, and having to defend yourself. It's [a] very different thing from being the party responsible for that, what I regard as abuse of the system.
>
> So enough said about that. But I am going to grant the request that you - - well, by the defendant, and order as part of this that you not be permitted to file any further actions against any of the defendants here in this case arising in any way out of the circumstances that were the subject of the federal court action and

> that are the subject of this action as well, until you have paid the sanctions that I'm ordering be paid today.

Id. at pp. 30-31.

vii. The Seventh Neri Action – Pending

On May 9, 2013, a third federal lawsuit, Case No. 13-c-0382, was filed against the same defendants, again arising out of the same facts as the previous suit. On July 31, 2013, Judge Crabb ruled that the Seventh Neri Action was barred by claim preclusion because it arose from the same transaction as the First Neri Action. West Aff., ¶ 31, Exh. DD (Dismissal Order, Case No. 13-cv-382 (W.D. Wis. July 31, 2013)). Judge Crabb's dismissal order was vacated by the Seventh Circuit following its decision in *Neri v. Monroe*, 726 F.3d 989 (7th Cir. 2013), which remanded the First Neri Action (as discussed below, claim preclusion requires a prior final judgment regarding the transaction). West Aff., ¶ 32, Exh. EE (Order from USCA Case No. 13-cv-382 (W.D. Wis. Dec. 3, 2013)). The case is once again pending before the Western District, where the defendants have filed a motion to dismiss or abate the claim. West Aff, ¶ 33, Exh. FF (Brief in Support of Motion to Dismiss Case No. 13-cv-382 (W.D. Wis. Feb 20, 2014). Assuming that the pattern of abuse noted by the Dane County Circuit Court continues, if Ms. Neri's motion to proceed *in forma pauperis* is granted she will likely amend her pleadings in the near future to join Mr. Rigsby as a plaintiff.

3. Suit to Recover Damages Associated with Legal Work Performed by Mr. Rigsby

Mr. Rigsby has frequently engaged in the unlicensed practice of law, and in the course of the Original Action (Dane County Case No. 13-CV-941) Judge Colas repeatedly warned him against doing so. West Aff., ¶¶ 7, 34-36, Exhs. F at p. 2; GG (13-CV-941 Order (4/12/13)); HH (13-CV-941 Order (5/9/13)), and II (13-CV-941 Transcript (10/11/13)) at p. 2. Judge Colas is not the only jurist to have pointed out Mr. Rigsby's unlawful conduct to him. Even before Judge

Colas's warnings, Judge Sumi similarly admonished Mr. Rigsby that his company's claims must be litigated by an attorney, not by him. West Aff, ¶ 21, Exh. T at p. 6-7 ("The RigRad claims cannot be litigated by you.").

In apparent defiance, in his most recent lawsuit Mr. Rigsby brazenly claims that his provision of legal services to a third party, and the apparent conversion of value associated with his work-product, gives rise to claims against his business partner as well as his partner's lawyers and insurer. On January 13, 2014, Mr. Rigsby filed a lawsuit in the Western District of Wisconsin, *Rigsby v. American Family Mut. Ins. Co. et al.*, Case No. 14-cv-23. West Aff., ¶ 37, Exh. JJ (Complaint, Case No. 14-cv-23 (W.D. Wis. January 13, 2014)). Perhaps unsurprisingly, Mr. Rigsby's relatively new case takes aim at the attorneys and insurers involved with his alleged business partner, Chris Miscik (who is also named as a defendant). Among other things, Mr. Rigsby claims that the attorneys he has named as defendants infringed upon his copyrights in the legal work-product he performed on behalf of Mr. Miscik. *Id.* at ¶¶ 36-39. He likewise asserts that the defendants converted his legal work-product. *Id.* at ¶¶ 55-59. In total, Mr. Rigsby seeks to recover at least $1.6 million from the named defendants. *Id.* at p. 18.

4. Judgments Entered Against Mr. Rigsby as a Consequence of His Conduct

Looking only at litigation pursued by Mr. Rigsby since 2011, it is easy to see that his abuse of the legal system has imposed a significant burden on numerous courts, individuals, companies, insurers, and attorneys. Mr. Rigsby has not prevailed with respect to a single case discussed above. Moreover, in the majority of these cases the courts have sanctioned him and required that he pay the attorneys fees, costs, or both incurred by the defendants. Defendants have been able to confirm judgments in the following amounts:

Case Name and Number	Amount of Judgments (Aggregate in Bold, individually listed below)	Support
Rigsby et al. v. AM Community Credit Union et al., Dane County Case No. 11-CV-4650	**$2,573.01** • $1,224.26 • $1,348.65	West Aff., ¶ 38, Exh. KK (11-CV-4650 Judgment)[3]
Conrad et al. v. Bell Moore & Richter et al., Dane County Case No. 11-CV-4860	**$203.00**	West Aff., ¶39, Exh. LL (11-CV-4860 Judgment)
Neri et al. v. Barber et al., Dane County Case No. 12-CV-4096	**$26,601.21** • $8,026.00 • $118.65 • $4,518.62 • $8,597.50 • $300.00 • $5,040.44	West Aff. ¶¶ 40-42, Exhs. MM, NN, OO (12-CV-4096 Judgments)
Neri et al. v. Barber et al., Dane County Case No. 12-CV-4166	**$26,281.50** • $3,578.50 • $3,313.00 • $19,390.00	West Aff., ¶¶ 43-45, Exhs. PP, QQ, RR (12-CV-4166 Judgments)
Neri et al. v. Sentinel Ins. Co. Ltd. et al., Dane County Case No. 12-CV-4181[4]	**$9,096.14**	West Aff., ¶ 46, Exh. SS (12-CV-4181 Decision and Order (9/10/13)
Conrad et al. v. Batz et al., Dane County Case No. 12-CV-4772	**$7,011.86**	West Aff., ¶ 47, Exh. TT (12-CV-4772 Judgment)
Neri et al., v. Pinckney Holdings, LLC et al., Dane	**$17,749.04**	West Aff., ¶ 48, Exh. UU (13-CV-75 Judgment)

3 All of the amounts and judgments referenced herein are a matter of public record and reflected on CCAP, and therefore subject to judicial notice. Where possible, Defendants have also obtained copies of the judgments for the convenience of the Court.

4 CCAP indicates that the judgment in Case No. 12-CV-4181 was only assessed against Ms. Neri. A review of the Decision and Order granting the judgment indicates that Judge Sumi granted the defendants' motion for fees with respect to both plaintiffs, which would include Mr. Rigsby.

County Case No. 13-CV-75		
Conrad et al. v. McLaughlin et al., Dane County Case No. 13-CV-377	**$7,436.30**	West Aff., ¶ 49, Exh. VV (13-CV-377 Decision and Order (7/16/13)
Conrad et al. v. Russell et al., Dane County Case No. 13-CV-941[5]	**$80.00**	West Aff., ¶ 50, Exh. WW (13-CV-941 Judgment)
Conrad et al. v. Bendewald et al., Case No. 11-cv-305 (W.D. Wis)	**$55,154.81** • $50,000.00[6] • $845.43 • $4,309.38	West Aff., ¶¶ 51-53, Exhs. XX (Judgment), YY (Order for Cost), and ZZ (Order for Costs).
Total	**$152,186.87**	

When taking into account the single $80 judgment that he has satisfied, the total amount currently owed by Mr. Rigsby as a consequence of his abuse of the legal system is $152,106.87. Mr. Rigsby's litigation-related liability is only this low because Judge Crabb used her discretion to reduce the original $95,064 in fees originally awarded to the defendants to $50,000, and because the Seventh Circuit remanded the original decision issued in the matter of *Neri et al. v. Monroe et al.*, causing the vacation of the costs and fees awarded to the defendants in the amount of $78,651.29 previously granted by the court. West Aff., ¶ 55-59, Exh. BBB (Opinion and Order, Case No. 11-cv-429 (W.D. Wis. May 24, 2013)); and Exhs. CCC, DDD, EEE, FFF (Orders for Costs). Had these amounts not been reduced (likely temporarily with respect to Case No. 11-cv-429) Mr. Rigsby would owe $275,822.16.

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5 The judgment entered against Mr. Rigsby in Case No. 13-CV-941 was satisfied on November 4, 2013. To date, no other judgment or award discussed in this memorandum has been satisfied.

6 This amount was reduced pursuant to the Court's discretion from $95,064. West Aff., ¶ 54, Exh. AAA (Order, Case No. 11-cv-305 (W.D. Wis. Dec. 26, 2012).

ARGUMENT

I. THE COLLATERAL ACTION MUST BE DISMISSED WITH PREJUDICE

A. LEGAL STANDARD FOR MOTIONS TO DISMISS

A motion to dismiss for failure to state a claim pursuant to Wis. Stat. § 802.06(2) tests the legal sufficiency of the complaint. *See Weber v. City of Cedarburg*, 129 Wis. 2d 57, 64, 384 N.W.2d 333 (1986); *Wausau Tile, Inc. v. County Concrete Corp.*, 226 Wis. 2d 235, 245, 593 N.W.2d 445 (1999). A complaint will be dismissed where "it is quite clear that under no conditions can the plaintiff recover." *Evans v. Cameron*, 121 Wis. 2d 421, 426, 360 N.W.2d 25 (1985). In considering a motion to dismiss a complaint for failure to state a claim, all properly pleaded facts are taken as admitted. *Id.* Here, even construing the allegations of the Complaint in favor of Mr. Rigsby, his pleading still fails as a matter of law because, in each respect, he has either failed to plead sufficient facts to establish the elements of his claims or he has pled claims that are legally barred.

B. EACH CLAIM PLED BY MR. RIGSBY FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

All told, Mr. Rigsby denominates five claims in his pleading: 1) violation of Section 893.53; 2) violation of his right to privacy pursuant to Section 995.50; 3) invasion of privacy; 4) breach of fiduciary duty; and 5) unjust enrichment. *See generally* Complaint. Although Mr. Rigsby is arguably entitled to some deference as a *pro se* litigant, for the reasons set forth below his claims are, in all respects, defective and unsalvageable.

1. Mr. Rigsby Fails to State a Claim for Violation of Wis. Stat. § 893.53

Mr. Rigsby first purports to state a claim for violation of Wis. Stat. § 893.53. At best, Mr. Rigsby's claim is nonsensical. Section 893.53 does not establish a cause of action or claim, let alone a private right of action associated therewith. Rather, the statute establishes the period

of limitations associated with particular types of tort claims. Accordingly, this claim – whatever it might have been intended to be – must be dismissed. Moreover, because it is unsalvageable, it must be dismissed with prejudice.

2. Mr. Rigsby Fails to State a Claim for Violation of Privacy Pursuant to Section 995.50

Under Wisconsin law, Section "995.50(1) entitles anyone 'whose privacy is unreasonably invaded' to equitable relief, compensatory damages, and reasonable attorney fees." *Habush v. Cannon*, 2013 WI App 34, ¶¶ 8-9, 346 Wis. 2d 709, 828 N.W.2d 876 *review denied,* 2013 WI 80, 839 N.W.2d 616. Mr. Rigsby alleges that Defendants violated his right to privacy in contravention of Sections 995.50(2)(a) and 995.50(2)(c). *See* Complaint at ¶¶ 8 - 9. These statutory provisions establish that an "invasion of privacy" means:

> (a) Intrusion upon the privacy of another of a nature highly offensive to a reasonable person, in a place that a reasonable person would consider private or in a manner which is actionable for trespass.
>
> * * *
>
> (c) Publicity given to a matter concerning the private life of another, of a kind highly offensive to a reasonable person, if the defendant has acted either unreasonably or recklessly as to whether there was a legitimate public interest in the matter involved, or with actual knowledge that none existed. It is not an invasion of privacy to communicate any information available to the public as a matter of public record.

Wis. Stat. § 995.50(2). Mr. Rigsby alleges that such invasion occurred when Defendants "obtain[ed] [his] personal and private information in a supplemental exam" and "submitted Rigsby [*sic*] and his business's bank statement, personal information and exam deposition transcript on the record as an exhibit . . ." Complaint, ¶ 8.

As an initial matter, Mr. Rigsby is already aware that his claim for violation of Section 995.50 fails as a matter of law. On at least three occasions during the Original Action he argued that the information sought by the Defendants in connection with his supplemental examination was protected by the Wisconsin Privacy Act found at Section 995.50 ("WPA" or the "Act"). *See generally* West Aff.; ¶¶ 36, 60-61, Exhs. II at pp. 13-16; GGG (13-CV-941 Motion (10/28/13 Motion)); and HHH (13-CV-941 Brief in Opposition to Motion for Contempt and Motion to Dismiss(12/30/13)). In fact, on December 30, 2013, Mr. Rigsby filed a motion and brief in which he argued that the Defendants violated his privacy by, among other things, attaching a copy of the transcript of his supplemental examination to their motion for contempt. West Aff., ¶ 61, Exh. HHH. It is not lost upon the Defendants that this is the identical basis that Mr. Rigsby claims supports both of his privacy claims in the Collateral Action. Regardless, in each circumstance in the Original Action, the Dane County Circuit Court informed him that he was incorrect insofar as the WPA did not provide him with the protections he claimed. West Aff., ¶36, Exh. II at p. 16 ("I'm persuaded that there's no basis for the refusal of any of those documents that were requested to accompany the [supplemental] examination."); ¶ 21, Exh. T, and ¶¶ 62-63, Exhs. III (13-CV-941 Order (10/29/13)) and JJJ (13-CV-941 Order (1/21/14)).

Setting aside the fact that Mr. Rigsby's claim is, in reality, a poorly disguised collateral attack on the Court's previous ruling upon this issue, the claim is wholly without merit. Under subsection (a), Mr. Rigsby must plead that the alleged breach of his privacy was highly offensive to a reasonable person either 1) in a place that a reasonable person would consider private or 2) in a manner which is actionable for trespass. *See* Wis. Stat. § 995.50(2)(a). The Complaint is devoid of any allegations from which an objective mind could conclude that Defendants invaded Mr. Rigsby's privacy in a place that a reasonable person would consider private or in a manner

that is actionable for trespass. *Gillund v. Meridian Mut. Ins. Co.*, 2010 WI App 4, ¶ 29, 323 Wis. 2d 1, 778 N.W.2d 662 ("The test is an objective one: whether a reasonable person would find the intrusion highly offensive. There is no requirement that the actor have a particular mental state or intent."). Accordingly, there are no grounds upon which Mr. Rigsby could proceed with respect to a claim under Section 995.50(2)(a).

Subsection (c) also fails to give legs to Mr. Rigsby's claim. It requires that Mr. Rigsby plead that Defendants gave publicity to a matter concerning his private life in a manner that would be highly offensive to a reasonable person in circumstances where the Defendants acted unreasonably as to whether there was a legitimate public interest involved. Most significant to this issue, Mr. Rigsby fails to acknowledge that in Wisconsin, "where a matter of legitimate public interest is concerned, no cause of action for invasion of privacy will lie." *Van Straten v. Milwaukee Journal Newspaper–Publisher,* 151 Wis.2d 905, 921, 447 N.W.2d 105 (Wis.App.1989). *Bogie v. Rosenberg*, 705 F.3d 603, 614 (7th Cir. 2013), reh'g denied (Feb. 20, 2013).

Here, Mr. Rigsby's allegations are silent with respect to any allegations concerning the public interest. To the contrary, he pleads that Defendants obtained his "personal and private information" through post-judgment legal process as permitted under Chapter 816 (*i.e.* in connection with a supplemental examination and/or deposition). *See* Complaint, ¶8. Moreover, Mr. Rigsby pleads that Defendants disclosed such information as an exhibit to a motion filed pursuant to Wis. Stat. § 785.03 (*i.e.* a motion for contempt). *Id.* In other words, Mr. Rigsby pleads himself out of Court by alleging that Defendants both obtained and disclosed his allegedly-personal information in a manner consistent with the public interest and in the manner prescribed by both the Wisconsin legislature and judicial system.

In addition, it is worth noting that the Act protects only against invasions of places upon which a party has a reasonable expectation of privacy. *See generally* Wis. Stat. § 995.50(2). The Wisconsin legislature has statutorily provided that information regarding a judgment debtor's property and finances may be discovered by creditors. *See generally* Wis. Stat. Ch. 816. Long-standing Wisconsin law establishes that the scope of a supplemental proceeding may be vastly broad, subject only to the limitations imposed at a court's discretion. *Heilbronner v. Levy*, 64 Wis. 636, 26 N.W. 113, 114 (1885) ("The order and scope of the examination of a judgment debtor in a proceeding supplementary to execution is largely in the discretion of the judge or commissioner before whom such examination is being taken."). Any expectation of privacy Mr. Rigsby might have is therefore unreasonable, and thus not protected by the Act. Therefore, the Court should dismiss this claim with prejudice.

3. Mr. Rigsby Fails to State a Claim for Invasion of Privacy

Mr. Rigsby asserts without legal basis that "Wisconsin law recognizes Intrusion [*sic*] in solitude – intruding upon another's solitude or private affairs, physically or otherwise, is subject to liability if intrusion would be considered highly offensive to a reasonable person." Complaint, ¶ 11. This claim, which is essentially based upon the same theory as the previous claim – invasion of privacy – is based upon Mr. Rigsby's allegation that "Travis West illegally recorded a phone call he had with Mr. Rigsby violating his rights as Travis West did not tell Mr. Rigsby he was recording him." *Id.* In support of his argument, Mr. Rigsby cites to Section 885.365 for the proposition that notice must be given to the other individual if one party opts to record a telephone conversation. *Id.*

Mr. Rigsby fails to correctly read and apply the relevant statutes. Defendants are privileged in the same manner as all other residents of Wisconsin to record, intercept, or disclose

any telephone conversation to which they are a party. Wis. Stat. § 968.31(2)(c) ("It is not unlawful . . . For any person not acting under color of law to intercept a wire, electronic or oral communication, *where the person is a party to the communication* or one of the parties to the communication has given prior consent to the interception . . ." (emphasis supplied)). The statute cited by Mr. Rigsby has nothing to do with whether an individual is privileged to record his or her phone calls. Rather, Mr. Rigsby cites to the evidentiary rule regarding whether and when recorded telephone conversations shall be admissible within the context of litigation. *See* Wis. Stat. § 885.365. Accordingly, in light of the unsalvageable nature of Mr. Rigsby's claim for invasion of privacy and/or intrusion of solitude, this claim must also be dismissed with prejudice.

4. Mr. Rigsby Fails to State a Claim for Breach of Fiduciary Duty

Mr. Rigsby's fourth denominated cause of action is a claim for breach of fiduciary duty. To state a claim for breach of fiduciary duty Mr. Rigsby must allege sufficient facts to establish three elements: 1) the existence of a lawfully recognized duty, 2) that the Defendants breached this duty, 3) and that the alleged breach caused the plaintiff damage. *Berner Cheese Corp. v. Krug*, 2008 WI 95, ¶ 40, 312 Wis. 2d 251, 752 N.W.2d 800.

Mr. Rigsby begins by (incorrectly) asserting that the Russell Defendants hold a duty to each other. Complaint, ¶ 14. Assuming for the sake of argument that Wisconsin law supports this allegation (it does not), Mr. Rigsby fails to allege that any of the Russell Defendants owe a duty of loyalty to him, that they breached such a duty, and that such breaches caused him damages. Instead, he alleges the non sequitur that the Russell Defendants breached their duty to each other "by not being in good faith and serving loyalty to Mr. Rigsby as a joint author in the Ell Russ, LLC copyright to resolve their dispute." *Id.*

It is clear that Mr. Rigsby's pleading is missing numerous factual allegations that he may or may not have intended to provide in order to permit the Court to make sense of his theory. The Russell Defendants assume, without knowing, that he intended to allege that the Russell Defendants were joint authors of a copyright with him and that they therefore owed him a fiduciary duty, which they subsequently breached and which breach thereafter caused him damages. Even if he had alleged such a duty, and even if he had alleged facts to establish the necessary causal connection between the breach of such a duty and his claimed damages, his claim would still fail. This is because the law does not recognize a duty of loyalty between joint authors of copyrights. *See Mills v. Cottrell*, 2006 WL 3635325 (S.D.N.Y. Dec. 8, 2006) ("there are traditionally no fiduciary duties owed between joint authors or copyright holders") citing *Margo v. Weiss,* 1998 WL 2558, *9 (S.D.N.Y. 1998) (finding no breach of fiduciary duty where plaintiff's claims were "premised on the unsupported assumption that co-authors owe fiduciary duties to one another.").

Riding upon the wave he's created, Mr. Rigsby also alleges that a second set of facts give rise to his claim for breach of fiduciary duty. He begins by alleging that the SBG Defendants owed a fiduciary responsibility to their clients, the Russell Defendants. Complaint, ¶ 15. Defendants, in general, do not dispute that lawyers owe a duty of loyalty to their clients. Notwithstanding the same, Mr. Rigsby fails to allege that the SBG Defendants, the Russell Defendants, or any other defendant owed a duty of loyalty to him, and that there is a causal connection between the breach of such a duty and his claimed damages. With respect to the SBG Defendants, Mr. Rigsby was not their client, does not claim to have been their client, and does not assert the existence of an attorney client relationship with the SBG Defendants.

In all respect, Mr. Rigsby has failed to plead facts to establish the elements of a claim for breach of fiduciary duty. Moreover, the facts he has pled make clear that the defect in Mr. Rigsby's fiduciary claim is owed largely to his failure to understand the legal requirements and elements of such a claim, and not to his failure to plead particular facts. Thus, the claim cannot be salvaged and should be dismissed with prejudice.

5. Mr. Rigsby Fails to State a Claim for Unjust Enrichment

The final, denominated claim in Mr. Rigsby's complaint is for unjust enrichment. This claim is barred by the doctrine of claim preclusion, sometimes called *res judicata*. The doctrine of claim preclusion applies when three factors are present: "(1) an identity between the parties or their privies in the prior and present suits; (2) an identity between the causes of action in the two suits; and, (3) a final judgment on the merits in a court of competent jurisdiction." *N. States Power Co. v. Bugher*, 189 Wis. 2d 541, 551, 525 N.W.2d 723 (1995). "[U]nder claim preclusion a final judgment is conclusive in all subsequent actions between the same parties [or their privies] as to all matters which were litigated or which might have been litigated in the former proceedings." *Id.* at 550 (internal punctuation omitted); *see also Lindas v. Cady,* 183 Wis.2d 547, 558, 515 N.W.2d 458, 463 (1994) (quoting *DePratt v. West Bend Mutual Ins. Co.,* 113 Wis.2d 306, 310, 334 N.W.2d 883, 885 (1983)). "[C]laim preclusion is 'designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand.'" *Id.* citing *Purter v. Heckler,* 771 F.2d 682, 689-90 (3rd Cir.1985).

"Wisconsin has adopted a transactional approach to determining whether two suits involve the same causes of action." *Bugher*, 189 Wis. 2d at 553. Under this approach, "if both suits arise from the same transaction, incident or factual situation, [claim preclusion] generally will bar the second suit." *Id.* at 554 (internal punctuation omitted, brackets in original). This is

true "regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff, regardless of the number of primary rights that may have been invaded; and regardless of the variations in the evidence needed to support the theories of rights." *Id.* (internal punctuation omitted). "The transaction is the basis of the litigative unit or entity which may not be split." *Id.* (internal punctuation omitted).

Arguably, the entire Collateral Action is barred by claim preclusion as it's factual basis arises from the same transaction as which formed the basis for Mr. Rigsby's Original Action. This is most particularly true, however, with respect to the claim for unjust enrichment. Here, Mr. Rigsby first alleges that he provided business consulting services to the Russell Defendants, and that notwithstanding that such services had value the Russell Defendants failed to pay for them. Complaint, ¶ 21. He then alleges that the SBG Defendants "benefitted because the monies that were due to Mr. Rigsby and for their creative ideas went to them instead" of being paid to him. *Id.*

Mr. Rigsby has already taken his shot at pursuing a claim for unjust enrichment on these very same grounds. In the Original Action, Mr. Rigsby and his business partner Catherine Conrad filed a claim for unjust enrichment as part of their First Amended Complaint. *See* West Aff., ¶ 4, Exh. C. The Dane County Court considered the allegations set forth therein (which are essentially duplicative of the allegations asserted in the Collateral Action) and ultimately issued an order dismissing Mr. Rigsby's unjust enrichment claim with prejudice. West Aff., ¶ 5, Exh. D (dismissing Mr. Rigsby's claim for unjust enrichment with prejudice).

Mr. Rigsby is not now allowed to reassert this claim simply because he did not like the original outcome. To permit him to do so would violate the purpose of the claim preclusion doctrine, which is to prohibit parties from filing "vexatious, repetitious and needless" claims.

Moreover, with respect to the SBG Defendants, Mr. Rigsby has failed to plead that he provided them with any benefit. Accordingly, the pleading does not contain sufficient facts to meet the requisite elements of the claim and must therefore be dismissed.[7]

II. THE COURT SHOULD GRANT DEFENDANTS' MOTION FOR SANCTIONS

A. APPLICABLE LEGAL STANDARD

The Defendants seek the imposition of sanctions against Mr. Rigsby pursuant to Sections 895.044 and 802.05. Under Wis. Stat. § 895.044, a plaintiff can be liable for the defendants' costs and fees if one of two conditions are met. First, the defendants' expenses can be shifted if the plaintiff has "commenced, used, or continued" the action "in bad faith, solely for purposes of harassing or maliciously injuring another." Wis. Stat. § 895.044(1)(a). Second, expense shifting is also appropriate if the plaintiff "knew, or should have known, that the action . . . was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law." Wis. Stat. § 895.044(1)(b).

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7 Defendants anticipate that Mr. Rigsby may assert that no final order has been entered in the Original Action because, although the Court issued its order dismissing the Russell Defendants' counterclaims on January 13, no written order has, as yet, been entered upon the record. Defendants acknowledge that, as of the date of this writing, no final written order has been entered upon the record within the meaning of Wis. Stat. §§ 806.06(1), 807.11.(2), or 808.03. Notwithstanding the same, the judgments and orders issued by the Court in the Original Action are final with respect to the analysis of whether *res judicata* attaches to this matter. *See Bugher*, 189 Wis. 2d at 555 (judgment that "finally dispose[s]" of a party's claim is final for claim preclusion purposes even if lacking technical requirements). *See also Barbian v. Linder Bros. Trucking Co., Inc.*, 106 Wis. 2d 291, 301-303, 316 N.W.2d 371 (1982) (holding that claim preclusion will attach to oral rulings even if not entered as written judgments upon the record). Even if claim preclusion did not apply, Mr. Rigsby's claims would be barred be issue preclusion. *Bugher*, 189 Wis. 2d at 551. ("Issue preclusion refers to the effect of a judgment in foreclosing relitigation in a subsequent action of an issue of law or fact that has been actually litigated and decided in a prior action.") "Courts may consider some or all of the following factors to protect the rights of all parties to a full and fair adjudication of all issues involved in the action: (1) could the party against whom preclusion is sought, as a matter of law, have obtained review of the judgment; (2) is the question one of law that involves two distinct claims or intervening contextual shifts in the law; (3) do significant differences in the quality or extensiveness of proceedings between the two courts warrant relitigation of the issue; (4) have the burdens of persuasion shifted such that the party seeking preclusion had a lower burden of persuasion in the first trial than in the second; or (5) are matters of public policy and individual circumstances involved that would render the application of collateral estoppel to be fundamentally unfair, including inadequate opportunity or incentive to obtain a full and fair adjudication in the initial action?" *Michelle T. by Sumpter v. Crozier*, 173 Wis. 2d 681, 688-89, 495 N.W.2d 327 (1993) citing *Restatement (Second) of Judgments*, "Exceptions to the General Rule of Issue Preclusion" sec. 28 at 273-74.

An award of costs and fees to the defendants is *mandatory* if the plaintiff commits either of these violations and then fails to correct it within 21 days after the defendant has served a motion for sanctions. In that event, if the Court "finds, upon clear and convincing evidence, that [§§ 895.044(1)(a) or (b)] applies," the Court "*[s]hall* . . . award to the party making the motion, as damages, the actual costs incurred by the party as a result of the action . . . including the actual reasonable attorney fees the party incurred, including fees incurred in any dispute over the application of [§ 895.044]." Wis. Stat. §§ 895.044(2)(intro.) & (a) (emphasis added).

Section 802.05(2) authorizes the Court to impose discretionary sanctions against an unrepresented party independent of Section 895.044's provision for mandatory sanctions. Pursuant to Wis. Stat. § 802.05, "[b]y presenting to the court, whether by signing, filing, submitting, or later advocating a pleading, written motion, or other paper, an attorney *or unrepresented party* is certifying that to the best of the person's knowledge, information, and belief, formed after reasonable inquiry under the circumstances . . . [that the] claims, defenses, and other legal contentions stated in the paper are warranted by existing law or by a nonfrivolous argument . . . [and that the] allegations and other factual contentions stated in the paper have evidentiary support". Wis. Stat. § 802.05(2) (emphasis supplied).

"Section 802.05, STATS., was patterned after Federal Rules of Civil Procedure 11, and both have the same purpose: to impose sanctions upon counsel who file documents with the court without conducting an adequate investigation of the issues or with improper motives behind the filing." *Belich v. Szymaszek*, 224 Wis. 2d 419, 430-431, 592 N.W.2d 254 (Ct. App., 1999) (internal citations omitted). When performing its analysis, the Court is instructed to consider the 1) amount of time a party had to investigate her claims; 2) the extent to which the facts supporting the claims are provided by a party rather than by counsel and whether counsel

had an opportunity to investigate the same; 3) the complexity of the facts; and 4) whether discovery would benefit the factual record." *Id.*

Unlike Section 895.044, Section 802.05 does not require a movant to meet the "clear and convincing evidence" standard of proof. Further, it empowers the Court to impose a sanction for the purpose of "deter[ing] repetition of the unrepresented party's conduct, or of deterring "comparable conduct by others similarly situated." Wis. Stat. § 802.05(3)(b). Such a sanction "may . . . include . . . directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on a motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney fees and other expenses incurred as a direct result" of the unrepresented party's violation. *Id.* The Court is also separately authorized to award the movant its "reasonable expenses and attorney fees incurred in presenting . . . the motion [for sanctions]." Wis. Stat. § 802.05(3)(a)1.

B. THE IMPOSITION OF FEES UNDER SECTION 895.044 IS MANDATORY

The analysis of whether the imposition of fees is mandatory under Section 895.044 requires the Court to determine whether Mr. Rigsby knew, or should have known that his claims were frivolous, or if Mr. Rigsby continued his action after he learned, or reasonably should have learned, that they were frivolous. In this instance, it is undisputed that Mr. Rigsby knew or should have known that each claim alleged in the Collateral Action lacked merit. Defendants have explained why the claims lack merit in Section I above, but this explanation is unnecessary for Mr. Rigsby because each of the claims alleged is based upon the decision issued by the Court in the Original Action.

Moreover, his prolific legal practice further informs, or should have informed, Mr. Rigsby that his claims are impermissible. The Neri Actions alone have resulted in numerous

dismissal and sanction awards based upon the claim preclusion doctrine. The doctrine of claim preclusion has been explained to Mr. Rigsby both in writing and orally from the bench. It has also been the subject of numerous motions and briefs, which Mr. Rigsby has opposed. Any notion that Mr. Rigsby was not aware of this bar to his claims is simply unreasonable. As the clear and convincing evidence weighs against any finding to the contrary, the Court must impose monetary sanctions upon Mr. Rigsby pursuant to Section 895.044.

C. THE COURT SHOULD ALSO SANCTION MR. RIGSBY PURSUANT TO SECTION 802.05 FOR HIS UNLAWFUL HARASSMENT OF DEFENDANTS

The clear lack of any legitimate basis for the Collateral Action itself is strong evidence that Mr. Rigsby brought this suit in bad faith, for the purpose of harassing and injuring the Defendants. But that is not the only reason the Court should find that he has acted in bad faith here.

As discussed at length above, Mr. Rigsby and his cohorts Ms. Neri and Ms. Conrad have abused the legal system with near impunity over the course of the last several years. Their conduct demonstrates a willingness to ignore virtually any rule, requirement, or limitation established by the rules of civil procedure in both Wisconsin and federal courts. Mr. Rigsby files suit after suit grounded in frivolous claims. He is undeterred by the fact that each suit has been dismissed, and that in each circumstance the tribunal has gone to great lengths to explain to him exactly why his claims lacked merit. He is calloused to the fact that his actions have cost innocent defendants to spend almost a third of a million dollars. He is indifferent to the fact that the trial and appellate courts of Wisconsin, inclusive of the judges presiding and lawyers practicing therein, have spent countless hours addressing his filings. He clearly could care less that the Courts have sanctioned him to the tune of hundreds of thousands of dollars.

The fact of the matter is, Mr. Rigsby is a classic strike suit litigant. He either is, or appears to be, judgment-proof. Thus, defendants who find themselves in his cross hairs quickly learn that the only party who has something to lose by litigating his claims is the defendant himself. No reasonable party could consider Mr. Rigsby's history as recounted above and believe that the legal expenses incurred in fighting him could ever fully be recouped. The significance of this is, as was pointed out by Judges Crabb and Sumi, that Mr. Rigsby attempts to leverage this perceived indigence as a way of compelling settlements from the parties he has harassed with his lawsuits.

The Defendants are hard pressed to imagine the more improper purpose of filing a lawsuit than for the purpose of engaging in strike suit litigation. Wisconsin law does not condone or permit litigants to abuse the legal system for the purpose of extorting such payments, and the Court should not do so now. Accordingly, the Court should also exercise its discretion under Section 802.05 to impose appropriate sanctions upon Mr. Rigsby.

D. ALTHOUGH MONETARY SANCTIONS SHOULD BE AWARDED, THEY ALONE ARE NOT SUFFICIENT TO DETER FUTURE IMPROPER CONDUCT BY MR. RIGSBY

The need for non-monetary sanctions could not be more apparent. Mr. Rigsby has demonstrated a history of repeatedly filing frivolous lawsuits despite the Courts ordering him to pay hundreds of thousands of dollars in attorneys' fees to innocent defendants. He has also made clear that he is willing to file the same lawsuit, based upon the same set of facts, against the same parties over and over again. The Neri actions are a glaring example of this, which now span seven separate lawsuits that have touched the trial and appellate courts at both the state and federal level. The plain language of the Collateral Action's complaint belies any pretense that Mr. Rigsby intends to harass the Russell Defendants, their insurers and their counsel in any manner different from the way he harassed the defendants in the Neri actions. The threat of such

an occurrence additionally imperils the precious resources of the Dane County Circuit Court, which will be spent resolving such litigation.

"Frivolous actions hinder a court's ability to function efficiently and effectively and to fairly administer justice to litigants who have not brought frivolous actions." *Puchner v. Hepperla*, 2001 WI App 50, ¶ 7, 241 Wis. 2d 545, 625 N.W.2d 609. A court faced with a litigant who brings frivolous litigation thus has the inherent authority "to limit that litigant's access to the court." *Id.*; *see also* Wis. Stat. § 802.05(3) (sanctions "may . . . include . . . directives of a nonmonetary nature"). "Otherwise, such a litigant may be undeterred from bringing frivolous litigation." *Puchner*, 241 Wis. 2d 545, ¶ 7.

By way of example, based on this authority a court that has shifted legal expenses as a sanction may also prohibit the sanctioned plaintiff from involving the defendant in further litigation until the plaintiff first pays off the monetary sanction. The court of appeals applied such a sanction in *Puchner*. *See id.* ¶ 10 (instructing the clerk of court "to return unfiled any document submitted by Puchner relating to any matter arising from, relating to or involving [the other party] . . . [unless] the documents are accompanied by an order of the circuit court indicating that Puchner has paid the costs, fees and reasonable attorney's fees awarded by the circuit court . . ."). And it did so again in *Schapiro v. Pokos*, 2011 WI App 97, ¶ 24, 334 Wis. 2d 694, 802 N.W.2d 204 ("[W]e conclude that it is appropriate to bar Schapiro from involving Pokos or Progressive in litigation until sanctions are paid.").

Here too, it is necessary to bar Mr. Rigsby from involving the Defendants in additional litigation until he has paid the monetary sanctions imposed upon him. As demonstrated herein, Mr. Rigsby has made clear his willingness to mire defendants in endless litigation if given the opportunity. This has already been recognized by the Dane County Circuit Court in Case No.

13-CV-75, where the Court imposed the very sanction sought here. The Defendants do not believe that a monetary sanction, on its own, will provide the deterrence needed under these circumstances. Indeed, Mr. Rigsby has demonstrated that he will simply refuse to pay the sanction and continue filing new lawsuits, leaving the Defendants with new legal bills likely exceeding the real value of any monetary sanctions imposed here.

Finally, as Mr. Rigsby's conduct has cause him to owe at least $150,000 in judgments associated with attorneys' fees and costs, he has made clear that any defendant against whom he files suit is in serious jeopardy of not being able to recover its costs at the conclusion of the suit. Accordingly, the Defendants suggest that the Court should exercise its power under Section 814.27 to require Mr. Rigsby to post a bond or other sufficient security for any lawsuit he files in the Dane County Circuit Court.

CONCLUSION

For the preceding reasons, Defendants Travis West, James Statz, and SBG Law, S.C. respectfully request that the Court grant their motions to dismiss and for the imposition of sanctions up Plaintiff Rodney Rigsby.

Dated this 25th day of February, 2014.

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