

Zack Duffly, OSB No. 143109
zack@dufflylaw.com
Duffly Law, LLC
6723 SE 16th Ave. #82151
Portland, OR 97202
(503) 941-0319
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

TAMARA RUBIN,

Case No.: 3:19-cv-01377-IM

Plaintiff,

v.

THIRD AMENDED COMPLAINT

Malicious Prosecution; Due Process; Failure
to Provide Exculpatory Evidence

THE STATE OF OREGON, KRIS
KALANGES, MICHAEL GLENN, KAREN
ERTEL, MARK KLEYNA, and JOHN/JANE
DOE,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, by and through her attorney, brings her complaint herein and states and alleges
as follows:

INTRODUCTORY STATEMENT

1.

Plaintiff Tamara Elise Rubin brings this case against the State of Oregon, by and through,
the Oregon Department of Justice, the Oregon Department of Human Services, Kris Kalanges,

Karen Ertel, Michael Glenn, Mark Kleyna, and (Jane or John) Doe, for malicious prosecution, failure to divulge exculpatory evidence, and deficiency of due process under the 4th, 5th and 14th Amendments to the United States Constitution.

JURISDICTION

2.

This court has jurisdiction over Plaintiffs' claim of violations of federal Constitutional Rights under 28 U.S.C. §§ 1331 and 1343.

3.

Venue is proper under 28 U.S.C. § 1391(b), in that one or more of the defendants reside in the District of Oregon and Plaintiffs' claims for relief arose in this district.

4.

Plaintiff is entitled to her attorney fees pursuant to 42 U.S.C. § 1988. Plaintiff sent a Notice of Tort Claim on May 11, 2018 to the State of Oregon and Multnomah County.

PARTIES

5.

At all material times Tamara Elise Rubin ("Plaintiff") is an individual residing in Multnomah County, in the State of Oregon. Plaintiff is a vocal and well-known activist for childhood lead poisoning prevention, and was the founder of, and from 2011 through 2016 the Executive Director of, the non-profit organization Lead Safe America Foundation (LSAF).

6.

Kris Kalanges resides in Multnomah County, in the State of Oregon. At all times material herein, he was employed as a Financial Investigator in the Charitable Activities Section of the

Oregon Department of Justice. The Charitable Activities section supervises and regulates the activities of charitable organizations in the state. He is sued in his individual capacity.

7.

Karen Ertel resides in Multnomah County, in the State of Oregon. At all times material herein, she was employed as an Investigator with the Oregon Department of Human Services. She is sued in her individual capacity.

8.

Michael Glenn resides in Washington County, in the State of Oregon. At all times material herein, he was employed as a Criminal Fraud Investigator for the Oregon Department of Human Services. He is sued in his individual capacity.

9.

Mark Kleyna resides in Multnomah County, in the State of Oregon. At all times material herein, he was employed as an Assistant Attorney General for the Oregon Department of Justice.

10.

Defendant JOHN or JANE DOE 1-3, includes the unknown individual who made an “anonymous” tip to the Oregon Department of Justice that sparked its investigation and the subsequent proceedings emanating from this person’s false allegations. John and Jane Does include any other investigator or public employee who withheld evidence, falsely reported certain evidence, failed to take necessary actions to provide Plaintiff with due process are mandated under the 4th, 5th and 14th Amendments to the United States Constitution.

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11.

Defendant State of Oregon is being sued for the tortious actions committed by employees within the Oregon Department of Justice (DOJ) and the Oregon Department of Human Services (DHS).

FACTUAL BACKGROUND

12.

Plaintiff has four sons between the ages of 23 and 11. Plaintiff's sons have each tested positive with lead in their blood.

13.

The poisoning of her sons prompted Plaintiff to educate other families around the world about the dangers and hazards of lead poisoning.

14.

In 2007, Plaintiff began speaking at conferences and participating in and coordinating collaborative lead-poisoning prevention outreach events in Oregon and around the country. And Plaintiff appeared on the cover of USA Today in an interview focused on her lead poisoning prevention advocacy work.

15.

July 15, 2008, Plaintiff appeared on the Today show because of her collaborative work with the National Center for Healthy Housing to help increase awareness of the new federal EPA RRP Rule mandating lead-safe work practices in the renovation, repair and painting of pre-1978 homes.

16.

From 2008 through 2010 Plaintiff testified before the Oregon legislature and senate in

support of the Oregon State implementation of the EPA RRP Rule. In 2009 Plaintiff became certified in using an X-Ray Fluorescence spectrometer to test consumer goods for Lead and other toxicants.

17.

In 2010 and 2011, Plaintiff secured bipartisan support for Oregon state legislation she drafted aimed at reducing and eventually eliminating lead hazards in public and private schools and daycares throughout the State of Oregon. This included support from Representative Conger and Representative Tomei.

18.

In March of 2011, Plaintiff founded the 501(c)3 nonprofit Lead Safe America Foundation (LSAF). LSAF provided emergency intervention and support to families across the country whose children had been lead-poisoned. LSAF distributed free LeadCheck™ lead test kits for parents to test paint and common household items that may contain lead. LSAF offered free testing of soil and household goods that were sent to them, such as toys, lunch boxes, kids' jewelry, and dishes. LSAF awarded modest grants to families needing emergency assistance if their children had been poisoned due to lead exposure. LSAF coordinated and held outreach and education events for lead poisoning prevention (in collaboration with EPA Regional offices, local city and state health departments, hospitals, universities, schools, nonprofit agency partners and corporations) across the country.

19.

Plaintiff's work before founding LSAF and including the work of LSAF led to Plaintiff becoming an internationally recognized, multi-award-winning advocate for childhood lead poisoning prevention and awareness.

20.

Plaintiff expressed her views and opinions on childhood lead poisoning prevention via her social media accounts, her websites (including TamaraRubin.com / LeadSafeMama.com), blogging, interviews with the media—domestic and international— and personal appearances.

21.

In 2015, in a call to action following an interview about her advocacy on a local popular radio program/podcast (via UrbanMamas.com), Plaintiff started a Change.org petition to “Clean up the existing lead (pb) hazards at all pre-1978 Portland Public Schools”, which received over one thousand seven hundred signatures.

22.

Plaintiff was the catalyst that prompted the Portland Public School district to “re-sample fountains at her children’s school” for the presence of lead in 2016.

23.

February 25, 2016, Plaintiff coordinated a lead-poisoning information outreach event for the residents of Flint, Michigan, appearing on stage with Bernie Sanders. During the event, which was internationally televised, she advocated for the community and nation to recognize the role of the lead industry in the crisis, and hold them accountable for their actions. At this event, Plaintiff also announced that her documentary film about lead poisoning, *MisLEAD: America’s Secret Epidemic* was in post-production and would “soon be in theaters”.

24.

On or about March 23, 2016, Plaintiff and LSAF received a Civil Investigative Demand (CID) from the DOJ informing them that the DOJ was investigating the activities of LSAF and requesting LSAF's financial accounting records.

25.

These accusations were based on an “anonymous” tip to the DOJ. It is suspected the anonymous tip came from a member of the industry or organizations being affected by Plaintiff’s advocacy work.

26.

The CID was signed by Defendant Mark Kleyna and directed that any questions be directed to DOJ Financial Investigator Defendant Kris Kalanges.

27.

LSAF produced records to the DOJ, including financial records in FileMaker Pro (an enterprise-level, cross-platform database software development system owned by Apple Computers), but Defendant Kalanges said that the records in FileMaker Pro were “not acceptable” requesting the records be reproduced in QuickBooks.

28.

Before LSAF and/or Plaintiff were able to fully reproduce the requested accounting records in QuickBooks, Defendant Kalanges completed a “Payments To/For Rubins Analysis” (Analysis), “to determine the total dollar amount of payments made either to or for the benefit of Tamara and Leonard Rubin and their family.” This calculation was based on no data.

29.

Defendant Kalanges’s Analysis estimated that Plaintiff and her family received approximately \$450,000 from LSAF between 2011 and 2016.

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30.

Defendant Kalanges lacked or failed to review or request documents that would identify, categorize, or substantiate the nature of LSAF transactions, e.g., whether they were cost reimbursements, principal loan repayments, or compensation.

31.

Defendant Kalanges's Analysis was unsubstantiated and misleading because it assigned income to Plaintiff and her family that they did not receive. Defendant Kalanges did not use any acceptable accounting standard in his calculations, failed to use or rely upon records provided by the Plaintiff, the Internal Revenue Service or acceptable evidence of the transactions at issue. Kalanges, it is alleged, simply made up his calculations.

32.

Defendant Kalanges sent this unsubstantiated and misleading Analysis to DHS Criminal Fraud Investigator Michael Glenn (Defendant Glenn), and to the Internal Revenue Service (IRS).

33.

On April 2, 2016, Plaintiff was the opening speaker for a presentation by Erin Brockovich in Portland, Oregon

34.

On or about June 13, 2016, Defendant Glenn opened and started a joint administrative DHS investigation based on his review of "a completed investigation report from Kris A. Kalanges who is a Financial Investigator for the Department of Justice Charitable Activities Section that showed DHS Client Tamara Elise Rubin and her husband Leonard Rubin,

between 2011 and 2016 have received payments to or for the benefit of themselves an amount of approximately \$450,248.13 from Lead Safe America.”

35.

Neither Defendant Glenn nor anyone else at DHS reviewed or substantiated Defendant Kalanges’ Analysis, but instead they accepted and adopted Kalanges’ conclusions that the transactions identified in the Analysis constituted “income” for purposes of calculating Plaintiff and her family’s benefit eligibility determination.

36.

In turn, Defendant DHS incorrectly concluded that Plaintiff’s income made them ineligible for the state benefits they had received from 2011 to 2016.

37.

On or about May 2, 2016, the IRS notified Plaintiff and LSAF that it was auditing LSAF for the 2014 Tax year.

38.

In August 2016, without a vote or the knowledge of LSAF’s Board of Directors, LSAF fired Plaintiff from the organization as its Executive Director.

39.

In May 2017, the IRS audit (Audit) of Plaintiff’s personal returns for years 2013, 2014, and 2015 was initiated on Defendant Kalanges’ faulty and deceptive analysis and conclusions: that LSAF’s financial transactions with Plaintiff were not reflected on Plaintiff’s personal tax returns.

40.

Plaintiff was required to hire a tax attorney and third-party bookkeeper to respond to

the Audit. Plaintiff was able to provide the IRS with the completed LSAF QuickBooks for all years in question, as well as substantiating documentation for the transactions in question.

41.

In June 2017, Plaintiff's blog posts on website (TamaraRubin.com), about her work finding lead in Fidget Spinners went "viral."

42.

In July 2017, Plaintiff successfully "Kickstarte[d]" her book *I Make Women Cry & Throw Out Their Shit*.

43.

In September 2017, Plaintiff received a write-up of her work in WebMD, as #LeadSafeMama.

44.

On or about September 12, 2017, the IRS concluded its full investigative audit, finding in Plaintiff's favor with no changes to Plaintiff's tax liability.

45.

On or about October 5, 2017, Plaintiff provided Defendant DOJ with a letter informing them of the outcome of the IRS audit, along with the IRS letter stating that no changes were made to Plaintiff's tax liability and a letter from Plaintiff's tax attorney summarizing the attorney's communications with the IRS, the meeting with the IRS agent, and the outcome of the audit.

46.

Over the course of the next few weeks, Plaintiff's attorney corresponded with

Defendant Kleyna and Defendant Kalanges to make sure they understood the exculpatory nature of the audit and had received all of the more than 2300 pages of substantiating documents that Plaintiff had given the IRS, including the QuickBooks file with all of the relevant LSAF transactions.

47.

On or about November 8, 2017, “CBS This Morning” news covered Plaintiff’s work finding lead in fidget spinners. This was Plaintiff’s first major national TV news story mentioning the new branding of her work as #LeadSafeMama.

48.

On or about, November 8, 2017, Plaintiff confirmed a commitment from a prominent distribution agent for the documentary film she directed and produced (on the subject of childhood lead poisoning), *MisLEAD: America's Secret Epidemic*.

49.

On November 13, 2017, Defendant Kalanges confirmed with Plaintiff’s attorney that he had received all of the substantiating records, including the QuickBooks file with all of the relevant LSAF transactions, and that he could access them.

50.

That same day, on November 13, 2017, an Indictment was returned in Multnomah County Case No. 17CR75385, charging Plaintiff with nine (9) Class C felonies: Seven (7) counts of Theft in the First Degree and two (2) counts of welfare fraud.

51.

On or about November 28, 2017, Plaintiff was arrested by deputies from Defendant

Multnomah County Sheriff's office, while working on educational activities in her kitchen with her nine-year old disabled son. Plaintiff was given no advance notice (by mail or otherwise) that she was being charged with any crime.

52.

Plaintiff retained Attorney Celia Howes of HOEVET OLSON HOWES, PC to represent her in the criminal matter on November 28, 2017.

53.

Plaintiff was subsequently booked into the Multnomah County jail and arraigned on November 29, 2017.

54.

Plaintiff learned at the arraignment that Defendant Kalanges alleged Plaintiff had embezzled money from LSAF; and, therefore, this disqualified Plaintiff and her family from receiving welfare benefits.

55.

Defendant Kalanges and Defendant Glenn were the only two witnesses providing information regarding the claims against Plaintiff. Their examination followed their confirmation of receipt the IRS materials and Quickbooks evidence.

56.

All of the indicted charges were based on the unsubstantiated and misleading findings of Defendant Kalanges's Analysis, created in June 2016. Defendant Kalanges failed to provide any of the exculpatory material to the District Attorney or communicating his knowledge of it, knowing that Plaintiff was likely not guilty of the crimes for which he alleged. Kalanges provided false information to the District Attorney and with no legitimate lawful purpose.

57.

Despite being aware that his Analysis was unsubstantiated and misleading, Defendant Kalanges failed to seek reliable information or records from any source that would substantiate, reconcile or confirm his understanding of the nature of the transactions appearing on LSAF's bank statements at that time.

58.

Subsequently, but prior to the issuance of the Indictment, Defendant Kalanges received these substantiating records from LSAF and/or Plaintiff that materially undermined (and fully contradicted) his preliminary assumptions that nearly every transaction flowing from LSAF to Plaintiff was income to or for the benefit of the Plaintiff – this information included the QuickBooks data Defendant Kalanges had requested.

59.

Prior to the issuance of the Indictment, Defendant Kalanges was also informed that his Analysis was inconsistent with the conclusions reached by the IRS following their own 17-month analysis.

60.

On or about December 21, 2017, Defendant Kleyna contacted Plaintiff's attorney Phil Bezanson to request password access to the QuickBooks file, which had been included with the supporting documentation to the IRS audit. This password had previously been provided by Mr. Bezanson to Defendant Kalanges and Defendant Kleyna on November 10, 2017. Defendant Kalanges had confirmed receipt of this password via an e-mail to Mr. Bezanson on November 13, 2017.

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61.

This request for password access supports the allegation that Defendant Kleyna and Defendant Kalanges had not previously attempted to open these documents even though they were aware that the documents provided the exculpatory evidence in the matter, as determined by the investigative audit conducted by IRS auditor Angie Chapman.

62.

On February 8, 2018, Ms. Howes informed assigned Deputy District Attorney Sam Leineweber that these exculpatory materials in the possession of the DOJ were not produced by the state in discovery. She also noted her suspicion that Defendant Kalanges had never even looked at (or opened the QuickBooks file of) the exculpatory materials.

63.

Ms. Howe also informed Mr. Leineweber that the charges were based on Defendant Kalanges's unsubstantiated and misleading Analysis, that was rebutted by the IRS audit (the exculpatory materials.)

64.

On February 9, 2018, Plaintiff's attorneys (Ms. Howes & Megan McVicar) met with Mr. Leineweber, Defendant Glenn, and Defendant Kalanges. Plaintiff's attorney confirmed at this meeting, based on questioning by Defendant Leineweber and responsive statements to those questions by Defendant Kalanges, that Defendant Kalanges had withheld the IRS conclusions and the substantiating financial records from DHS and the Multnomah County District Attorney's Office and knew that he had withheld this information. Defendant Kalanges also confirmed in this meeting that he had not yet personally reviewed the exculpatory information he had had in his possession for approximately three months.

65.

In an excerpt from a 5/6/19 e-mail to Plaintiff from criminal attorney Megan McVicar: “We met with the prosecution team on February 9, 2018. The afternoon before that meeting, Celia and I called Leineweber. Because we knew that Kalanges was going to be at the meeting the next day, we wanted to let Leineweber know that it appeared that Kalanges had the QuickBooks information from Phil and knew of the outcome of the IRS audit” prior to the indictment being returned. It is our recollection that Kalanges had not reviewed the QuickBooks/IRS audit documents or provided these to the DA/DHS prior to that meeting. Based on the notes from the meeting, he said he had never spoken with the DHS analyst.”

66.

On May 10, 2018—over three months after Mr. Leineweber had sufficient evidence to dismiss—the Multnomah County District Attorney’s office finally dismissed all criminal charges against Plaintiff.

67.

On May 21, 2018, Mr. Leineweber gave an interview to the Portland Tribune, wherein he stated the following defamatory statements:

- a) “Based on the available information at the time of the indictment, there was ample probable cause to support arresting Mrs. Rubin. However, the new information given to the district attorney's office in the months following the indictment has made proving the case beyond a reasonable doubt untenable.”
- b) “During the relevant time period, the Rubins had money coming in to their accounts, but due to the disorganized nature of the financial records, it was difficult to attribute that money as a certain type of income for purposes of government benefits.”
- c) “Further complicating the issue was that the Rubins had a casualty loss (house fire) in the early 2000s that they were using to achieve a modified adjusted gross income of nearly \$0 during the time period in question. None of that information was known to the district attorney's office at the time[.]”

68.

On or about June 22, 2018, Defendant DHS's Office of Payment Accuracy and Recovery sent Plaintiff a billing statement for \$73,280.43 in "overpayments", based on:

- a) \$13,526.00 in "overpayments" for TANF;
- b) \$27,880.40 in "overpayments" for Medicaid; and
- c) \$31,874.00 in "overpayments" for SNAP.

69.

On or about August 22, 2018, the Oregon Health Authority (OHA) contacted Plaintiff to inform her that OHA "decided that the entire Medicaid portion of the overpayment has been dismissed – and zeroed out. Thus, any Medicaid overpayment amount we stated you owed has been eliminated."

70.

That same day, Plaintiff was served with a Contested Case Notice IA3024 by Defendant Ertel, wherein Defendant DHS decided that Plaintiff and her family were "overpaid" the reduced amount of approximately \$46,000, which is represented in the following breakdown (note there is some overlap in categories below):

- a) \$29,185.00 in Supplemental Nutrition Assistance Program (SNAP) benefits from October 1, 2011 to October 31, 2016;
- b) \$8,536.00 in SNAP benefits from August 1, 2014 to May 31, 2015 (separately for Colescott Rubin, amount also included in point (a) above); and
- c) \$13,526.00 in Temporary Aid for Needy Families (TANF) benefits from October 12, 2011 to March 31, 2013.

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71.

On or about February 4, 2019, Plaintiff, her attorney and her bookkeeper (Phyllis Shelton, The Bookkeeping Collaborative) met with DOJ Attorneys Ellen Mendoza, DHS Investigator Karen Ertel (Defendant Ertel) and DOJ attorney Elizabeth Grant to demonstrate in person that there was no reasonable basis supporting Defendant DHS's Contested Case No. IA3024 against Plaintiff.

72.

Among the numerous examples: 1) Plaintiff's attorney demonstrated that certain monies designated by DHS as "personal income" to the Rubins (via Kalanges' Analysis) were, in fact, well documented business expenses - for the rental of 2 climate-controlled public storage spaces (at Rose City Storage) on behalf of LSAF for the storage of tens of thousands of LeadCheckTM swab lead testing kits that were donated by 3M and distributed to families across the country for free; and (as a second example among many to choose from) 2) that monies that were provided to LSAF by a collaborative nonprofit partner organization (Concord Cooperative Preschool in New Hampshire – an entity that happened to be a childcare center) to help cover the costs of an LSAF sponsored event in New Hampshire hosted by New Hampshire's Department of Health and Human Services, were somehow erroneously designated by Oregon DHS (via Kalanges' Analysis) as "childcare costs" – asserted to have been received as a benefit to Plaintiff – presumably for childcare of Plaintiff's own children (who live in Oregon, not New Hampshire).

73.

On or about February 12, 2019, Plaintiff's attorney received Defendant DHS's Amended

Contested Case No. IA3024, which claimed that Plaintiff and her family were now “overpaid” for the again reduced amount of approximately \$27,000.00, which is represented in the following breakdown (note: there is some overlap in the categories below):

- a) \$20,018.00 in Supplemental Nutrition Assistance Program (SNAP) benefits from July 1, 2012 through May 31, 2015;
- b) \$5,623.00 in SNAP benefits from August 1, 2014 through May 31, 2015 (separately for Colescott Rubin, amount also included in point (a) above); and
- c) \$8,438.00 in Temporary Aid for Needy Families (TANF) benefits from April 1, 2012 through March 31, 2013.

74.

On or about February 19, 2019, Defendant Ertel and Ms. Mendoza submitted to the administrative law judge a totally new set of allegations demonstrating DHS has continued this pattern of acting in bad faith. DHS investigators and defendants herein did not review the transactions which were disputed by the Plaintiff and her legal team on May 14, 2019.

75.

In spite of DOJ & DHS’ allegations being repeatedly disproven by a careful review of the facts as evidenced by the following instances: 1) the September 12, 2017, IRS Audit conclusion; 2) the May 10, 2018, dismissal of all criminal charges; and 3) the August 22, 2018, dismissal of the approximately \$27,000 in Medical benefits overpayment allegation and 4) February 12, 2019 dismissal of the remaining approximately \$46,000 in overpayment allegations based on the calculus in the August 2018 contested case notice, DHS has continued to act in bad faith with the new allegation of approximately \$27,000 in overpayment (using new calculus) submitted to the administrative law judge on February 19, 2019.

76.

The alleged “facts” being used by DHS as “evidence” for the May 14, 2019, hearing in combination with the past clear and demonstrable lack of DHS’ investigators’ independent review of actual facts and evidence as further supported by DHS’ newly formulated allegations in the February 2019 contested case notice represent an ongoing abuse of power as defendants continually changed the amount they claimed was owed for overpayment on public benefits finally reduced to the sum of \$3500 which is not supported by any credible evidence.

77.

Plaintiff and her family were below the poverty line during periods questioned by DHS and were not guilty of the alleged financial impropriety, nor alleged misuse of state benefits. The September 2017 conclusion of the IRS audit unequivocally demonstrated this. The May 2018 conclusion of the criminal case demonstrated this. The August 2018 DHS initial review and dismissal of the medical overpayments portion of the DHS claim demonstrated this. The subsequent DHS review and February 2019 dismissal of the false calculus behind remaining approximately \$46,000 portion of funds alleged due in “overpayment” from the August 22, 2018 contested case notice demonstrated this.

78.

All of these actions against Plaintiff and her family have been unwarranted and an abuse of process, a violation of due process requirements in government actions. Public agencies and their employees spent substantial resources - and more than three years - pursuing a low-income family with disabled children, forcing them back in to poverty at a critical juncture in Mrs. Rubin’s career, a juncture when she had created unprecedented and significant momentum in her environmental advocacy work, and had finally pulled her family out of poverty. In engaging in

this de facto persecution of Mrs. Rubin and her family, these public agencies and their employees caused even greater expense to the State by returning the Rubin family to poverty.

FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983

Fourth Amendment Violations

Defendants Kalanges, Glenn, and Kleyna, John and Jane Does

79.

Plaintiff realleges all previously matters as if fully set forth herein.

80.

The Fourth and Fifth Amendment to the United States Constitutional guarantee due process to those involved in criminal process and state enforcement actions. This protection entitles Plaintiff to be subject to prosecution only upon probable cause, to be provided the right to exculpatory evidence, to be entitled to know the details of the charges, the identity of accusers, the evidence to be relied upon by the government. Furthermore, public investigators or prosecutors shall provide honest, fair, evidence which has not been manipulated or falsified.

81.

Plaintiff's arrest and indictment were based on Defendant Kalanges's unsubstantiated, false and misleading Analysis he conveyed as part of his oath or affirmation in support of the arrest warrant issued for Plaintiff's November 28, 2018, information he provided to the prosecutor and in sworn statement he gave. Defendant Kalanges provided false, misleading information and intentionally withheld exculpatory evidence from the District Attorney and made false sworn statements.

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82.

Defendant Kalanges was aware that his Analysis was unsubstantiated, false and misleading based on the IRS Audit prior to either making statements in support of a warrant for Plaintiff's arrest or providing false statements to secure Plaintiff's indictment.

83.

Defendant Kalanges was aware that his Analysis lacked sufficient probable cause to either support an arrest warrant or to justify arresting Plaintiff without a warrant or to charge her with any criminal charges.

84.

The acts of Defendants described herein were taken under color of state law.

85.

As a result of Defendants' unlawful acts, Plaintiff had to spend a day in jail, faced criminal charges, lost her position as Executive Director, lost funding for her non-profit, lost funding for her documentary, lost funding for her book, and suffered irreparable harm to her reputation.

86.

As a result of Defendants' unlawful acts, Plaintiff and her family have suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult, all in amounts to be determined by the jury at trial but no less than non-economic damage of \$5,000,000.

87.

As a result of Defendants' unlawful acts, Plaintiff has suffered harm to her reputation, the

loss of the non-profit she founded, the loss of past and future appearance opportunities, the loss of funding for her documentary, and the loss of funding for her book, all in amounts to be determined by the jury at trial but no less than \$5,000,000 in economic damages.

88.

As a result of Defendants' unlawful acts, Plaintiff is entitled to recover all of her legal fees in defending herself against the criminal charges in Multnomah County Case No. 17CR75385, all in amounts to be determined by a jury at trial or no less than \$150,000.

89.

Defendants' conduct toward Plaintiff demonstrated a wanton, reckless, or callous indifference to Plaintiff's constitutional rights, which warrants an imposition of punitive damages in such amounts as the jury may deem appropriate to deter future violations.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983
Fourteenth Amendment Violations
Due Process Violation
(As to Defendants Kalanges, Ertel and Glenn)

90.

Plaintiff realleges all previous matters as if more fully set forth herein.

91.

Under the U.S. Constitution, Amend. XIV, Section 1, "[n]o State shall... deprive any person of life, liberty, or property, without due process of law ...". The rights protected under the 14th Amendment due process clause bar certain government actions regardless of the fairness of the procedures used to implement them. In this situation, the 14th Amendment is intended to

prevent government officials from acting in ways that employ their powers as an instrument of oppression or menace or which shocks the conscience, and which are deliberately indifferent to the safety, security and liberty of citizens.

92.

The substantive due process rights of the 14th Amendment substantive due process clause protect citizens against the arbitrary governmental actions which shock the conscience and which actions are deliberately indifferent to the rights held by citizens to be free from unconstitutional infringement on life, liberty and property. The right to be free from unconstitutional infringement of liberty includes the right to control bodily integrity. When governmental employees act in a way which is deliberately indifferent to the rights held by citizens, they are interfering in fundamental rights implicit in the Constitution. Plaintiff was charged with crimes, faced with administrative enforcement actions because of the intentional efforts by Defendants Kalanges and Glenn to falsify, manipulate and withhold exculpatory evidence. Defendant Kalanges acted in providing information to the District Attorney knowing that he lacked probable cause, knowing that Plaintiff was innocent of the various acts she was accused of. Defendant Kalanges and Glenn had numerous opportunities to change their conduct, correct the record and stop the process, but failed to do so.

93.

Defendants Kalanges, Glenn, and Ertel operating under color of law, while working for the State of Oregon and subject to the laws of the State of Oregon and the United States Constitution, pursued Plaintiff in a criminal process and administrative process in a dangerous, deliberately indifferent manner resulting in false charges and false actions being taken against Plaintiff. It was Defendants extensive opportunity to take appropriate actions combined with

their repeated failure to do so which is the conscience shocking, deliberately indifferent conduct which caused a significant risk and in fact, caused serious harm to Plaintiff.

94.

The deliberately indifferent actions committed by Defendant Kalanges and Glenn which violated Plaintiff's right to be free from unconstitutional infringement on her liberty and property include, without limitation:

1. Failing to review the IRS material, the financial records provided by Plaintiff to correct his Analysis and conclusions;
2. Failure to use acceptable accounting practices and procedures in analyzing the financial data reviewed;
3. Failing to correct actions once information was received from the IRS;
4. Failing to disclose the exculpatory IRS material to the District Attorney and the administrative agencies pursuing Plaintiff;
5. Providing a false statement, false affidavit of probable cause to the District Attorney about Plaintiff's finances and conduct;
6. Giving false sworn statements to the District Attorney;
7. Providing false evidence to the court prosecuting Plaintiff; and
8. Failing to stop or correct the proceedings against Plaintiff based on the exculpatory evidence.

95.

The information and documentation emanating from the IRS Audit and provided to Defendant Kalanges, informing him that his Analysis was unsubstantiated and misleading, was exculpatory evidence.

96.

Defendants DOJ, DHS, Ertel, Kalanges and Glenn had a duty to provide that exculpatory evidence to the District Attorney's office.

97.

Defendants damaged Plaintiff's standing within the community and/or imposed a stigma on her as an "embezzler" that negatively affected her ability to earn income as a consultant.

98.

The acts of Defendants described herein were taken under color of state law.

99.

As a result of Defendants' unlawful acts, Plaintiff had to spend a day in jail, lost her business contracts including speaking engagements, and was removed from the non-profit she had formed.

100.

As a result of Defendants' unlawful acts, Plaintiff and her family have suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult, all in amounts to be determined by the jury at trial but no less than \$5,000,000 to her non-economic damage.

101.

As a result of Defendants' unlawful acts, Plaintiff has suffered harm to her reputation, the loss of the non-profit she founded, the loss of past and future appearance opportunities, the loss of funding for her documentary, and the loss of funding for her book, all in amounts to be determined by the jury at trial all to her economic loss of no less than \$5,000,000.

102.

As a result of Defendants' unlawful acts, Plaintiff is entitled to recover all of her legal

fees in defending herself against the criminal charges in Multnomah County Case No. 17CR75385, in amounts to be determined by a jury at trial or no less than \$150,000.

103.

Defendants' conduct toward Plaintiff demonstrated a wanton, reckless or callous indifference to Plaintiff's constitutional rights, which warrants an imposition of punitive damages in such amounts as the jury may deem appropriate to deter future violations.

THIRD CLAIM FOR RELIEF Malicious Prosecution
4th Amendment
(As to Defendants, Kalanges, Glenn)

104.

Plaintiff realleges all previous paragraphs as if fully set forth herein.

105.

Defendants began or continued a criminal proceeding based on Defendant Kalanges's unsubstantiated, false and misleading Analysis. The state had no probable cause to charge Plaintiff, no probable cause to pursue the charges as all the information from Kalanges and Glenn was false, contrived and not based in fact. The 4th Amendment to the United States Constitution provides that defendants may not be charged with crimes unless upon probable cause and further that the criminal prosecution may not be maintained absent continuing probable cause.

106.

Despite being made aware of the unsubstantiated and misleading nature of Defendant Kalanges's Analysis, and the discovery that Defendant DOJ, DHS, Kalanges and Glenn withheld exculpatory evidence, the Multnomah County District Attorney's Office and Leineweber continued the prosecution of Plaintiff for three more months

107.

All nine (9) felonies filed against Plaintiff in Multnomah County Case No. 17CR75385 were dismissed in Plaintiff's favor.

108.

As a result of Defendants' unlawful acts, Plaintiff has suffered harm to her reputation, the loss of the non-profit she founded, the loss of past and future appearance opportunities, the loss of funding for her documentary, and the loss of funding for her book, all in amounts to be determined by the jury at trial but no less than \$5,000,000 all to her economic damages.

109.

As a result of Defendants' unlawful acts, Plaintiff and her family have suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult, all in amounts to be determined by the jury at trial but no less \$5,000,000 in non-economic damages.

SUPPLEMENTAL STATE CLAIMS

FOURTH CLAIM FOR RELIEF

Abuse of Process

(As the State of Oregon)

110.

Plaintiff incorporates all previous allegations as if more fully set forth herein.

111.

Defendants continued the IRS audit, DOJ and DHS investigations, criminal prosecution and DHS administrative process with the intention of 1) silencing Plaintiff's advocacy on behalf of children potentially exposed to lead poisoning, and 2) covering up the fact that their proceedings were based on Defendant Kalanges's false and unsubstantiated Analysis, rather than trying to discover the truth or recoup monies from Plaintiff. Furthermore Defendants knew and

should have known the actions both administratively and criminal were not based on probable cause, were based on false and contrived information and violations of the Constitution including failure to provide exculpatory evidence to the District Attorney, providing false and perjured testimony, providing false Affidavit of Probable Cause.

112.

As a result of Defendants' unlawful acts, Plaintiff has suffered harm to her reputation, the loss of the non-profit she founded, the loss of past and future appearance opportunities, the loss of funding for her documentary, and the loss of funding for her book, all in amounts to be determined by the jury at trial but in an amount no less than \$5,000,000 to her economic damages.

113.

As a result of Defendants' unlawful acts, Plaintiff and her family have suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult, all in amounts to be determined by the jury at trial but no less than \$5,000,000 all to her non-economic damage.

114.

As a result of Defendants' unlawful acts, Plaintiff is entitled to recover all of her legal fees and bookkeeping fees incurred in defending herself against the IRS audit, the criminal charge levied by the Multnomah County District Attorney, the DOJ and DHS Investigations and DHS's Contested Case, all in amounts to be determined by a jury at trial.

FIFTH CLAIM FOR RELIEF
Malicious Prosecution

115.

Plaintiff realleges all previous matters as if more fully set forth herein.

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116.

The prosecution against Plaintiff was without probable cause. It was based on false statements, contrived evidence and the withholding of exculpatory evidence. Defendants Kalanges and Glenn, along with the prosecutor, brought the charges against Plaintiff with perjured testimony, false statements of probable cause and by withholding evidence.

117.

All charges against Plaintiff were dismissed with prejudice and in her favor. Plaintiff suffered extreme financial, reputational and personal loss associated with malicious and baseless prosecution.

118.

Even after the details of the factual omissions, false statements and missing exculpatory evidence was brought to the attention of the prosecutor, the charges remained against Plaintiff for an additional three months. The prosecutor then issued a public press release indicating falsely stating the basis for the criminal case and the basis for the dismissal.

WHEREFORE, Plaintiff prays for judgment against defendants as follows:

- a) Economic damages in the form of lost past consulting income, consequential damages, and prejudgment interest in the amount of \$1,215,000;
- b) Economic damages in the form of lost future consulting income, consequential damages, and prejudgment interest in the amount of \$3,725,000;
- c) Reimbursement of all fees incurred in fighting the audit, investigations, criminal charges, and contested case in an amount to be determined by the jury at trial in the amount of \$150,000 or greater;

- d) Non-economic damages in the form of pain and suffering in the amount of \$5,000,000;
- e) All available equitable relief and damages in amounts to be determined at trial, consistent with the claims above against defendants, including but not limited to:
 - i. Restraining Defendants from further targeting Plaintiff for her work as an advocate or for her use of state benefits;
 - ii. DOJ divulging the name of person(s) who made the “anonymous” complaint, Defendant Doe, sued herein;
 - iii. Dismissing any and all proceedings and investigations being pursued against Plaintiff and the Board of Directors for LSAF; and
 - iv. Dismissing any and all proceedings being pursued against Plaintiff by Defendant DHS;
- f) Punitive damages consistent with the claims above against Defendants in amounts to be determined at trial;
- g) Reasonable attorneys’ fees and litigation expenses/costs herein, including expert witness fees and expenses, consistent with the claims above against Defendants; and
- h) Grant such other relief as is just and proper.

DATED this 4th day of August, 2021

s/ Zack Duffly
Zack Duffly, OSB No. 143109
DUFFLY LAW, LLC
6723 SE 16th Ave. #82151
Portland, OR 97282
Tel: (503) 941-0319
zack@dufflylaw.com
Attorney for Plaintiff