In the
United States Court of Appeals
for the Ninth Circuit

Nos. 12-35238, 12-35319

OBSIDIAN FINANCE GROUP LLC, *ET AL.*,

Plaintiffs-Appellees and Cross-Appellants,

v.

CRYSTAL COX,

Defendant-Appellant and Cross-Appellee.

FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
Case No. 3:11-cv-00057-HZ
Honorable Marco A. Hernandez

BRIEF OF *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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I. Statement of Interests

Amicus Curiae Marc J. Randazza ("*Amicus*") moves for leave to file this brief because counsel for Appellant Crystal Cox did not consent to its filing. Counsel for Appellees Obsidian Finance Group LLC and Kevin Padrick, however, consented to the filing of this brief.

No party's counsel authored any portion of this brief, and no party has contributed money intended to fund the preparation or submission of this brief. No person other than *Amicus* contributed money intended to fund the preparation or submission of this brief.

Amicus is an attorney based in Las Vegas, Nevada, who is licensed to practice law in Nevada, Massachusetts, Florida, California, and Arizona. *Amicus* (and his family) is also a victim of the extortion schemes engaged in by Appellant Crystal Cox ("Cox") for conduct identical to her actions against Appellees in this case. *Amicus*, along with his wife and daughter,[1] have been the target of precisely the kind of activity that the court described.[2]

Cox subjected *Amicus* to the same conduct she subjected Appellees to in the case before the Court. It is important to *Amicus* that this Court continue to

[1] Jennifer Randazza, and young daughter, Natalia Randazza, who was only three years old at the time Cox registered her name as a domain name, <nataliarandazza.com> as part of her extortion scheme.

[2] *Amicus* is not the only one. As discussed *infra*, *Amicus* is aware of at least one other party targeted by Cox's extortion scheme.

recognize Cox's extortionate conduct. The Ninth Circuit was correct in shining a light on Cox's extortion scheme. To an extent, *Amicus* agrees at least partially with Cox: the Court perhaps should not have referred to her extortion and then cited only to The New York Times for support. There are opinions from courts, arbitrators, and administrative bodies that have found, even after affording Cox due process, that she is an extortionist. This Court should add these sources to its Opinion.

II. Introduction and Summary of Argument

Cox's petition for rehearing requests this Court to withdraw the portion of its opinion that states:

> Cox apparently has a history of making similar allegations and seeking payoffs in exchange for retraction. See David Carr, *When Truth Survives Free Speech*, N.Y. Times, Dec. 11, 2011, at B1.

(Opinion at 4) However, the Court could have referred to the findings of fact in the record before it. In denying Cox's motion for a new trial, the District of Oregon made the following finding of fact:

> [T]he uncontroverted evidence at trial was that after receiving a demand to stop posting what plaintiffs believed to be false and defamatory material on several websites, including allegations that Padrick had committed tax fraud, defendant offered "PR," "search engine management," and online reputation repair services to Obsidian Finance, for a price of $2,500 per month. **The suggestion was that defendant offered to repair the very damage she caused for a small but tasteful monthly fee.**

Obsidian Finance Group LLC v. Cox, Case No. 3:11-cv-00057-HZ, *2012 U.S.*

Dist. LEXIS 43125 at *20 (D. Ore. Mar. 27, 2012) (emphasis added) (internal citations omitted). The United States District Court for the District of Oregon is not alone in making this observation about Cox's conduct, and this Court was not in error for memorializing it within its Opinion.

At least three other bodies have evaluated Cox's conduct and rightly described it as **extortion**. These bodies include the the District of Nevada, the World Intellectual Property Organization ("WIPO"), and the Realty Regulation Board of the State of Montana.

All three of these bodies have found Cox to be an extortionist. Cox now asks this Court to conceal the portion of its analysis recognizing this fact by relying on a technicality in Federal Rule of Evidence 201, asserting that The New York Times article this Court cited in its opinion is not properly an adjudicative fact that the Court may notice. Instead of *removing* the reference as Cox suggests, the Court should strengthen it by relying on adjudicative findings.

The importance of doing so is twofold: First, when this Court noted Cox's extortionate behavior in its opinion, it sent the signal that even criminals deserve First Amendment rights – thus dispelling the usual truism that "bad facts make bad law."[3] Second, it should not be lost on this Court, nor on any reader of the

[3] In cases where the most objectionable parties and speech find First Amendment protection, our constitutional commitment to free speech is more strongly reaffirmed. *See, e.g.*, *U.S. v. Alvarez*, 132 S. Ct. 2537, 2550 (2012) (defendant

Court's Opinion, that the Ninth Circuit has issued a statement on the *law*, while expressly declining to stamp its imprimatur upon Cox's conduct. Cox will use the Court's removal of its language recognizing her scheme to falsely claim that this Honorable Court has somehow approved of her extortionate conduct. Instead, a full citation of sources demonstrating that Cox engaged in wrongful conduct will be fair to her (as she has asked that the Court not make such pronouncements without relying upon more authoritative sources), and will be fair to those she would wield this Court's decision against in order to further her continued unlawful activity.

III. Argument

The Court's current Opinion should stand, and any alteration should reflect the true nature of Cox's extortionate schemes.

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lying about earning military honors); *U.S. v. Stevens*, 559 U.S. 460 (2010) (finding statute outlawing the production of "crush videos" and other animal cruelty unconstitutional); *Nat'l Socialist Party of Am. v. Village of Skokie*, 432 U.S. 43 (1977) (allowing American Nazi party to conduct a march); *Brandenburgh v. Ohio*, 395 U.S. 444 (1969) (overturning conviction of Ku Klux Klan leader based on his espousal of group beliefs). The factual context of this case *is important*. In the future, this case may very well be cited by legitimate bloggers in their defense. If the legal principles in this case provide some shelter, even to an extortionist, then *legitimate* bloggers will find greater protection under it. Accordingly, strengthening the factual analysis in this case may not fit Cox's agenda of extortion, but it will increase the case's precedential strength overall.

A. Crystal Cox Is An Extortionist.

Numerous bodies, including the United States District Court for the District of Nevada, have found that Cox engages in extortionate behavior when engaged in conduct identical to her actions in this case. In *Amicus*' litigation against Cox, the Court granted *Amicus* a temporary restraining order against Cox's conduct. While enjoining Cox, the Court held:

> In this case, **Defendants have embarked on a campaign of cyber-extortion**. Specifically, Cox sent an e-mail to Plaintiff Randazza that informed him that she had purchased <marcrandazza.com> and, in that same email, informed him of her "need to make money." Additionally, Cox currently uses several of the Domain Names to operate websites where she publishes "articles" with the apparent intent to tarnish Plaintiff Randazza's online reputation. Moreover, Cox has actually offered to sell at least one of the Domain Names, <marcrandazza.me>, for $5 million.

Randazza v. Cox ("Randazza I"), Case No. 2:12-cv-02040-GMN-PAL, *2012 U.S. Dist. LEXIS 178048* at *13-14 (D. Nev. Dec. 14 2012) (emphasis added) (internal citations omitted).

After a hearing, the District of Nevada entered a preliminary injunction in *Amicus*' favor. In the Court's separate order entering a preliminary injunction against Cox, the Court further found:

> **Here, Defendants' actions leading up to the filing of the Complaint, as well as Defendants' past behavior, as represented in Plaintiffs' reply briefing, clearly seems to indicate cyber-extortion** […] Defendant's post hoc attempt to explain this as a "joke" is not credible. Given the fact that the **Defendant has been shown to have engaged in a pattern of cybersquatting and cyber-extortion**.

Randazza v. Cox ("Randazza II"), 920 F. Supp. 2d 1156, 1157-58 (D. Nev. 2013) ("An injunction would return the parties to the position that existed before **Defendants began using Plaintiffs' personal names in association with their websites, before the extortion and witness intimidation began**") (emphasis added) (internal citations omitted). The District of Nevada did not find that Cox "*apparently* has a history of making similar allegations and seeking payoffs in exchange for retraction," but instead *conclusively* found that she did so.

In a WIPO arbitration, the WIPO arbitration panel evaluated the evidence in an adversarial proceeding, in which Cox submitted more than 100 pages of arguments and evidence in her defense. The WIPO panel found:

> Respondent has previously registered domain names that solely include her target's full names and uses link-bombing methods in an effort to increase the prominence of her search results on search engines. **The Respondent then offers to provide "reputation management" services to her target in return for a fee. Such websites are not "criticism sites" but merely a pretext for the Respondent's bad faith extortionate use**.

Marc J. Randazza v. Reverend Crystal Cox et al., D2012-1525 (WIPO Nov. 30, 2012) (emphasis added) (a courtesy copy of this decision is attached as Exhibit A).[4] The WIPO panel summarized Cox's scheme thusly:

> Respondent's intention, as reflected by the record, was never to solely provide, through her websites, speech critical of the Complainant.

[4] This decision is also available online at http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2012-1525.

> **Rather, her objective in both registering and using the disputed names was apparently to engage in a rather sinister and tenacious scheme to extort money from the Complainant**.
>
> Specifically, the Respondent first posted negative and false commentary on her websites that was intentionally calculated to injure the Complainant's on-line reputation and disrupt the Complainant's business conducted through his law firm. Thereafter, the Respondent used those sites in a manner that apparently optimized their ranking on the Google search engine in order to increase their visibility and prominence on search results yielded through a Google search of the Complainant, thus likely exacerbating the injury caused to the Complainant. Once all this occurred, the Respondent then offered her reputational management services to the Complainant through which, for a considerable fee, she would remediate the Complainant's on-line reputation by eliminating all the negative and false commentary of her own making and presumably also ceasing her use of the disputed domain names. Basically, for a price, she would undo the injury to the Complainant for which she was responsible for having created in the first place.

(*Id*. (emphasis added))

Finally, on July 5, 2013, the State of Montana Board of Realty Regulation took action against Cox based on nearly identical conduct. *In re: the Proposed Disciplinary Treatment of the License of Crystal L. Cox*, Case No. 1105-2013 (Mont. Bd. of Realty Regulation July 5, 2013) (a courtesy copy of this document is attached as Exhibit B). The Board of Realty Regulation found Cox violated the confidences of Martin Cain, a potential client, seeking to extort him (*id*. ¶¶ 7-10).

As in this case and *Amicus*' cases, Cox purchased <martincain.com> and filled it with false and harmful statements, including the accusation that Mr. Cain

had hired a hit man to kill her (*id*. ¶ 10).[5] After making this claim, Cox contacted Mr. Cain, offering to sell him the <martincain.com> domain name and underlying website for $550,000 (*id*.). Cox's conduct toward Mr. Cain rose to the level of extortion, let alone "seeking payoffs in exchange for retraction," and provides still more evidence that Cox has a "history" of this unlawful behavior (Opinion at 4).

B. The Court's Description of Cox's Conduct Should Stand, But Cox Should Get What She Asked For – More Support For The Proposition That She Engages in Extortion.

Still, Cox does have a bit of a point: Since the Ninth Circuit has properly described Cox's behavior, it should provide greater support for its view than only one article in The New York Times. The Court's description of Cox's extortion is supported by judicially noticeable records, and those could (and should) have been noted in the January 17, 2014 Opinion. For the Court to take notice of Cox's conduct based on these records is entirely consistent with Cox's own petition for rehearing. Cox herself argued that a "judicial assertion of misconduct […] could be based on the record in a case, or on authoritative findings by another court." (Petition at 1) Very well. Let the Court give Cox what she wanted.

Federal Rule of Evidence 201 allows the Court to take notice of all the materials cited in this brief. Rule 201(b) and (c) allow the Court to take notice of

[5] This is a common theme in Cox's allegations against those who decline to pay her *danegeld*.

the orders of another court.[6] *See In re Sas*, 488 B.R. 178, 179 n. 3 (D. Nev. Bankr. 2013) (taking judicial notice of proceedings in parallel litigation). Additionally, the Court may also judicially notice the contents of WIPO's decision (Exhibit A) and the Montana Board of Realty Regulation's proceedings against Cox (Exhibit B). *Biggs v. Terhune*, 343 F.3d 910, 916 n. 3 (9th Cir. 2003) (taking judicial notice of facts from administrative proceeding, as "[m]aterials from a proceeding in another tribunal are appropriate for judicial notice"); *see Compana LLC v. Aetna, Inc.*, Case No. C05-0277RSL, *2006 U.S. Dist. LEXIS 29028* at *11-12 (W.D. Wash. May 12, 2006) (specifying that FRE 201 allows judicial notice of WIPO arbitration proceedings). If Cox's petition is granted, the court should *expand* its discussion of Cox's extortionate conduct, and not redact it.

IV. Conclusion

For the reasons set forth in this brief, *Amicus* urges that Cox's petition for rehearing either be denied, or if the Court entertains the petition, it should update its Opinion to strengthen its original point by referencing more sources demonstrating Cox's misconduct.

Dated: February 3, 2014 Respectfully submitted:

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[6] Rule 201(b)(1) is particularly appropriate in this Court taking judicial notice of the proceedings within one of the District Courts within its jurisdiction.

/s/ Marc J. Randazza
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