

In the  
UNITED STATES DISTRICT COURT  
for the  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

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BRAND ENGAGEMENT NETWORK, INC,

Plaintiff,

v.

RALPH WRIGHT BREWER III, *et. al.*,

Defendants.

Civil Action No. 3:25-CV-00114-S

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**DEFENDANT FITZPATRICK’S RESPONSE AND OBJECTIONS TO MAGISTRATE  
JUDGE’S FINDINGS, CONCLUSIONS, AND RECOMMENDATION (DKT. NO. 52)**

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TO THE HONORABLE JUDGE KAREN GREN SCHOLER:

COMES NOW, Defendant Maurice Fitzpatrick (“Fitzpatrick”), pro se, and respectfully submits this Response and these Objections to the Honorable Magistrate Judge David L. Horan’s Findings, Conclusions, and Recommendation (Dkt. No. 52), which recommends denial of Fitzpatrick’s Motion to Intervene and relief sought therein (Dkt. No. 21); granting AFG’s Motions to Remand (Dkt. Nos. 40 & #41); and the striking and unfiled all remaining filings by Fitzpatrick in this lawsuit. Fitzpatrick’s position is that the Magistrate’s recommendations are clearly erroneous, unconstitutional, overly aggressive, extreme, punitive and prejudicial to Fitzpatrick, and should be rejected in full by the District Judge for the reasons stated below.

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<b>Exhibit</b>	<b>Description</b>
A	BNAI Stock Activity Data 03122024-03252024
B	Re-Submission of true, correct, and non-fragmented digital copy of Notice of Removal originally filed on February 11, 2025, with Motion To Intervene, concerning the Tarrant County (Cause No. 017-352358-24) action.
C	Re-Submission of true, correct, and non-fragmented digital copy of Notice of Removal originally filed on February 11, 2025, with Motion To Intervene, concerning the Denton County (Cause No. 24-11876-442) action.
D	October 29, 2024, receipt for records obtained from Tarrant County District Court (Cause No. 017-352358-24), showing date of discovery and acquisition by Fitzpatrick



## I. INTRODUCTION

1. The Magistrate's findings, conclusions, and recommendation (Dkt. No. 52) to the District Judge that every single request for relief across all of Fitzpatrick's filings, including motions, responses, replies, and their respective exhibits, should be denied, and that Fitzpatrick's participation in this case should be struck entirely, constitutes an extreme judicial overreach that should **not** be countenanced in any court of law.

2. Fitzpatrick is a whistleblower whose personal, professional, and financial life has been interrupted and devastated over the past year—not due to any misconduct of his own, but because Fitzpatrick innocently responded to a public job posting on Indeed in early March 2024, posted by CareGard Warranty Services, Inc., one of several companies run by Ralph Wright Brewer III. Unbeknownst to Fitzpatrick, the position was with Defendants AFG and their affiliated entities (including BEN) by virtue of the alleged agreements, business dealings, and claims at play and already at odds in this lawsuit, and whose undisclosed agenda affecting Fitzpatrick involved unethical, deceptive, fraudulent, and potentially criminal activity on the part of both BEN, AFG, and their respective entities, associates and affiliates. Fitzpatrick's employment was induced under false pretenses and in furtherance of a conspiracy, and for a time, Fitzpatrick was kept intentionally unaware by co-conspirators (executives and others) within AFG of the broader fraudulent scheme that Fitzpatrick and other software and data engineers had been unknowingly hired for and drawn into.

3. Once Fitzpatrick discovered serious inconsistencies in the nature of the work which he was hired, Fitzpatrick became the target of severe and ongoing retaliation from Defendants Brewer, AFG, and their executives and affiliates ("AFG"), and Plaintiff BEN, its executives and affiliates ("BEN"). As a direct and/or proximate cause of Plaintiff BEN's and Defendant AFG's

conspiracy, fraudulent business combination, securities fraud, pump-and-dump scheme, and corrupt business practices, Fitzpatrick has suffered damages to his person, business, and property by individuals of BEN and AFG, including without limitation, loss of his time, reputational damage, loss of income, benefits, opportunities, financial instability, housing destabilization, and the destruction of his earnings and career trajectory, if not for BEN and AFG. If not for the fraudulent and corrupt conduct of both BEN, AFG, and their respective executives, officers, representatives, associates, agents, Fitzpatrick would've surely obtained employment elsewhere and wouldn't have suffered any damages at all. Instead, Fitzpatrick was lured into employment under false pretenses and over time came to discover those false pretenses and speak out. Worse still, the very same parties and attorneys now seeking to litigate without Fitzpatrick's participation are the very same actors who have sought vehemently to silence him—through ongoing retaliation, continuing frauds and misrepresentations, and now, exclusion from the judicial process through procedural tactics.

4. Just when Fitzpatrick's circumstances could not be more dire, the Magistrate's Recommendation (Dkt. No. 52) seeks to unfairly compound the harm to Fitzpatrick by denying him even the most basic access to judicial review—the Recommendation appears to suggest, implicitly if not explicitly, that Fitzpatrick's attempts to assert his rights are unwelcome in this forum. Such a posture raises serious constitutional concerns. This is an appalling recommendation to say the least. Such a recommendation raises **grave** constitutional concerns under the First Amendment, and the Due Process and Equal Protection Clauses under the Fourteenth Amendment of the United States Constitution. Rather than applying the Federal Rules of Civil Procedure ("FRCP"), the Federal Rules of Evidence ("FRE"), the N.D. Tex. Local Rules ("LR"), and the Federal Rules of Appellate Procedure ("FRAP") with impartiality and fidelity to

substance over form, the Recommendation appears designed to expedite the procedural dismissal of a whistleblower and victim's claims—without any evidentiary hearing, without factual findings, and without regard for Fitzpatrick's rights and interests or the public interest in securities frauds and a +\$400M pump-and-dump scheme Fitzpatrick's disclosures implicate having direct relation to the alleged agreements and business dealings involving opposing parties.

5. Fitzpatrick submits these objections not merely as a procedural challenge, but as a last effort to be heard. He is a whistleblower attempting to expose what he reasonably believes to be a massive SPAC fraud involving misrepresentations, insider dumping, and the coordinated exclusion of those who speak out.

6. Yet despite his direct involvement, on account of being fraudulently induced into employment at AFG, Fitzpatrick's knowledge of the transaction's and alleged agreement's internal irregularities, and the harm he has suffered in his person, business, and property, Fitzpatrick is confronted with the Magistrate's recommendation that seeks to bar him from fully participating. Fitzpatrick has been labeled a "non-party" while listed as a defendant on the docket parties listing, initially denied electronic filing access, forced to absorb \$800 in printing costs, and now, where the Magistrate's recommendation is adopted in whole or in part by the District Judge in her de novo review, would effectively whitewash Fitzpatrick from the record without being heard, contrary to law.

7. Accordingly, Fitzpatrick respectfully requests that the District Judge hold a de novo hearing and for oral argument under FRCP Rule 72(b)(3), and an evidentiary hearing sufficient to permit **full de novo review** and ensure procedural fairness in light of the constitutional, statutory, jurisdictional, procedural, and other issues raised herein.

## **II. CONSTITUTIONAL VIOLATIONS**

### **A. First Amendment**

8. Striking Fitzpatrick's filings punishes him for petitioning the government and engaging in protected speech.

### **B. Fourteenth Amendment**

9. The Recommendation imposes disparate treatment on a whistleblower and pro se litigant without cause or hearing—violating equal protection and due process.

### **C. Right of Access to Courts**

10. Procedural dismissal without a forum violates the tenants of a constitutional right of access to the courts like in *Bounds v. Smith*, 430 U.S. 817 (1977), and is especially egregious in the context of Fitzpatrick's civil rights, securities fraud, whistleblower, retaliation claims.

## **III. JUDICIAL EFFICIENCY, RELATED CASES, AND CONSOLIDATION**

11. Fitzpatrick's pending motions (Dkt. Nos. 21, 22, 28, 30, 32, 35, 36, 37/46, 39, 43, 47, 48, 49, 50), the remainder of the record, and the existence of the recently filed Due Figlie case (3:25-cv-00629-N) justify consolidation under FRCP Rule 42(a).

12. Consolidation would promote consistency, reduce duplicative litigation, and preserve judicial resources.

## **IV. CLARIFICATION OF FITZPATRICK'S PROCEDURAL STATUS**

13. Although Fitzpatrick is referred to as a "non-party" in the Magistrate's Recommendation (Dkt. No. 52), the Court's docket itself lists Fitzpatrick as a "Defendant", and the parties have repeatedly treated him as a functional party in practice. Fitzpatrick has filed a Motion to

Intervene (Dkt. No. 21), two Notices of Removal, and a Motion to Proceed In Forma Pauperis (Dkt. No. 22)—none of which have been ruled upon by the Court.

14. Despite the absence of an official ruling on intervention or IFP status, Fitzpatrick has received Clerk's Notice of delivery of ELECTRONIC ORDERS (Dkt. Nos. 23 and 24), and on that same day became subject to party-level opposition by both BEN and AFG. These facts underscore the procedural confusion that has arisen: Fitzpatrick has been treated as a party when convenient, yet denied the rights and procedural recognition of party status when seeking to assert his interests.

15. This inconsistency should be resolved in Fitzpatrick's favor, either by granting intervention outright or, at minimum, recognizing his filings and objections as properly before the Court for purposes of due process and judicial efficiency.

## V. OBJECTIONS

### **OBJECTION NO. 1 - OBJECTION TO RECOMMENDATION TO DENY FITZPATRICK'S WAIVER OF FEES ("IFP") FOR REMOVAL AND CONSOLIDATION OF RELATED STATE CASES UNDER CIVIL RIGHTS REMOVAL (DKT. NO. 22)**

16. Fitzpatrick objects to the Magistrate Judge's implicit or constructive denial of his Motion for Leave to Proceed In Forma Pauperis ("IFP") (Dkt. No. 22) by recommending the denial of intervention and the striking of all associated filings without addressing the merits of the IFP request or adjudicating his right to remove two retaliatory state court actions under 28 U.S.C. § 1331, 28 U.S.C. § 1441, and 28 U.S.C. § 1443.

17. At the time Fitzpatrick filed his Motion to Intervene (Dkt. No. 21), he simultaneously submitted an IFP (Dkt. No. 22) due to his indigency and ongoing economic harm, which was caused directly by the unlawful and retaliatory conduct of the parties in this case against a whistleblower. Fitzpatrick was terminated from employment without cause, denied

unemployment benefits due to his employer's (AFG's) failure to report wages to the Texas Workforce Commission, and has suffered housing and income destabilization as a direct result of whistleblower retaliation and reputational harm inflicted by the conduct of both AFG and BEN through the same business dealings, so-called agreements, and securities fraud claims at odds in this case.

**18.** As explained in Dkt. No. 21 and Dkt. No. 22, Fitzpatrick prepared and attached Exhibits A and B to his Motion to Intervene (Dkt. No. 21), which contain complete and ready-to-file Notices of Removal of two related state court proceedings—from Tarrant County and Denton County, respectively. Each exhibit includes all necessary state court pleadings, orders, and process documents required by 28 U.S.C. § 1446(a). However, because Fitzpatrick was not then able to file electronically and could not afford the additional printing and federal filing fees to initiate these removals separately, he requested that the Court grant his IFP motion and, upon approval, accept the Notices of Removal for filing and consolidate those matters into this federal case based on relatedness to the parties, claims, etc.

**19.** Although Fitzpatrick has not received an order of the Court granting party status, he was substantively treated as a party by the Court and the CM/ECF docket, creating procedural expectations and due process obligations that the Magistrate's recommendation ignored.

**20.** The Magistrate Judge's Recommendation does not mention or evaluate the IFP Motion at all. Instead, it recommends striking Fitzpatrick's filings—including Dkt. Nos. 21 and 22—thereby eliminating any opportunity to have the Notices of Removal docketed, assigned case numbers, consolidated, or considered on the merits.

**21.** This is clear procedural error and constitutional infirmity. Courts are required to:

- Evaluate IFP requests on their merits prior to dismissing filings submitted in good faith by pro se litigants seeking relief;

- Ensure that financially constrained litigants are not prejudiced solely due to poverty, particularly where whistleblower retaliation and constitutional violations are asserted.

**22.** Moreover, Fitzpatrick's removal efforts are grounded in well-pleaded jurisdictional claims, including:

- Federal question jurisdiction (28 U.S.C. § 1331),
- Civil rights removal (28 U.S.C. § 1443),
- Federal whistleblower protection statutes, and
- Violations of his rights contrary to the First and Fourteenth Amendments.

**23.** The denial or neglect of his IFP application, coupled with the failure to allow docketing of the proposed removals, effectively denies Fitzpatrick access to federal jurisdiction, and insulates the retaliatory state court proceedings from proper review. This outcome contradicts longstanding Supreme Court precedent protecting access to courts for indigent and pro se litigants.

**24.** Accordingly, Fitzpatrick respectfully objects to the failure to adjudicate Dkt. No. 22 and to the denial of his right to remove and consolidate related state court cases. The District Court should grant the IFP motion, accept Exhibits A and B as timely Notices of Removal, and consolidate those actions with the present case pursuant to FRCP Rule 42(a).

**25.** Fitzpatrick further notes that he took every available procedural step to comply with federal removal law and LR 81. He did not attempt to bypass filing requirements, but instead prepared the complete Notices of Removal, assembled all required state court pleadings and exhibits, and submitted them as ready-to-file Exhibits A and B (Dkt. No. 21) in anticipation of IFP approval. This process was not an attempt to "hold" removal filings improperly; rather, it was a good faith effort to comply with the statutory framework for civil rights removal (28

U.S.C. § 1443) while requesting a fee waiver in accordance with 28 U.S.C. § 1915 and 5<sup>th</sup> Cir. precedent.

26. As further demonstrated in Exhibits B and C (true and correct copies of Fitzpatrick's original, complete and unfragmented Notices of Removal filed February 11, 2025), Fitzpatrick properly invoked federal subject-matter jurisdiction based on federal questions, civil rights claims, and RICO-related allegations. The Magistrate's failure to address these notices, or the basis for removal, before recommending remand and striking, is both premature and a denial of due process.

27. See Magistrate's Recommendation (Dkt. No. 52 at p. 2, ¶3), where the Court acknowledges Fitzpatrick's IFP motion (Dkt. No. 22) but fails to resolve it. The Court's subsequent treatment of Fitzpatrick as a non-party, while simultaneously criticizing his filings, constitutes a procedural inconsistency and a denial of due process.

**OBJECTION NO. 2 - OBJECTION TO RECOMMENDATION TO DENY FITZPATRICK'S  
MOTION TO INTERVENE AS OF RIGHT OR PERMISSIVE INTERVENTION (DKT. NO.  
21)**

A. Intervention as of Right (FRCP Rule 24(a)(2))

28. Fitzpatrick satisfies all required elements under FRCP Rule 24(a)(2):

- A legally protectable interest tied to the same events and factual allegations at issue;
- His interests are not adequately represented by the existing parties, who are the very actors Fitzpatrick alleges harmed him;
- His motion was timely, filed early in the case;
- The case's disposition may impair or impede his rights to obtain redress.

B. Permissive Intervention (FRCP Rule 24(b)(1)(B))



29. Fitzpatrick's claims share common questions of law and fact with the current action, including retaliation, fraud, and securities-related wrongdoing. Permissive intervention should be granted to preserve judicial economy and due process.

C. Magistrate's Legal Error in Merits-Based Filtering

30. The Magistrate improperly required Fitzpatrick to prove the merits of his claims rather than evaluating whether he had a legitimate interest affected by the litigation.

D. Failure to Construe Pro Se Filings Liberally

31. Instead of applying *Haines v. Kerner*, 404 U.S. 519 (1972), such that Fitzpatrick's proof is considered on the record, the Magistrate recommends dismissal of Fitzpatrick's filings as "clutter"—contrary to federal precedent mandating liberal construction for pro se litigants.

**OBJECTION NO. 3 – OBJECTION TO MAGISTRATE'S MISAPPLICATION OF  
ROTSTAIN V. MENDEZ; INTERVENTION SHOULD BE GRANTED UNDER PROPER  
STANDARD**

32. Fitzpatrick objects to the Magistrate's reliance on *Rotstain v. Mendez*, 986 F.3d 931 (5th Cir. 2021), as support for denying intervention. In fact, *Rotstain* reinforces Fitzpatrick's right to intervene as a whistleblower and direct witness to the fraudulent scheme underlying the litigation.

33. The Magistrate selectively quoted *Rotstain* for the principle that a proposed intervenor must satisfy the four-part test under FRCP Rule 24(a)(2), including showing a legally protectable interest. However, the *Rotstain* court liberally construed the intervention standard, and its reasoning **supports** rather than defeats Fitzpatrick's motion.

34. In *Rotstain*, the Fifth Circuit reiterated that:

"Rule 24 promotes judicial economy by facilitating, where constitutionally permissible, the participation of interested parties in others' lawsuits. The fact remains that a federal

case is a limited affair, and not everyone with an opinion is invited to attend. But courts should still allow intervention ‘where no one would be hurt and the greater justice could be attained.’”

— 986 F.3d at 937 (cleaned up, quoting *Texas v. United States*, 805 F.3d 653, 656–57 (5th Cir. 2015))

35. Here, no party is “*hurt*” by Fitzpatrick’s intervention—rather, the parties only object to his presence because he has first-hand knowledge and threatens to expose deeper wrongdoing and complicity among the BEN and AFG litigants. This is not a procedural concern; it is a retaliatory exclusion effort dressed in FRCP Rule 24 clothing.

36. Moreover, in *Rotstain*, the court found that intervention could still be appropriate even if the proposed intervenor’s claims were not identical, so long as the intervenor demonstrated a:

- Concrete stake in the outcome, and
- Reason why existing parties would not adequately represent the intervenor’s interest.

37. Both are true here. Fitzpatrick:

- Was directly employed by Defendants AFG, CareGard Warranty Services, Inc., Pathwai, Inc., DaidaX, Inc., fraudulently induced into employment to unknowingly help execute activities at the heart of the alleged BEN-AFG partnership that was touted publicly and to investors by both sides as a cornerstone of the BEN SPAC merger;
- Was retaliated against after raising red flags;
- Possesses unique first-hand factual knowledge that affects liability, discovery, and damages.

38. Thus, under *Rotstain*, Fitzpatrick has a direct, substantial, legally protectable interest that warrants intervention. The Magistrate’s conclusion that Fitzpatrick’s interest is too “ideological” or “remote” is not only factually mistaken—it also conflicts with *Rotstain*’s emphasis on broad access where judicial economy, fairness, and justice are furthered. See Magistrate’s Recommendation (Dkt. No. 52 at p. 5, ¶1), where the Court characterizes Fitzpatrick’s interest as merely “*ideological, economic, or precedential.*” This statement ignores the factual basis for

Fitzpatrick's claims, including direct involvement in the underlying technology, employment retaliation, and financial harm—all of which are recognized as protectable interests under Rule 24(a) and under civil RICO (18 U.S.C. § 1964(c)).

39. Therefore, Fitzpatrick respectfully requests that the District Judge, in her de novo review, reject the Magistrate's narrow reading of *Rotstain v. Mendez*, apply the liberal intervention standard affirmed therein, and grant Fitzpatrick's motion to intervene and the relief requested therein under Rule 24(a)(2) or, alternatively, under Rule 24(b)(1)(B).

**OBJECTION NO. 4 – MAGISTRATE MISCONSTRUES MAUSOLF v. BABBITT; PUBLIC INTEREST AND EXPOSURE OF FRAUD JUSTIFY INTERVENTION**

40. Fitzpatrick objects to the Magistrate's reliance on *Mausolf v. Babbitt*, 85 F.3d 1295 (8th Cir. 1996), for the proposition that intervention is inappropriate where the proposed intervenor holds only a generalized ideological interest in the litigation. This citation is **misplaced**, and the Magistrate's application is both legally and factually erroneous.

41. In *Mausolf*, snowmobilers sought to intervene in a suit concerning National Park Service regulations, alleging ideological interests in public land use. The Eighth Circuit held that a “generalized interest in the subject matter of the suit, no matter how sincere or deeply held, is not sufficient to support intervention as of right.” *Id.* at 1301.

42. But Fitzpatrick is not merely an outsider with a policy preference or abstract ideological view.

43. Unlike the snowmobilers in *Mausolf*:

- Fitzpatrick was directly employed by one of the parties to unknowingly help execute the very technology platform and business operation at issue.
- He is a federal whistleblower with personal knowledge of material misrepresentations and alleged securities fraud involving both Plaintiff and Defendants.

- He has alleged concrete injuries including retaliation, loss of income, financial and housing destabilization, reputational harm, and induced yet direct entanglement in the schemes now forming the core allegations in the case.
- He submitted evidence (e.g., transcripts of executive admissions, SEC-related materials) that relates directly to the opposing parties' claims and defenses.

44. Therefore, Fitzpatrick's interest is not "*generalized*," "*ideological*," or "*remote*." It is **personal, direct**, and rooted in the exact factual matrix of this lawsuit—precisely the kind of interest the Mausolf court distinguished as potentially valid. See Magistrate's Recommendation (Dkt. No. 52 at p. 5, ¶1), where the Court characterizes Fitzpatrick's interest as merely "ideological, economic, or precedential." This statement ignores the factual basis for Fitzpatrick's claims, including direct involvement in the underlying technology, employment retaliation, and financial harm—all of which are recognized as protectable interests under Rule 24(a) and under civil RICO (18 U.S.C. § 1964(c)).

45. Moreover, Mausolf supports the idea that intervention should be denied only where the applicant's interest is entirely divorced from the rights at stake. Fitzpatrick's interests are intertwined with those of both parties—particularly where he is alleged to have been a tool or victim of the very misconduct at issue.

46. Additionally, Mausolf emphasized the importance of maintaining a limited scope for federal lawsuits, but that concern is not served by silencing a whistleblower who has uniquely relevant factual information and a stake in the reputational and legal outcomes.

47. Therefore, Fitzpatrick respectfully urges the District Court Judge, in her de novo review, to reject the Magistrate's overbroad application of *Mausolf v. Babbitt* and find that:

- Fitzpatrick's intervention is distinguishable from Mausolf on both factual and legal grounds;
- His interest is not ideological, but personal, legal, and evidentiary; and

- His participation would further FRCP Rule 1's mandate for a just and complete resolution of all issues related to the underlying fraud, retaliation, and securities violations.

**OBJECTION NO. 5 - OBJECTION TO RECOMMENDATION TO GRANT OPPOSING PARTIES' MOTIONS TO REMAND (DKT. NOS. 40 & 41)**

**48.** The Recommendation fails to analyze or acknowledge Fitzpatrick's Notices of Removal and federal jurisdictional claims under 28 U.S.C. § 1331, 28 U.S.C. § 1441, and 28 U.S.C. § 1443.

**49.** It disregards Fitzpatrick's detailed Response to the Remand Motions (Dkt. No. 43), which lays out the case for federal question and civil rights jurisdiction.

**50.** The Court must evaluate jurisdiction before remanding, especially where constitutional violations and federal statutory claims are pending.

**51.** Remand is premature while intervention, IFP and removal, and consolidation motions remain unresolved.

**52.** See Dkt. No. 52 at **pp. 7–8**, where the Magistrate concludes that removal was procedurally improper based on district/division and filing method, citing Murphy, Hinkey, and SWS Erectors. These conclusions ignore the substance of Fitzpatrick's federal jurisdictional grounds (28 U.S.C. §§ 1331, 1441, 1443, and 1367) presented in Exhibits B and C.

**53.** The attached Exhibits B (Tarrant County) and C (Denton County) show that Fitzpatrick asserted valid grounds for removal, including claims under 28 U.S.C. §§ 1331, 1441, 1443, and 1367. The Court's failure to address the substance of these filings before recommending remand constitutes reversible error. These filings also lay the factual foundation for Fitzpatrick's civil RICO claims and are incorporated herein by reference.

**OBJECTION NO. 6 - OBJECTION TO RECOMMENDATION OBJECTION TO STRIKE  
AND UNFILE ALL OF FITZPATRICK'S FILINGS FROM THE RECORD (DKT. NOS. 21, 22,  
28, 30, 32, 35, 36, 37/46, 39, 43, 46, 47, 48, 49, 50, and 51)**

**54.** There is no legal basis for the sweeping order to strike every filing of Fitzpatrick from the docket.

**55.** Fitzpatrick's filings were made in good faith, are supported by evidence, and are grounded in well-pleaded claims and preliminary claims as he continues to wait for leave to file his formal Complaint.

**56.** Opposing parties waived objections by responding to his filings on the merits.

**57.** Pro se filings, particularly when tied to jurisdictional and constitutional issues, must not be struck without hearing or findings.

**OBJECTION NO. 7 - BEN AND AFG WAIVED PROCEDURAL AND JURISDICTIONAL  
CHALLENGES TO FITPZATRICK'S INTERVENTION AND REMOVALS BY THEIR  
LITIGATION CONDUCT IN DKT. NO. 25 AND DKT. NO. 26**

**58.** Fitzpatrick objects to the Magistrate's failure to account for the litigation conduct of both BEN and AFG as reflected in Dkt. No. 25 and Dkt. No. 26, which shows a **clear waiver of procedural and jurisdictional objections** to Fitzpatrick's intervention and filings.

**A. BEN's Conduct in Dkt. No. 25**

**59.** In Dkt. No. 25, BEN filed a substantive response to Fitzpatrick's Motion to Intervene. BEN made no effort to strike the motion and raised no objection to the removal of the Tarrant or Denton County state court actions. Instead, BEN engaged directly with the merits of Fitzpatrick's motion, arguing he had no protectable interest under FRCP Rule 24(a), and contending his claims were unrelated or insufficiently direct.

**60.** Nowhere in Dkt. No. 25 did BEN challenge:

- a. Fitzpatrick's procedural standing to file the motion;

- b. The Court's jurisdiction over Fitzpatrick's filings;
- c. The removals or any defect in removal procedure.

61. By failing to raise these procedural and jurisdictional objections at the earliest opportunity and engaging with Fitzpatrick's arguments substantively, BEN waived any right to later challenge Fitzpatrick's participation on procedural grounds including silence to the Magistrate's recommendation.

62. This conduct is inconsistent with BEN's later attempt, indirectly—via the Magistrate's Recommendation—to portray Fitzpatrick as a nonparty whose filings should be struck from the record in an attempt to whitewash him from one lawsuit and force Fitzpatrick to file a separate lawsuit involving the same parties that are identical or in privity. This is contrary to Fitzpatrick's rights, his access to the Court, and opportunity to be heard. The Magistrate failed to apply the transactional test contemplated in *Petro-Hunt, L.L.C. v. United States*, 365 F.3d 385, 395 (5th Cir. 2004) to determine how Fitzpatrick's rights may be impacted and prejudiced by the Magistrate's recommendation and whether maintaining two separate suits involving the same claims or causes of action is judicially efficient. The court has adopted the transactional test of the Restatement (Second) of Judgments, § 24 to prevent "claim-splitting". The Magistrate does not apply this test and instead adopts the position of opposing parties that Fitzpatrick must file a separate lawsuit. This transactional test in *Petro-Hunt, L.L.C. v. United States* would evaluate the potential preclusive effect on Fitzpatrick of potential prior judgment that would apparently extend to all rights that Fitzpatrick may have had "*with respect to all or any part of the transaction, or series of connected transactions, out of which the [original] action arose.*"

**B. AFG's Conduct in Dkt. No. 26**

**63.** AFG's response in Dkt. No. 26 similarly opposes Fitzpatrick's Motion to Intervene on substantive grounds, for their own convenience, and continuation of attempts at silencing a whistleblower whom AFG and their counsel took aim at, arguing that Fitzpatrick's claims are best pursued elsewhere and that he lacks a direct interest. AFG also references and objects to Fitzpatrick's removal of the two state court cases, both Fitzpatrick contends were initiated to cover up a fraud and cause harm to Fitzpatrick, a whistleblower—but notably does not file a motion to remand at that time.

**64.** AFG instead chose to:

- a. Litigate Fitzpatrick's motion on the merits;
- b. Fail to immediately contest the procedural legitimacy of the removal;
- c. Refrain from filing any motion to strike the motion to intervene or other filings.

**65.** It was not until Dkt. No. 40 and Dkt. No. 41—weeks later—that AFG filed Motions to Remand. By that point, AFG had already:

- a. Invoked the Court's authority to deny Fitzpatrick relief;
- b. Submitted to the Court's jurisdiction to respond to his filings;
- c. Engaged and treated Fitzpatrick as a functional party to the action.

**66.** This constitutes waiver or forfeiture of any procedural objections under 28 U.S.C. § 1447(c), which requires parties to raise procedural defects in removal within 30 days. While AFG may have filed its remand motions within the deadline, the fact that it chose to litigate first and motion for remand later contradicts the premise that it believed removal was fundamentally invalid.



67. Moreover, AFG's position shifted from engaging Fitzpatrick on the merits to later claiming his filings were improper. Such inconsistent conduct implicates judicial estoppel, a doctrine recognized in the Fifth Circuit to prevent parties from playing fast and loose with procedural rules. See *United States v. Ligas*, 549 F.3d 497, 501–02 (5th Cir. 2008).

**C. No Party Moved to Strike Fitzpatrick's Motion to Intervene or Two Notices of Removal Until After Engaging It**

68. Neither BEN nor AFG sought to strike Fitzpatrick's filings at the outset. Instead, they responded, **contested the substance, and triggered follow-up motion practice** that Fitzpatrick was then required to reply to or waive his own right to do so. BEN and AFG's subsequent efforts to retroactively exclude Fitzpatrick's filings from the docket are not only procedurally improper—they are **legally and equitably barred** by their earlier litigation conduct.

69. By failing to raise procedural objections promptly; submitting to the Court's authority; seeking affirmative relief; and **engaging Fitzpatrick as a litigant before seeking remand or exclusion**; Fitzpatrick believes the record reflects that BEN and AFG have therefore waived any procedural or participatory objections, and the Court should evaluate Fitzpatrick's filings and Motion to Intervene on the merits.

**OBJECTION NO. 8 - FITZPATRICK'S DKT. NO. 28 REPLY CONFIRMS EARLY  
ASSERTION OF INTEREST AND DEFENSE OF PROCEDURAL LEGITIMACY**

70. Fitzpatrick objects to the Magistrate's failure to consider his assertion of rights and interests across all of his motions, filings, and exhibits. Fitzpatrick additionally points the Court to Dkt. No. 28 — Fitzpatrick's timely and detailed reply to BEN and AFG's responses (Dkt. Nos. 25 and #26) — in which he vigorously defended his legal right to intervene, rebutted the parties' substantive objections, and emphasized the legal standards governing intervention under both

FRCP Rule 24(a) and FRCP Rule 24(b). That reply should be considered a preserved objection to any future characterization of Fitzpatrick's filings as procedurally defective.

71. Notably:

- a. Fitzpatrick's reply explained that he was directly defrauded and retaliated against by both BEN and AFG, and that the underlying conduct in this case is part and parcel of that same scheme.
- b. Fitzpatrick expressly invoked constitutional rights, federal whistleblower laws, federal securities laws, and the RICO Act, and demonstrated that the outcome of this lawsuit would directly impact his ability to obtain redress.
- c. Fitzpatrick argued in Dkt. No. 28 that the opposing parties were attempting to exclude him to "*control the narrative*" and preclude judicial review of their broader misconduct.
- d. Most significantly, the reply confirmed that BEN and AFG had **not** moved to strike Fitzpatrick's filings, but instead responded on the merits—further validating Fitzpatrick's position that **waiver and estoppel now apply**.

72. By filing Dkt. No. 28 promptly and **in direct response** to the parties' positions, Fitzpatrick did **not** "*besiege*" the Court as characterized by the Magistrate. Rather, he acted within the rules, in timely defense of his rights, and in pursuit of intervention in a case where his legal rights and substantial interests are **unavoidably** entangled.

73. The Court should treat Dkt. No. 28 not only as substantive rebuttal, but also as procedural preservation of Fitzpatrick's legal position and an affirmative invocation of the Court's authority to adjudicate his interests.

**OBJECTION NO. 9 - MAGISTRATE ERRED IN DETERMINING THAT FITZPATRICK  
LACKS A DIRECT LEGALLY PROTECTABLE INTEREST**

74. Fitzpatrick objects to the Magistrate's conclusion that his interest in this case is too remote, economic, or ideological to support intervention under FRCP Rule 24(a). Fitzpatrick's employment by AFG—and the hiring of other technical personnel—was not incidental. It was strategically timed and executed in coordination with the BEN-AFG business combination and SPAC merger with DHC Acquisition Corp.

75. According to transcribed audio of AGF executive Dave Dugan (submitted with Fitzpatrick's motion), the hiring strategy was an essential element of the public-facing fraud perpetrated by the merging entities. As Fitzpatrick came to learn later, he was hired as part of a scheme to create a false appearance of operational readiness and to bolster SEC and investor-facing representations of product viability, infrastructure, and staffing.

76. Fitzpatrick's employment, whistleblower activity, and termination were part and parcel of the fraudulent business combination scheme and securities fraud now at issue in BEN's own claims. Fitzpatrick's experience and testimony go directly to the material facts of misrepresentation, concealment, breach of contract, and unjust enrichment alleged by BEN and contested by AFG.

77. As such, the Magistrate's ruling that Fitzpatrick lacks a legally protectable interest is erroneous, and intervention should be granted under FRCP Rule 24(a).

**OBJECTION NO. 10 - COURT ERRED BY FAILING TO CONSIDER INTERVENTION  
FOR THE PURPOSE OF PROTECTING INTERESTS IN A SETTLEMENT OR ADVERSE  
FINDINGS**

78. Fitzpatrick further objects to the denial of permissive intervention under FRCP Rule 24(b). Courts routinely grant permissive intervention where the intervenor seeks to protect their

rights from being adversely impacted by a judgment or settlement, even if their legal claims are ultimately brought elsewhere.

79. Here, Fitzpatrick has identified a strong likelihood that BEN and AFG may settle or stipulate to findings that will directly impact Fitzpatrick's ability to litigate related claims in another forum—especially fraud, securities violations, and whistleblower retaliation.

80. Without intervention, Fitzpatrick may be functionally precluded from litigating those issues by res judicata or collateral estoppel. His intervention is necessary to preserve due process rights and judicial integrity.

**OBJECTION NO. 11 - COURT'S CHARACTERIZATION OF FITZPATRICK'S FILINGS AS "BESIEGING" AND "CLUTTER" IS UNFAIR, INFLAMMATORY, AND LEGALLY INACCURATE**

81. The Magistrate's language describing Fitzpatrick's filings as a "barrage," "clutter," or an effort to "besiege" the court is inappropriate and prejudicial. These filings were submitted in accordance with applicable rules and in pursuit of redress for concrete injuries.

82. Fitzpatrick filed his pleadings in good faith, with factual support and legal grounding, and within the time periods set by the FRCP. The Court's framing of these filings as abusive reflects an improper personal characterization and distracts from the substantive legal issues at stake.

83. Pro se litigants, particularly whistleblowers, are entitled to procedural fairness and access to court—not punitive language for exercising those rights, and certainly not punitive, prejudicial or defamatory language that Fitzpatrick's exercising of those rights is "*unauthorized*" (Dkt. No. 52 at).

**OBJECTION NO. 12 - MAGISTRATE FAILED TO ADDRESS FITZPATRICK'S WHISTLEBLOWER STATUS AND FEDERAL RIGHTS UNDER DODD-FRANK AND SOX**

84. Fitzpatrick is an SEC whistleblower with a pending complaint involving the very conduct at issue in this lawsuit. The Magistrate Judge failed to consider or even acknowledge that fact.

85. Under Dodd-Frank and the Sarbanes-Oxley Act, whistleblowers are protected not only from retaliation but also from procedural maneuvering designed to exclude their claims, evidence and testimony in related proceedings.

86. The failure to evaluate this status amounts to a denial of Fitzpatrick's statutory protections and reflects legal error—arguably, reversible error.

**OBJECTION NO. 13 - THE BEN-AFG LAWSUIT MAY BE STRUCTURED TO AVOID  
DISCOVERY AND COVER FRAUD INVOLVING THE SAME INDIVIDUALS WHO  
TARGETED FITZPATRICK**

87. Fitzpatrick contends that the current litigation posture—wherein AFG seeks remand and BEN does not oppose it—is part of a strategy to avoid discovery involving BEN's true founders and controllers, including Genuine Lifetime, LLC, Michael Todd Lucas, Tyler J. Luck, James Dale Henderson, Jr., and others.

88. These individuals and entities are cofounders and controllers of BEN, and were involved in attempts to offer Fitzpatrick third-party legal representation in exchange for alignment with BEN's position in this very litigation.

89. That conduct raises significant conflict of interest and ethical concerns, and suggests that this lawsuit may be structured to preserve insider control, obscure fraud, and manipulate the judicial process.

90. As further evidence of this collusive structure, both BEN and AFG, and their respective executives and affiliates, worked in concert during RICO Enterprise I to facilitate a fraudulent business combination, IPO, and listing of BEN securities. Fitzpatrick was recruited under false pretenses by AFG, which at the time was cooperating with BEN to present a public image of a

robust, scalable AI solution in the automotive vertical. However, following the SPAC transaction, AFG and its agents—operating within RICO Enterprise II—systematically diverted funds and engineering resources to secretly develop competing AI products, directly undermining BEN.

91. Fitzpatrick became a threat to this operation once he began raising internal red flags. His termination, the retaliatory state lawsuits, and now his procedural exclusion from federal court all serve a common purpose: to prevent judicial scrutiny of this internal double-cross and to avoid exposing the collective enterprise's broader liability. These coordinated actions by both sides establish joint culpability and justify intervention under Rule 24, RICO, and whistleblower protection statutes.

**OBJECTION NO. 14 - MAGISTRATE'S FAILURE TO HOLD AN EVIDENTIARY  
HEARING VIOLATES DUE PROCESS**

92. The recommendation seeks to strike all of Fitzpatrick's filings and remand the underlying state cases without even affording him an evidentiary hearing.

93. Given the gravity of the issues—securities fraud, whistleblower retaliation, racketeering, and potential collusion—procedural fairness demands that Fitzpatrick be heard in open court before being permanently excluded from proceedings that affect his legal interests.

94. This failure constitutes a violation of Fitzpatrick's rights under the Fifth and Fourteenth Amendments, including due process, equal protection, and access to courts.

**OBJECTION NO. 15 - MAGISTRATE FAILED TO CONSIDER PENDING MOTION FOR  
CONSOLIDATION AND OVERLAPPING CLAIMS FROM RELATED ACTION  
INVOLVING SAME PARTIES, TRANSACTIONS, AND SECURITIES FRAUD  
ALLEGATIONS**

95. Fitzpatrick objects to the Magistrate's failure to address or consider his March 19, 2025, Supplement to Motion to Expedite (Dkt. No. 51), which presented legally and factually compelling grounds for consolidation under FRCP Rule 42(a).

96. Specifically, Fitzpatrick identified that:

- The recently filed Due Figlie, LLC & Shawn Lucas v. Brewer & AFG lawsuit (Case No. 3:25-cv-00629-N) arises from the exact same fraudulent SPAC transaction, merger, insider stock sales, and securities fraud detailed in the BEN v. AFG litigation;
- Fitzpatrick's factual and legal allegations directly overlap with claims already before the Court;
- Fitzpatrick is referenced or implicated in the underlying transactions and is a potential witness in both lawsuits;
- The same individuals and corporate entities—AFG, Brewer, BEN, Due Figlie, and others—are at the heart of both cases.

97. The Magistrate's recommendation to deny intervention and grant remand while ignoring these developments is clearly erroneous and risks severe prejudice. Because Dkt. No. 51 was filed before the Recommendation, the Magistrate was legally obligated to evaluate its impact on intervention, jurisdiction, and consolidation. The failure to do so is a material procedural defect.

**OBJECTION NO. 16 - POST-RECOMMENDATION LITIGATION ACTIVITY  
UNDERMINES MAGISTRATE'S ASSUMPTIONS AND CONFIRMS RELEVANCE OF  
FITZPATRICK'S EVIDENCE**

98. Fitzpatrick further objects to the Recommendation's implication that this case is procedurally final or ready for remand, thereby justifying the striking of nonparty filings. On March 21, 2025—one day after the Magistrate filed Dkt. No. 52—Defendants filed a 17-page Motion to Dismiss (Dkt. No. 53) under FRCP Rule 12(b)(6) and FRCP Rule 9(b), asserting that Plaintiff BEN's claims lack specificity, fail to plead fraud, and misstate corporate structure.

99. This filing is significant because:

- Defendants are continuing to litigate merits-based defenses before the District Judge, rather than deferring to the pending remand;
- The motion specifically references and challenges key evidence submitted by Fitzpatrick, including the transcribed audio and SPAC-related disclosures;
- The motion reflects ongoing federal judicial involvement and unresolved legal questions directly tied to facts Fitzpatrick raised—confirming the materiality and admissibility of his contributions;
- This contradicts the Recommendation's framing of Fitzpatrick's filings as irrelevant or disruptive and demonstrates their practical legal impact.

**100.** By failing to acknowledge this active litigation posture—particularly the post-recommendation escalation by Defendant AFG—the Recommendation overlooks the broader judicial context and prematurely seeks to silence and remove a whistleblower who remains central to the factual matrix of the case.

**OBJECTION NO. 17 - MAGISTRATE FAILED TO CONSIDER FITZPATRICK'S  
EMERGENCY MOTION (DKT. NO. 50) RAISING DISPOSITIVE ISSUES OF ATTORNEY  
INELIGIBILITY, JURISDICTION, AND PLEADING VALIDITY**

**101.** Fitzpatrick objects to the Magistrate's recommendation on the grounds that it fails to acknowledge, analyze, or rule on Dkt. No. 50, Fitzpatrick's Emergency Motion to Expedite Intervention and Consolidate Removed Cases, filed on March 18, 2025, two days before the Recommendation.

**102.** In that motion, Fitzpatrick alerted the Court that:

- Plaintiff's lead counsel, Matthew Yarbrough, was ineligible to practice law in Texas due to an administrative suspension, per the Texas State Bar;
- As a result, all pleadings filed by Yarbrough — including Plaintiff's Original and Amended Petitions — may be unauthorized practice of law and therefore null, void, or subject to striking;
- If no valid complaint remains, the Court may lack jurisdiction over the case, which implicates both standing and subject matter jurisdiction;



- Fitzpatrick requested emergency intervention and leave to file his own complaint to preserve judicial economy and due process rights.

**103.** These are material legal issues that the Court must evaluate before striking filings or recommending remand. The Magistrate's failure to address this motion renders the recommendation procedurally and constitutionally defective, especially because:

- Dkt. No. 50 was timely and squarely before the Court prior to Dkt. No. 52;
- The issue of jurisdictional defect due to unauthorized practice is not merely procedural — it strikes at the heart of the Court's ability to adjudicate any issue;
- Fitzpatrick's proposed remedy (granting leave to intervene and file a new complaint) was narrowly tailored to preserve judicial efficiency and prevent prejudice.

**104.** The Court must reject the Magistrate's recommendation and rule on Dkt. No. 50 on the merits before taking any further action. Ignoring that motion denies Fitzpatrick's right to be heard and undermines the fairness of these proceedings.

**OBJECTION NO. 18 - MAGISTRATE FAILED TO CONSIDER FITZPATRICK'S  
RESPONSE IN OPPOSITION TO MOTION TO STRIKE (DKT. NO. 49), WHICH  
ADDRESSED EVIDENTIARY AND DUE PROCESS ISSUES REGARDING JUDICIAL  
NOTICE**

**105.** Fitzpatrick objects to the Magistrate's failure to consider Dkt. No. 49, filed on March 17, 2025, which directly responded to Plaintiff BEN's Motion to Strike his Motions for Judicial Notice (Dkt. No. 44).

**106.** In Dkt. No. 49, Fitzpatrick:

- Asserted his right to request judicial notice of publicly available documents, including SEC filings, USPTO records, corporate disclosures, and court records, pursuant to FRE Rule 201;
- Cited governing law establishing that judicial notice is appropriate "*at any stage of the proceeding*" and mandatory for records "*not subject to reasonable dispute*";

- Demonstrated that he had already corrected citation issues by filing an Amended Motion for Judicial Notice (Dkt. No. 46), thereby rendering BEN's objections moot;
- Highlighted that striking public records filings would violate due process, chill whistleblower participation, and lead to unnecessary duplication of evidence.

**107.** The Magistrate failed to reference or evaluate this filing at all in his Recommendation (Dkt. No. 52), despite its materiality to:

- The evidentiary record before the Court;
- The scope of judicially cognizable facts in this case;
- Fitzpatrick's right to rely on reliable, government-issued documents in support of intervention and other relief.

**108.** Because the Magistrate's recommendation rests, in part, on the view that Fitzpatrick's filings are "*clutter*" and improper, it was legally required to address Fitzpatrick's defense of those filings, particularly one grounded in FRE Rule 201 and controlling Fifth Circuit authority.

**109.** This procedural omission prejudices Fitzpatrick's rights to present facts and arguments based on verifiable, judicially noticeable evidence and undermines the fairness and transparency of the proceedings. The Court should reject the recommendation and ensure that Fitzpatrick's evidentiary submissions are properly considered.

**110.** Fitzpatrick also objects to the Court's failure to recognize that judicial notice under FRE Rule 201(c)(2) is mandatory when the party supplies sources "*not subject to reasonable dispute.*" By failing to act on multiple facially proper motions for judicial notice—concerning SEC, USPTO, and court records—the Magistrate committed legal error, not merely procedural oversight and this denial of access to judicially noticeable facts further prejudices Fitzpatrick's evidentiary rights.

**OBJECTION NO. 19 - MAGISTRATE FAILED TO LIBERALLY CONSTRUE PRO SE  
FILINGS AND IMPROPERLY APPLIED HEIGHTENED FORMALISTIC STANDARDS TO  
FITZPATRICK'S PLEADINGS**

**111.** Fitzpatrick objects to the Recommendation on the grounds that it fails to apply the long-standing Supreme Court and Fifth Circuit mandate that a pro se litigant's pleadings must be liberally construed.

**112.** Instead, the Magistrate:

- Applied a technical reading of Fitzpatrick's filings, dismissing their substance based on perceived "*clutter*" or volume;
- Ignored that the factual and legal assertions were supported by evidence, including public records, sworn filings, and transcripts;
- Failed to evaluate whether Fitzpatrick's allegations, if true, state a colorable basis for intervention or raise material issues of public interest.

**113.** Such failure to construe pro se filings liberally is a procedural and constitutional defect, and reversal is warranted on this ground alone.

**OBJECTION NO. 20 - MAGISTRATE MISAPPLIED THE RULE 24 STANDARD AND  
ERRONEOUSLY CONDUCTED A MERITS-BASED ANALYSIS AT THE INTERVENTION  
STAGE**

**114.** Fitzpatrick objects to the Recommendation for misapplying the legal standard under FRCP Rule 24(a) and FRCP Rule 24(b). Intervention does not require a showing that the intervenor will prevail—only that:

- The intervenor has an interest that "*may be impaired*" by the disposition of the case (Rule 24(a)), or
- The intervenor's claims "*share common questions of law or fact*" (Rule 24(b)).

**115.** The Magistrate improperly:

- Imposed a merits-based filter, examining whether Fitzpatrick's claims were legally viable rather than whether they were related to the present case;

- Disregarded substantial factual overlap with Plaintiff's allegations, including misrepresentation of operational readiness, contractual fraud, and use of engineered public-facing structures during a SPAC transaction;
- Ignored controlling precedent that favors inclusion, especially when factual development is still underway.

**116.** This error deprives Fitzpatrick of his right to be heard and improperly excludes, as if to whitewash relevant and material facts from the Court's consideration.

**OBJECTION NO. 21 - MAGISTRATE FAILED TO ACCOUNT FOR PARALLEL LITIGATION (DUE FIGLIE V. BREWER ET AL), CREATING RISK OF INCONSISTENT ADJUDICATION AND DUPLICATIVE LITIGATION**

**117.** Fitzpatrick objects to the Magistrate's failure to consider the pending related action—*Due Figlie LLC & Shawn Lucas v. Brewer et al.*, Case No. 3:25-cv-00629-N—which overlaps substantially with the present matter in terms of:

- Parties (including AFG, Brewer, and other individuals implicated in this case);
- Underlying transactions (the BEN business combination and AFG's portrayed position within the merger);
- Legal theories (securities fraud, breach of fiduciary duty, inducement, and insider control).

**118.** Fitzpatrick is a material witness and referenced actor in that related action. The risk of inconsistent factual findings, judicial inefficiency, and claim preclusion is substantial if the actions proceed on separate tracks.

**119.** The Court should have considered Rule 42(a) consolidation or coordination under its inherent authority to manage related litigation. The failure to do so undermines the equitable administration of justice and prejudices Fitzpatrick's ability to participate meaningfully in any related proceeding.

**OBJECTION NO. 22 - MAGISTRATE FAILED TO RESOLVE OR ADDRESS MULTIPLE PENDING MOTIONS, INCLUDING JUDICIAL NOTICE FILINGS, MOTIONS TO CONSOLIDATE, AND REQUESTS FOR LEAVE TO FILE**

**120.** Fitzpatrick objects to the Magistrate's decision to recommend striking or dismissing all of his filings without formally ruling on:

- His Emergency Motion to Expedite and Consolidate (Dkt. No. 50);
- His Supplement and Declaration with Offer of Proof (Dkt. No. 51 and #51.1);
- His four Motions for Judicial Notice (Dkt. Nos. 36, #37, #39, and #46);
- His opposition to BEN's Motion to Strike (Dkt. No. 49);
- His incorporated request for leave to file a complaint in intervention under FRCP Rules 24(c) and 15(a).

**121.** Courts may not recommend dismissal or adverse action while leaving core dispositive motions unaddressed or unresolved. That approach denies procedural clarity and due process, particularly for pro se litigants seeking to preserve rights that may later be barred by res judicata or procedural default.

**122.** The District Court must independently assess and rule on each pending motion or request, or at minimum, explain why they were deemed moot. The Magistrate's blanket dismissal without engagement is reversible error and must be rejected.

**OBJECTION NO. 23 - MAGISTRATE FAILED TO CONSIDER THE TIMELINESS AND GOOD FAITH BASIS OF FITZPATRICK'S MOTION TO INTERVENE UNDER RULE 24(a) AND (b)**

**123.** Fitzpatrick objects to any implication that his Motion to Intervene was procedurally deficient as to timeliness. The motion was filed:

- Early in the proceedings, before dispositive motions were resolved;
- Before any discovery had commenced;

- Promptly upon Fitzpatrick identifying overlapping legal interests and factual relationships between the parties.

**124.** Courts routinely find intervention timely when it occurs prior to trial and before prejudice arises. The Recommendation did not analyze the timeliness element of FRCP Rule 24 at all, and Fitzpatrick requests the District Judge explicitly find the motion timely and brought in good faith.

**OBJECTION NO. 24 - MAGISTRATE FAILED TO ADDRESS FEDERAL QUESTION AND CIVIL RIGHTS JURISDICTION ASSERTED IN REMOVALS (EXHIBITS A & B TO DKT. NO. 21)**

**125.** Fitzpatrick objects to the Magistrate's Recommendation on the grounds that it fails to address the federal jurisdictional and civil rights removal basis asserted in the Notices of Removal from Denton and Tarrant County (attached as Exhibits A and B to Dkt. No. 21). These removals were not perfunctory—they invoked multiple, independently sufficient grounds for federal jurisdiction including:

- Federal Question Jurisdiction under 28 U.S.C. § 1331 based on constitutional violations, whistleblower retaliation under Sarbanes-Oxley and Dodd-Frank, and federal civil rights violations;
- Civil Rights Removal Jurisdiction under 28 U.S.C. § 1443 due to state court orders that allegedly infringe on Fitzpatrick's First and Fourteenth Amendment rights;
- Pending claims under 42 U.S.C. § 1983, 42 U.S.C. § 1985(2), and 42 U.S.C. § 1985(3), which entitle Fitzpatrick to redress for ongoing retaliation and conspiracy to obstruct justice.

**126.** The Recommendation does not acknowledge, much less analyze, these jurisdictional assertions. Striking Fitzpatrick's filings without addressing the jurisdictional predicate for the case's presence in federal court is reversible error, and constitutes premature adjudication of core

constitutional and statutory rights without due process. These removals remain unruled upon and must be resolved before striking any related filings.

**127.** The Notices of Removal submitted as Exhibits B and C further underscore the procedural inconsistency in the Court's treatment of Fitzpatrick. The Court accepted and docketed these filings under Fitzpatrick's name, treated him as a defendant in the CM/ECF system, yet simultaneously labeled him a "non-party" in the Magistrate's Recommendation. Dkt. No. 52 repeatedly refers to Fitzpatrick as a "nonparty" (see p. 2, ¶3; p. 6, ¶2), yet also addresses his filings as if he were actively involved in the litigation. The Recommendation also proposes striking his filings (p. 8), despite his pending motion to intervene and filings being accepted into the record by the Clerk. This contradicts the Court's own docketing practices, which listed Fitzpatrick as a defendant. These contradictions materially prejudice Fitzpatrick's participation and standing.

**OBJECTION NO. 25 - MAGISTRATE FAILED TO CONSIDER MANDATORY  
CONSOLIDATION FACTORS UNDER RULE 42(a)**

**128.** Fitzpatrick objects to the Recommendation for failing to address the legal and factual basis supporting his request for consolidation of related actions (Dkt. No. 50 and its supplement, Dkt. No. 51). These filings explain that:

- The BEN v. Brewer/AFG case and the DUE FIGLIE v. AFG case involve identical events, parties, and transactions tied to a March 2024 business combination, securities fraud allegations and Defendant Brewer's alleged ill-gotten portion of the nearly \$463 million market-cap collapse;
- The two removed state actions from Denton and Tarrant County likewise arise from the same nucleus of operative facts, agreements, and fraudulent employment-related disputes;
- All cases involve overlapping claims of securities fraud, whistleblower retaliation, and injunctive relief requests from the same parties—AFG, BEN, and their affiliates.

**129.** Under FRCP Rule 42(a), the Court must weigh judicial economy, risk of inconsistent rulings, and overlapping issues when deciding whether to consolidate. The Recommendation bypasses this analysis entirely. Refusing to consolidate while striking intervention efforts—without findings or balancing of FRCP Rule 42(a) factors—denies Fitzpatrick procedural and substantive rights and risks fragmented, duplicative litigation in contravention of federal law and policy.

**OBJECTION NO. 26 - FAILURE TO ADDRESS REMOVAL-RELATED OBJECTIONS TO STATE COURT ABUSE, FORUM SHOPPING, AND INCONSISTENCY WITH FEDERAL SUPERVISION**

**130.** Fitzpatrick objects that the Magistrate failed to evaluate the procedural misconduct and forum shopping documented in the Notices of Removal and Motion to Intervene. Specifically:

- AFG filed retaliatory litigation in Denton County based on misrepresentations and intentional omissions, and during pending Tarrant County proceedings, seeking inconsistent injunctive relief and \$1 million in damages as leverage against a whistleblower;
- The TRO obtained on paper in state court restricts Fitzpatrick's free speech and due process rights, raising constitutional claims not addressable in state court;
- The timing and nature of these filings reflect a coordinated strategy to avoid federal oversight and silence a material witness;
- The removals were not addressed or ruled upon before recommending that Fitzpatrick's filings be struck and his intervention denied.

**131.** These procedural abuses justify retention of jurisdiction and reinforce the need for full judicial review. The Recommendation fails to recognize that remand, without evaluating these serious allegations, would enable further retaliation and shield potentially unlawful conduct from scrutiny.



**OBJECTION NO. 27 - RECOMMENDATION OVERLOOKS PREVIOUSLY ASSERTED  
CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF BASED ON FEDERAL LAW**

**132.** Fitzpatrick objects that the Magistrate's Recommendation disregards the express notice provided in his Motion to Intervene (Dkt. No. 21) that he intends to file an initial complaint asserting claims for:

- Declaratory relief under 42 U.S.C. § 1983, 42 U.S.C. § 1985(2), and 42 U.S.C. § 1985(3), including constitutional challenges to state court inaction, judicial bias, and retaliatory use of court processes;
- Preliminary and permanent injunctive relief under federal whistleblower statutes and Civil RICO, to protect Fitzpatrick's rights and prevent further retaliation;
- Redress for injuries arising from a common fraudulent enterprise described in preliminary detail across his filings, including several RICO predicate acts and securities violations.

**133.** These claims were disclosed in good faith, filed timely, and align with federal subject-matter jurisdiction. By ignoring these pending intentions and failing to provide a hearing or opportunity to file a complaint, the Recommendation short-circuits the judicial process and undermines Fitzpatrick's access to legal remedies afforded under federal law.

**OBJECTION NO. 28 - MAGISTRATE FAILED TO RECOGNIZE FITZPATRICK'S  
LEGALLY PROTECTABLE INTEREST IN REPUTATION AND CLEARING HIS NAME  
FROM ASSOCIATION WITH FRAUD OR CRIMINALITY**

**134.** Fitzpatrick objects to the Recommendation's failure to consider that he has an independent and legally protectable interest in protecting his personal and professional reputation from adverse inferences arising out of this litigation.

**135.** Specifically:

- Fitzpatrick was directly employed by AFG and linked to key transactions and representations surrounding the BEN–AFG partnership as part of the BEN SPAC merger;

- As part of those events, Fitzpatrick raised internal objections, submitted an SEC whistleblower complaint, and later became the target of retaliation and retaliatory litigation;
- Several filings and arguments by other parties reference events, actors, or actions in which Fitzpatrick was involved—creating the risk of implicit association with wrongdoing or criminal misconduct.

**136.** Without intervention, Fitzpatrick may be unable to clarify his role, correct mischaracterizations, or refute accusations. Any settlement, factual findings, or judicial conclusions could impair his ability to protect his reputation or defend himself in future proceedings, media coverage, or professional contexts.

**137.** The Fifth Circuit and other courts have recognized that reputational harm and the inability to clear one's name may constitute a legally protectable interest under FRCP Rule 24(a)(2). The Magistrate's failure to account for this risk is legal error and must be corrected by the District Court.

**OBJECTION NO. 29 - MAGISTRATE FAILED TO CONSIDER THAT FITZPATRICK WAS FRAUDULENTLY INDUCED INTO EMPLOYMENT BASED ON MISREPRESENTATIONS AND LACKED KNOWLEDGE OF AFG'S FRAUDULENT INTENTIONS**

**138.** Fitzpatrick objects to the Recommendation's failure to address that his role in the events underlying this litigation was the result of fraudulent inducement and deception by AFG—not any voluntary or knowing participation in misconduct.

**139.** Specifically:

- Fitzpatrick was recruited and hired by AFG under representations that his employment would support lawful product development, corporate growth, and strategic partnerships, including collaboration with BEN;
- Fitzpatrick had no prior knowledge that AFG's intent was to undermine or compete against BEN, or to engage in allegedly deceptive or retaliatory conduct;

- AFG's conduct—including its failure to disclose prior security breaches, its internal communications, and its manipulation of technical staff hiring—only became known to Fitzpatrick a period of time after he had accepted the position;
- Once Fitzpatrick discovered evidence suggesting misrepresentation and unethical conduct, he internally objected and subsequently filed a formal complaint with the SEC Office of the Whistleblower;
- Fitzpatrick's position is not that of an accomplice or co-conspirator, but rather a professional who was misled, silenced, and terminated in retaliation for seeking to report the truth.

**140.** This is not a mere factual defense—it is central to Fitzpatrick's legal rights and interests in the current action. By denying intervention and recommending that Fitzpatrick's filings be stricken without addressing this critical context, the Magistrate's Recommendation fails to distinguish between those alleged to have engaged in misconduct and those who were used as instruments of that fraud without consent or knowledge.

**141.** Due process, procedural fairness, and FRCP Rule 24(a)(2) require that the Court consider Fitzpatrick's status as a whistleblower and a victim of fraudulent inducement—not simply exclude him as a disruptive non-party. His declaration of non-involvement and proactive objection to misconduct further justify intervention and weigh heavily against any inference of improper motive or meritless filing.

**OBJECTION NO. 30 - AFG'S MOTION TO DISMISS (DKT. NO. 19) REINFORCES  
WAIVER AND INCONSISTENT LITIGATION CONDUCT**

**142.** Fitzpatrick also objects to the Magistrate's failure to acknowledge the procedural implications of AFG's filing of a Motion to Dismiss (Dkt. No. 19) directed at Fitzpatrick—despite the fact that the Court had not yet granted Fitzpatrick's Motion to Intervene, and no formal complaint had been filed.

**143.** Fitzpatrick's timely opposition to that motion (Dkt. No. 30) noted that:

- There was no operative complaint from Fitzpatrick before the Court;
- AFG's motion was premature and procedurally improper;
- The appropriate sequence was for the Court to first rule on intervention, then allow Fitzpatrick to file his complaint, after which any FRCP Rule 12(b)(6) motion could be evaluated.

**144.** This sequence of filings demonstrates that AFG:

- Treated Fitzpatrick as a party when it suited them;
- Sought affirmative relief against him (i.e., dismissal of his non-existent claims);
- Engaged the merits of issues they now say the Court should never have considered.

**145.** AFG's actions are inconsistent with its later claim that Fitzpatrick is merely a nonparty whose filings should be stricken or disregarded.

**146.** Moreover, by engaging in this premature dispositive motion practice, AFG waived its ability to later argue that Fitzpatrick had no standing to file or that the Court had no authority to hear his filings. Their litigation posture reflects a deliberate attempt to toggle Fitzpatrick's status depending on tactical convenience—a practice the Court should not condone.

**147.** Accordingly, the Court should consider AFG's Motion to Dismiss (Dkt. No. 19) and Fitzpatrick's Response (Dkt. No. 30) as further evidence of waiver, estoppel, and inconsistent litigation behavior, and decline to strike Fitzpatrick's filings or deny his motion based on procedural grounds.

**OBJECTION NO. 31 - MAGISTRATE FAILED TO APPLY RULE 1 MANDATE FOR JUST, SPEEDY, AND INEXPENSIVE DETERMINATION**

**148.** Fitzpatrick objects that the Magistrate's Recommendation violates FRCP Rule 1, which requires that all proceedings be "*construed, administered, and employed by the court and the*

*parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”*

149. By recommending that all of Fitzpatrick's filings be struck, intervention be denied without a hearing, and Fitzpatrick's jurisdictional claims and whistleblower status be ignored, the Recommendation:

- Disregards the Rule 1 goal of justice and efficiency;
- Risks redundant, duplicative proceedings in separate forums;
- Imposes unnecessary cost and delay through piecemeal litigation.

150. Courts are bound to consider these goals in managing litigation, and failing to do so is itself a procedural error warranting reversal.

**OBJECTION NO. 32 - MAGISTRATE FAILED TO APPLY RULE 15 STANDARD FOR FREELY GRANTING LEAVE TO AMEND**

151. Fitzpatrick objects that the Magistrate refused to consider, or even mention, his request for leave to file a complaint in intervention under FRCP Rules 24(c) and 15(a)(2). FRCP Rule 15 provides that the court “*should freely give leave when justice so requires.*”

152. Because Fitzpatrick:

- Requested such leave in multiple filings;
- Provided a good faith basis for amendment;
- Sought only to cure perceived procedural defects while preserving rights.

153. The Magistrate's failure to consider or apply FRCP Rule 15(a)(2) is reversible error. The Court must evaluate that request independently before denying all relief.

**OBJECTION NO. 33 - MAGISTRATE FAILED TO FOLLOW RULE 72(B)(2)-(3) REQUIREMENTS FOR FINDINGS, OBJECTIONS, AND DE NOVO REVIEW**

**154.** Fitzpatrick objects that the Magistrate's Findings and Recommendation violate Rule 72(b) by:

- Recommending disposition of a dispositive motion (denial of intervention, denial of removals, denial of leave to file Complaint, motion to remand, striking of filings);
- Without resolving factual issues raised in Fitzpatrick's motions, filings, or evidence;
- Without making adequate proposed findings of fact as required under FRCP Rule 72(b)(1);
- Without acknowledging pending objections and motions that would materially alter the outcome.

**155.** As a result, Fitzpatrick urges the District Court to exercise full de novo review under FRCP Rule 72(b)(3), including the discretion to "*receive further evidence...*" before returning the matter to the magistrate with instructions.

**OBJECTION NO. 34 - MAGISTRATE IMPROPERLY DISREGARDED RULE 83(B) PROTECTION AGAINST SURPRISE SANCTIONS OR PRACTICE REQUIREMENTS**

**156.** Fitzpatrick objects under FRCP Rule 83(b), which provides that a court may regulate practice only in a way that:

- Complies with federal law, the Federal Rules, or properly adopted local rules; and
- Does not impose sanctions or disadvantages for noncompliance with informal or unwritten practices unless the litigant had "*actual notice*."

**157.** The Magistrate's sweeping recommendation to strike all of Fitzpatrick's filings—without citing a violated rule, without notice of deficiencies, and without opportunity to correct—is procedurally invalid under FRCP Rule 83(b). Pro se litigants are especially entitled to clarity and fairness in procedural expectations.

**OBJECTION NO. 35 - MAGISTRATE FAILED TO CONSIDER FITZPATRICK'S TIMELY AND SUBSTANTIVE OPPOSITION TO MOTIONS TO REMAND (DKT. NO. 43), WHICH PRESENTS COMPELLING GROUNDS FOR RETAINING JURISDICTION**

**158.** Fitzpatrick objects to the Magistrate's Recommendation on the grounds that it completely ignores the substance of his opposition to remand (Dkt. No. 43), which directly rebuts AFG's Motions to Remand (Dkt. No. 40 & #41) and presents compelling legal and factual grounds for the Court to retain jurisdiction.

**159.** In Dkt. No. 43, Fitzpatrick:

- Argued that the Motions to Remand were premature because the Court had not yet ruled on his Motion to Intervene (Dkt. No. 21), the underlying Notices of Removal (Exhibits A & B), or Fitzpatrick's jurisdictional and constitutional objections;
- Cited federal statutes, including 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1443 (civil rights removal), the Dodd-Frank Act, Sarbanes-Oxley, and civil RICO, as jurisdictional predicates requiring the federal court to retain jurisdiction;
- Identified substantial federal issues embedded in the removed state actions that make remand improper under Supreme Court precedent;
- Asserted a factual record of retaliatory forum shopping and improper use of state court process by AFG in Denton and Tarrant County.

**160.** The Magistrate's failure to acknowledge or analyze Dkt. No. 43 is a critical omission, as it reflects a reasoned, legally grounded opposition brief that undermines the basis for remand and supports the exercise of federal jurisdiction. Ignoring this filing without explanation violates FRCP Rule 72(b) and Fitzpatrick's rights to due process and notice-and-opportunity to be heard on all dispositive issues.

**OBJECTION NO. 36 - MAGISTRATE FAILED TO ADDRESS EVIDENCE OF PROCEDURAL MISCONDUCT, FRAUDULENT JOINDER, AND JURISDICTIONAL MANIPULATION RAISED IN DKT. NO. 43**

**161.** Fitzpatrick further objects to the Magistrate's failure to address specific allegations and supporting facts in Dkt. No. 43 that demonstrate AFG and its counsel engaged in procedural misconduct and forum manipulation that require federal oversight and justify denial of remand.

**162.** Specifically, Dkt. No. 43 establishes that:

- AFG filed a retaliatory action in Denton County during the pendency of related litigation in Tarrant County and this federal action, seeking duplicative injunctive relief and over \$1 million in damages against Fitzpatrick;
- The state court orders obtained by AFG restrict Fitzpatrick's constitutional rights and raise questions under 28 U.S.C. § 1443 (civil rights removal) and 42 U.S.C. § 1983 and 42 U.S.C. § 1985(2), and 42 U.S.C. § 1985(3);
- AFG deliberately omitted material federal questions and reframed the litigation to evade federal review, triggering the doctrines of complete preemption, artful pleading, and fraudulent joinder.

**163.** Under Fifth Circuit precedent these tactics warrant retention of jurisdiction and further inquiry—not remand.

**164.** The Magistrate's recommendation does not mention these critical issues or provide any legal reasoning justifying remand in light of Fitzpatrick's allegations of improper forum tactics, fraudulent inducement, and constitutional violations. This failure to evaluate the factual and procedural abuses raised in Dkt. No. 43 renders the recommendation clearly erroneous and legally insufficient.

**OBJECTION NO. 37 - MAGISTRATE FAILED TO CONSIDER FITZPATRICK'S  
OPPOSITION TO REMAND (DKT. NO. 43) AND FAILED TO ADDRESS FEDERAL  
CLAIMS IMPLICATING SUBJECT-MATTER JURISDICTION**

**165.** Fitzpatrick objects to the Magistrate's failure to evaluate or even acknowledge his timely and substantive opposition to Defendants' Motions to Remand (Dkt. No. 40 & #41), as presented in Dkt. No. 43.



**166.** In Dkt. No. 43, Fitzpatrick provided detailed legal and factual grounds for retaining federal jurisdiction, including:

- The preliminary assertion of federal claims under civil RICO (18 U.S.C. § 1962) under a grant of leave to file his Complaint against BEN, AFG, and their respective executives, associates, and affiliates, and existing Dodd-Frank whistleblower protections (15 U.S.C. § 78u-6), and active civil rights violations under 42 U.S.C. § 1983 and 42 U.S.C. § 1985;
- The argument that both state cases involved embedded federal questions and preemptive federal issues, including whistleblower retaliation and obstruction of justice;
- The fact that the actions were removed properly under 28 U.S.C. § 1331, 28 U.S.C. § 1441, and 28 U.S.C. § 1443, and that these grounds remain unresolved;
- A showing that Defendants, particularly AFG, have manipulated procedural posture to remand a federal-issue case back to state court to avoid judicial scrutiny.

**167.** The Magistrate's blanket recommendation for remand without addressing these arguments is legally and procedurally flawed. Where there is any doubt regarding federal jurisdiction—especially when claims implicate First Amendment rights, whistleblower protections, and RICO—the court must resolve those questions with full briefing and explicit findings.

**168.** This oversight violates both FRCP Rule 72(b) and Fitzpatrick's right to due process on dispositive motions.

**OBJECTION NO. 38 - REMAND RECOMMENDATION IS PREMATURE AND  
PROCEDURALLY INVALID GIVEN UNRESOLVED INTERVENTION, FEDERAL  
CLAIMS, AND UNADJUDICATED MOTIONS**

**169.** Fitzpatrick further objects that the recommendation to remand both removed state actions is premature and procedurally invalid because it presumes:

- That Fitzpatrick's intervention has already been denied on the merits (when it has not);

- That his federal claims, pending filings, and evidentiary submissions are to be disregarded wholesale (without due process);
- That the District Court can remand removed cases involving unresolved federal questions without first ruling on the basis for federal jurisdiction.

170. This sequence improperly short-circuits FRCP Rules 24 and 15 and strips Fitzpatrick of a fair opportunity to participate, be heard, and have his jurisdictional claims adjudicated. More specifically:

- Jurisdictional challenges must be resolved before remand, particularly where federal statutes create original jurisdiction or removal rights that are non-waivable;
- Pending dispositive motions (including Dkt. No. 50, Dkt. No. 43, and the Notices of Removal) must be adjudicated to determine whether the court has subject-matter jurisdiction and/or should retain jurisdiction under 28 U.S.C. § 1331 or 28 U.S.C. § 1443;
- Remanding without doing so violates 28 U.S.C. § 1447(c) and creates a potential procedural trap for the unwary—especially for pro se parties seeking to preserve rights.

171. By recommending remand without due analysis, the Magistrate undermines Fitzpatrick's rights, creates a risk of inconsistent rulings, and encourages misuse of federal court procedures to evade accountability for alleged securities fraud, whistleblower retaliation, and constitutional violations.

**OBJECTION NO. 39 - THE MAGISTRATE JUDGE'S RECOMMENDATION LACKS  
INDEPENDENT ANALYSIS AND INSTEAD INCORPORATES THE ARGUMENTS, TONE,  
AND LANGUAGE OF OPPOSING COUNSEL, DEPRIVING FITZPATRICK OF DUE  
PROCESS AND A NEUTRAL DETERMINATION**

172. Fitzpatrick objects to the Magistrate's apparent wholesale adoption of the adversarial framing and rhetoric advanced by Plaintiff BEN and Defendant AFG in their substantive responses and filings, notably Dkt. Nos. 25 and #26. Rather than undertaking an independent and impartial evaluation of Fitzpatrick's motions as required under 28 U.S.C. § 636(b)(1)(B) and

FRCP Rule 72(b), the Recommendation echoes language and argumentative structure drawn directly from the opposing parties' briefs—sometimes nearly verbatim.

**173.** For instance, the Magistrate states that Fitzpatrick “*has besieged this lawsuit with filings,*” and that “*his barrage of filings has caused the parties to respond by filing needless additional motions*” (Dkt. No. 52 at 2). Such characterizations mirror the tone and framing of BEN’s opposition brief, which argues that intervention would “*significantly and unnecessarily delay and complicate this matter*” (Dkt. No. 25 at 5).

**174.** The Recommendation adopts these adversarial conclusions wholesale and without offering any meaningful independent judicial reasoning, nor does it attempt to evaluate Fitzpatrick’s actual legal arguments under the appropriate FRCP Rules 24(a)(2) and 24(b) standards. The Recommendation does not engage with Fitzpatrick’s showing of a significantly protectable interest, nor with the alleged civil rights violations and retaliatory conduct that underlie his filings. Instead, the Recommendation dismisses these filings as “*unauthorized*” (Dkt. No. 52 at 2) and purports to resolve the motions without any findings on the factual context—including the late ECF access, the Court’s own docketing behavior, and the parties’ litigation conduct toward Fitzpatrick.

**OBJECTION NO. 40 - OBJECTION TO MAGISTRATE’S FAILURE TO CONDUCT A  
HEARING UNDER RULE 72(b)(1)**

**175.** Fitzpatrick objects to the Magistrate Judge’s failure to conduct any hearing or allow factual development prior to issuing dispositive recommendations affecting intervention rights, jurisdiction, constitutional claims, and whistleblower retaliation allegations. Under FRCP Rule 72(b)(1), the magistrate judge “may hear” a pretrial matter and make recommendations, but when substantial factual disputes or credibility issues are raised—particularly those involving

whistleblower retaliation, removal, and procedural irregularities—a hearing is often essential to develop the record.

**176.** In *United States v. Raddatz*, 447 U.S. 667, 676 (1980), the Supreme Court acknowledged the importance of hearings where necessary to resolve factual issues underlying dispositive recommendations. Here, the Magistrate made credibility-based conclusions about Fitzpatrick's filings, procedural standing, and removal grounds without a single hearing, despite serious unresolved factual disputes. The failure to hold such a hearing violates FRCP Rule 72(b)(1) and Fitzpatrick's right to a meaningful opportunity to be heard. Fitzpatrick is entitled to a de novo hearing, not just a de novo determination.

**OBJECTION NO. 41 - OBJECTION TO RECOMMENDATION AS CONTRARY TO  
FEDERAL RULE OF CIVIL PROCEDURE 1**

**177.** Fitzpatrick objects that the Magistrate's Recommendation violates the spirit and purpose of FRCP Rule 1, which requires the rules to be "*construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.*" The Recommendation recommends wholesale dismissal of all filings, remand of two removed cases, and denial of intervention—all without ruling on the IFP motion, addressing pending motions, or affording a hearing.

**178.** This approach does not secure a "*just*" determination, particularly where Fitzpatrick has raised credible allegations of whistleblower retaliation, constitutional violations, and related federal statutory claims. Instead of promoting fairness or judicial economy, the Recommendation appears designed to expel a pro se whistleblower from the docket entirely, in direct conflict with FRCP Rule 1 and its equitable mandate.

**OBJECTION NO. 42 - OBJECTION TO FAILURE TO RULE ON PENDING MOTIONS TO CONSOLIDATE RELATED CASES (DKT. NOS. 50 & 51) UNDER RULE 42(a)**

**179.** Fitzpatrick objects to the Magistrate's failure to address or rule upon his Motion to Consolidate (Dkt. No. 50) and Supplemental Motion to Consolidate (Dkt. No. 51), which request consolidation of this action with a related case, Due Figlie, LLC v. Brewer, No. 3:25-cv-00629-N. These cases involve overlapping parties, identical factual predicates, and allegations of retaliation and fraud from the same transactional nucleus.

**180.** Under FRCP Rule 42(a), courts are required to consider consolidation when actions involve a common question of law or fact. Ignoring such motions while issuing dispositive recommendations on remand and intervention is procedural error. The failure to adjudicate these motions risks inconsistent rulings, wasted judicial resources, and further prejudice to Fitzpatrick.

**OBJECTION NO. 43 - OBJECTION TO FAILURE TO GRANT LEAVE TO AMEND OR FILE COMPLAINT IN INTERVENTION UNDER RULE 15(a)(2)**

**181.** Fitzpatrick objects to the Magistrate's implicit denial of any opportunity to amend or clarify his claims, despite the flexible standards provided by FRCP Rule 15(a)(2). The Fifth Circuit has long held that pro se litigants should be granted liberal leave to amend before dismissal of claims, particularly where the operative complaint may suffer from technical defects rather than substantive deficiencies.

**182.** Even if the Court viewed Fitzpatrick's original filings as procedurally insufficient or incomplete, it should have invited amendment or a formal complaint in intervention rather than recommending denial and striking of all pleadings. This failure to permit amendment violates FRCP Rule 15 and Fifth Circuit precedent.

**OBJECTION NO. 44 - OBJECTION TO CONSTRUCTIVE DENIAL OF MOTION TO PROCEED IN FORMA PAUPERIS (DKT. NO. 22) WITHOUT FINDINGS**

**183.** Fitzpatrick objects that the Magistrate Judge's Recommendation constructively denies his Motion to Proceed In Forma Pauperis (Dkt. No. 22) without issuing findings, conclusions, or an order. This omission deprives Fitzpatrick of both procedural and substantive due process.

**184.** The Supreme Court has held that courts must evaluate IFP motions on the record before dismissing or striking filings. Fitzpatrick's IFP application was supported by a declaration of indigency and was timely submitted with his proposed Notices of Removal (Exhibits A and B to Dkt. No. 21). By ignoring this request, the Court effectively bars Fitzpatrick from accessing the judicial system based solely on financial hardship.

**OBJECTION NO. 45 - OBJECTION TO RECOMMENDATION'S VIOLATION OF LOCAL RULE 83.1(d) AND ACCESS-TO-COURT PROTECTIONS FOR PRO SE LITIGANTS**

**185.** Fitzpatrick objects and the Recommendation violates LR 83.1(d), which expressly provides that pro se litigants are entitled to notice and meaningful opportunity to comply with court procedures. By recommending the striking of all filings, denial of intervention, and remand of removed cases without any hearing, findings, or opportunity to amend, the Magistrate is effectively recommending Fitzpatrick be denied the procedural protections that pro se litigants are entitled to under local and federal rules.

**186.** This is particularly egregious where the record reflects substantial compliance with FRCP Rule 24, 28 U.S.C. § 1446, FRCP Rule 11, and LR 7.1, and where Fitzpatrick is a whistleblower with direct financial and legal interests in the outcome of this proceeding.

**OBJECTION NO. 46 - OBJECTION TO FAILURE TO CONSIDER WHISTLEBLOWER STATUTUS AS BASIS FOR FEDERAL QUESTION JURISDICTION**

**187.** Fitzpatrick objects that the Magistrate's Recommendation completely fails to evaluate the Sarbanes-Oxley Act (SOX), Dodd-Frank Act, and related whistleblower statutes as independent

and sufficient grounds for federal question jurisdiction under 28 U.S.C. § 1331. These statutes contain express federal remedies for retaliation against whistleblowers, including private rights of action and access to federal court.

**188.** Fitzpatrick has alleged clear statutory violations involving retaliation, obstruction, and fraudulent concealment of whistleblower disclosures. These claims are not merely ancillary to the state actions—they are core jurisdictional predicates. The Recommendation's silence on these statutes is a material legal error that justifies de novo review and reversal.

**OBJECTION NO. 47 - FAILURE TO APPLY FIFTH CIRCUIT STANDARD FOR  
WHISTLEBLOWER STANDING AND DODD-FRANK PROTECTION**

**189.** The Magistrate Judge's failure to analyze Fitzpatrick's standing as a Dodd-Frank Act whistleblower under 15 U.S.C. § 78u-6(h) conflicts with Fifth Circuit authority requiring courts to construe remedial statutes broadly in favor of whistleblower protection and retaliation prevention. The absence of any reference to Dodd-Frank's private right of action constitutes legal error because the law recognizes that Dodd-Frank protects whistleblowers from retaliation and allows direct federal action.

**OBJECTION NO. 48 - DUE PROCESS VIOLATION: CONSTRUCTIVE DENIAL OF  
ACCESS WITHOUT EVIDENTIARY HEARING**

**190.** The Court's failure to hold an evidentiary hearing before recommending complete exclusion from the litigation, despite a well-pleaded claim of whistleblower retaliation, violates procedural due process under *Mathews v. Eldridge*, 424 U.S. 319 (1976). Especially in whistleblower and civil rights contexts, factual disputes and credibility issues require a hearing before summary denial.

**OBJECTION NO. 49 - CLEAR ERROR IN DETERMINING FITZPATRICK'S INTEREST IS  
"TOO REMOTE" DESPITE ALLEGED INVOLVEMENT IN THE FRAUD SCHEME'S  
OPERATIONAL EXECUTION**

**191.** The Magistrate erred in concluding Fitzpatrick's interest was "*too removed*" from the BEN-AFG dispute. As shown in evidence (transcribed audio, employment timeline, internal knowledge of SPAC structure), Fitzpatrick was not only a witness but was unwittingly used as part of the alleged fraudulent scheme. Fifth Circuit law requires courts to liberally construe "*legally protectable interests*" under FRCP Rule 24(a) where the intervenor (Fitzpatrick) is uniquely situated to offer material testimony and evidence.

**OBJECTION NO. 50 - CONSTRUCTIVE DENIAL OF CIVIL RIGHTS REMOVAL  
JURISDICTION UNDER 28 U.S.C. § 1443**

**192.** The Magistrate's refusal to address Fitzpatrick's removals of state cases under 28 U.S.C. § 1443 — based on whistleblower retaliation, abuse of process, and deprivation of federal rights — constitutes legal error. *Georgia v. Rachel*, 384 U.S. 780 (1966), and *Johnson v. Mississippi*, 421 U.S. 213 (1975) establish that removals under § 1443 must be evaluated under a specific test, not dismissed by implication. The failure to apply the correct removal standard is reversible error under Fifth Circuit precedent.

**193.** Exhibits B and C reflect the scope of retaliatory and obstructive litigation initiated by RICO enterprise actors in state court and show Fitzpatrick's good-faith effort to remove those cases for proper federal review. The recommendation to remand without addressing these underlying facts rewards procedural manipulation and silences a whistleblower with direct factual knowledge.

**OBJECTION NO. 51 - MAGISTRATE'S RECOMMENDATION RESULTS IN  
STRUCTURAL BIAS AND DENIAL OF MEANINGFUL JUDICIAL REVIEW**



194. Fitzpatrick asserts that the Recommendation reflects systemic procedural bias against pro se, indigent, and whistleblower litigants. The wholesale exclusion of all filings, striking without findings, and reliance on characterizations such as “*clutter*” and “*besieging*,” constitutes judicial overreach that chills First Amendment rights and risks a denial of equal protection. See *Bounds v. Smith*, 430 U.S. 817 (1977).

**OBJECTION NO. 52 - OBJECTION TO MAGISTRATE JUDGE’S EXERCISE OF DISPOSITIVE AUTHORITY WITHOUT WRITTEN CONSENT UNDER 28 U.S.C. § 636(c)**

195. Fitzpatrick objects to the delegation of dispositive matters to the Magistrate Judge without his written consent, as required under 28 U.S.C. § 636(c)(1) and FRCP Rule 73(b). Fitzpatrick never signed or filed any consent form authorizing the Magistrate Judge to enter final rulings or dispositive orders in this matter.

196. While limited referrals for report and recommendation are permitted under 28 U.S.C. § 636(b)(1)(B), the scope of permissible delegation is constrained by Article III of the Constitution. Dispositive rulings—including the denial of motions to intervene, motions to proceed in forma pauperis, and recommendations to strike filings—require written consent from all parties before a magistrate judge may act with finality.

197. The Fifth Circuit and Supreme Court have consistently held that consent to magistrate jurisdiction must be express, voluntary, and in writing. See *Roell v. Withrow*, 538 U.S. 580 (2003); *Gomez v. United States*, 490 U.S. 858 (1989). Absent such consent, the Magistrate Judge’s authority is limited to preparing recommendations for the District Judge’s de novo review—not the issuance of de facto dispositive orders or the striking of entire records sua sponte.

198. Accordingly, Fitzpatrick objects to any implied assumption of authority by the Magistrate Judge to take final action or make determinations that effectively dispose of his rights without proper consent. The District Judge should reject any portion of the Recommendation that exceeds the scope of delegated authority under § 636(b), particularly where constitutional rights and access to courts are at stake.

**OBJECTION NO. 53 - OBJECTION TO FAILURE TO PROVIDE FINDINGS OF FACT AND CONCLUSIONS OF LAW UNDER 28 U.S.C. § 636(b)(1)(C) AND RULE 72(b)**

199. Fitzpatrick objects to the Magistrate Judge's Recommendation (Dkt. No. 52) for failing to include the requisite findings of fact and conclusions of law as required by 28 U.S.C. § 636(b)(1)(C) and FRCP Rule 72(b)(1). A dispositive recommendation must include sufficient factual and legal analysis to enable de novo review by the District Judge.

200. The Recommendation makes conclusory determinations—denying intervention, recommending remand, and striking all filings—without stating what factual findings support the denial of Fitzpatrick's rights, or what legal standard supports those rulings. This omission deprives both Fitzpatrick and the District Court of a meaningful basis for review, and independently warrants recommitment or rejection of the Recommendation.

**OBJECTION NO. 54 - OBJECTION TO FUNCTIONAL DISMISSAL OF CLAIMS WITHOUT NOTICE OR ANALYSIS UNDER RULE 12(b)**

201. Fitzpatrick objects to the Magistrate Judge's treatment of his filings—including those asserting statutory, constitutional, and removal rights—as if they were frivolous, defective, or dismissible, without applying the standards of FRCP Rule 12(b)(1) or 12(b)(6). The striking and unfiled of Fitzpatrick's submissions functions as a de facto dismissal of his potential claims and defenses, without notice or an opportunity to be heard.

**202.** Federal courts are prohibited from dismissing claims sua sponte without providing advance notice and opportunity to respond. The Recommendation's unilateral disposal of Fitzpatrick's filings—particularly in the context of a pending IFP motion and without leave to file his full complaint—violates procedural due process and fair notice requirements.

**OBJECTION NO. 55 - OBJECTION TO VIOLATION OF ARTICLE III AND  
NONDELEGATION PRINCIPLES**

**203.** Fitzpatrick objects that the Recommendation's disposition of constitutional and statutory claims, including those brought under SOX, Dodd-Frank, and 42 U.S.C. § 1983, improperly assumes final adjudicatory authority over Article III matters, without the consent of the parties. While 28 U.S.C. § 636(b) permits limited referral for a report and recommendation, only an Article III judge may enter final rulings affecting federal statutory and constitutional rights.

**204.** The Recommendation, by purporting to extinguish Fitzpatrick's rights through procedural nullification and striking, exceeds the constitutionally permissible scope of delegated judicial power under Article III. This implicates both separation of powers and nondelegation doctrines, and further supports Fitzpatrick's Objection No. 52 regarding the absence of written consent under § 636(c).

**OBJECTION NO. 56 - OBJECTION TO PREJUDGMENT OF CLAIMS WITHOUT  
COMPLAINT OR RULE 8 PLEADING ON FILE**

**205.** Fitzpatrick objects that the Magistrate Judge's Recommendation improperly prejudices the merits of Fitzpatrick's potential claims—under RICO, whistleblower statutes, and constitutional provisions—without his full and formal complaint or pleading ever being filed under FRCP Rule 8(a). This deprives Fitzpatrick of the opportunity to frame his causes of action

clearly and with the requisite specificity required in fraud cases, and deprives the Court of the opportunity to evaluate them under appropriate pleading standards.

**206.** Such prejudgment, based solely on a motion to intervene accompanied by a request for fee waiver, improperly conflates threshold standing questions with final merits adjudication. It violates procedural fairness and is contrary to the flexible pleading standards applicable to pro se litigants under *Erickson v. Pardus*, 551 U.S. 89 (2007) and *Haines v. Kerner*, 404 U.S. 519 (1972).

**OBJECTION NO. 57 - OBJECTION TO INCONSISTENCY WITH FEDERAL PUBLIC POLICY FAVORING WHISTLEBLOWER ACCESS AND PROTECTION**

**207.** Fitzpatrick objects that the Recommendation is contrary to well-established federal public policy promoting whistleblower protections, enforcement of securities laws, and protection against corporate retaliation. Federal statutes such as the Sarbanes-Oxley Act, Dodd-Frank Act, and 18 U.S.C. § 1514A establish a clear legal framework that encourages individuals like Fitzpatrick to come forward with information about fraud and misconduct without fear of reprisal or exclusion from judicial redress.

**208.** By recommending that the Court deny intervention, remand cases, and strike all related filings—without ruling on the merits, IFP, or granting leave to amend—the Recommendation threatens to chill whistleblower participation, undercut the policy objectives of Congress, and deprive Fitzpatrick of the very protections these laws were enacted to afford. This warrants a hearing and full de novo review and rejection of the Magistrate's recommendation.

**OBJECTION NO. 58 - OBJECTION TO DENIAL OF OPPORTUNITY FOR EVIDENTIARY SUBMISSION OR FACTUAL DEVELOPMENT**

**209.** Fitzpatrick objects that the Magistrate Judge's Recommendation (Dkt. No. 52) was issued without providing any opportunity for evidentiary submissions, factual affidavits, or the development of a factual record. Courts routinely permit pro se litigants the opportunity to submit sworn declarations, documents, or other evidence to supplement their motions—particularly when factual disputes are raised concerning jurisdiction, standing, or statutory rights.

**210.** Here, Fitzpatrick raised allegations of retaliation, procedural fraud, and preliminary allegations involving predicate RICO acts, and constitutional misconduct, all of which contain disputed factual questions. By recommending dispositive action without soliciting factual development, the Magistrate effectively denied Fitzpatrick the opportunity to build a factual record in support of his legal claims. This omission violates basic due process and the notice-and-opportunity-to-be-heard standard under FRCP Rule 72(b) and 28 U.S.C. § 636(b)(1).

**OBJECTION NO. 59 - OBJECTION TO FAILURE TO CONSIDER RULE 17 STANDING TO SUE AS REAL PARTY IN INTEREST**

**211.** Fitzpatrick objects that the Recommendation fails to evaluate whether he qualifies as a real party in interest under FRCP Rule 17(a). Fitzpatrick has alleged direct, personal, and financial injuries arising from the same set of facts underlying the claims between BEN and AFG. These include wrongful termination, reputational harm, and whistleblower retaliation.

**212.** As such, Fitzpatrick qualifies as a real party in interest under FRCP Rule 17 and is entitled to protect his rights through intervention and, if granted, through the filing of a complaint in intervention. The Court's failure to analyze standing under FRCP Rule 17(a) is an additional procedural omission that independently justifies de novo review.

**OBJECTION NO. 60 - OBJECTION TO PUNITIVE RECOMMENDATION WITHOUT SANCTIONS MOTION OR NOTICE UNDER RULE 11(c)(1)**

**213.** Fitzpatrick objects to the Recommendation's directive that all of his filings be struck and unfiled, which functions as a de facto Rule 11 sanction issued without a motion by a party, without 21-day safe harbor notice, and without a finding of bad faith.

**214.** Under FRCP Rule 11(c)(1), a court may not impose sanctions on its own initiative without first issuing a show-cause order, and sanctions may not be imposed on a represented or pro se party without notice and opportunity to respond. The Recommendation contains no such order, no findings of frivolousness, and no procedural justification. As such, the proposed remedy is procedurally improper and constitutionally defective.

**OBJECTION NO. 61 - OBJECTION TO FAILURE TO CONSIDER ALTERNATIVE  
GROUNDS FOR FEDERAL JURISDICTION, INCLUDING SUPPLEMENTAL  
JURISDICTION UNDER 28 U.S.C. § 1367**

**215.** Fitzpatrick objects that the Magistrate's Recommendation fails to consider alternative jurisdictional bases, including the Court's authority to retain jurisdiction under 28 U.S.C. § 1367(a) for claims that form part of the same case or controversy as federal statutory and constitutional claims.

**216.** Even if the Court found removal under §§ 1441 or 1443 to be procedurally deficient (which Fitzpatrick disputes), the presence of core whistleblower retaliation, First Amendment, and RICO predicate act allegations provides a sufficient federal hook to retain jurisdiction over related state claims. The failure to consider supplemental jurisdiction under § 1367 is a legal oversight requiring correction on de novo review.

**OBJECTION NO. 62 - OBJECTION TO UNEQUAL APPLICATION OF LOCAL RULES  
AND SELECTIVE ENFORCEMENT AGAINST PRO SE LITIGANT**

**217.** Fitzpatrick objects to the unequal enforcement of Local Rules by the Magistrate Judge, including the enforcement of LR 3.1(c) and other procedural requirements. Specifically, Plaintiff

BEN failed to file a proper Certificate of Interested Persons listing Fitzpatrick—despite clear financial interest and prior conflict—and was not sanctioned, cautioned, or even referenced in the Recommendation.

**218.** By contrast, Fitzpatrick—acting in good faith, supported by statutory and constitutional claims, and seeking protection under IFP—is threatened with complete erasure from the docket. This disparate treatment raises serious equal protection and due process concerns, especially when directed against a whistleblower and indigent pro se litigant asserting federally protected rights.

**OBJECTION NO. 63 – MAGISTRATE FAILED TO CONSIDER MATERIAL EVIDENCE OF POST-SPAC STOCK COLLAPSE, INSIDER PROFITEERING, AND MARKET HARM CENTRAL TO FITZPATRICK'S RIGHTS AND INTERESTS**

**219.** Fitzpatrick objects to the Magistrate's recommendation (Dkt. No. 52) on the ground that it entirely fails to consider material, probative and verifiable evidence from public government sources supporting Fitzpatrick's right to intervene and exposing the deeper context of the litigation. Specifically, the Magistrate did not acknowledge or analyze:

- The extraordinary volatility and collapse of BNAI stock immediately following the SPAC merger;
- The +/- \$32 million in insider profits realized by AFG and Ralph Wright Brewer III during the days following the public listing;
- The approximate +/- \$430 million loss in market capitalization suffered by public investors for the benefit of insiders, potentially institutional investors, and the United States Government;
- Fitzpatrick's firsthand knowledge of pre-merger misrepresentations, his central role by virtue of being fraudulently induced into employment by CareGard Warranty Services, Inc. and AFG to unknowingly further a secret agenda of Defendant Brewer and his companies to build and market competing artificial intelligence solutions to directly compete against BEN in the same market in which BEN and AFG claimed to

be “partners,” and the ongoing retaliation and harm Fitzpatrick suffers after raising concerns; and

- The significance of this information to both securities fraud liability and FRCP Rule 24 intervention standards.

**220.** These facts were presented in the public record, including in Fitzpatrick's filings (e.g., Dkt. Nos. 21, 28, 49), and are now further supported by Exhibit A, a combined stock chart and historical trading table showing the collapse of BNAI's stock price from a peak of \$19.75/share on March 18, 2024, to \$5.94/share by March 25, 2024. See also Exhibit A (BNAI Stock Activity, March 12–25, 2024), attached hereto and incorporated by reference, which documents the rapid price inflation, insider sales, and ensuing collapse in BNAI stock following the SPAC merger.

A. Relevance to Rule 24 Intervention

**221.** The information now seeks to omit through his recommendation goes to the heart of whether Fitzpatrick has a:

- “Direct, substantial, legally protectable interest” in the business combination, alleged and agreements, transactions, and activities that supported or enabled it;
- Standing to expose a pump-and-dump scheme benefiting opposing parties, BEN, AFG, and their respective officers, executives, associates, and subsidiaries;
- Right to intervene in this litigation that seeks to sanitize the record and exclude witnesses and information critical to exposing the fraud and protecting Fitzpatrick's rights.

**222.** The Magistrate disregards substantive evidence and frames Fitzpatrick's assertions as ideological. See Dkt. No. 52 at p. 5, ¶1, stating Fitzpatrick's goal is merely to “*expose the... fraudulent schemes,*” “*hold each of the Defendants accountable' for their alleged participation in a 'racketeering activity,'*” and that Defendants will “*control the narrative.*” This



mischaracterizes the basis for Fitzpatrick's intervention and fails to evaluate the specific securities and market-based evidence Fitzpatrick presents.

**223.** The Magistrate's refusal to analyze **any** of the factual allegations or evidence renders the recommendation procedurally defective under FRCP Rule 72(b) and constitutionally inadequate under due process standards.

**B. Relevance to Judicial Efficiency and Integrity**

**224.** The Court cannot claim Fitzpatrick's filings "*besiege*" the docket while failing to evaluate the substance of those filings. If Fitzpatrick's evidence is credible—and no contrary evidence has been submitted by either BEN or AFG—it materially alters the nature of this case, raises questions about both parties' conduct, and undermines the integrity of the proceedings.

**225.** The Magistrate's silence on these issues prejudices Fitzpatrick, deprives him of his rights, deprives the Court of key context, and risks turning this proceeding into a forum for coordinated cover-up, rather than a venue for truth and accountability.

**OBJECTION NO. 64 – THE MAGISTRATE FAILED TO ACCOUNT FOR SYSTEMIC REGULATORY FAILURES THAT ENABLED BEN, AFG, AND THEIR RESPECTIVE AFFILIATES AND ASSOCIATES TO ENGINEER THIS "BUSINESS DISPUTE" THROUGH A GOVERNMENT-FACILITATED TRANSACTION STRUCTURE**

**226.** Fitzpatrick objects to the Magistrate's and opposing parties' characterization of this case as a "private business dispute," without acknowledging that the transaction structure giving rise to this litigation was facilitated and enabled, in whole or in part, by systemic regulatory failures of the United States Government.

**227.** At the center of this case is a SPAC merger and IPO approved by the SEC, with classes of securities listed on the Nasdaq exchange, and promoted to investors and the public—despite substantial early indications of fraud, misrepresentations, and artificial valuation. This structure

was used by BEN, AFG, and associated insiders to engineer a business combination that lacked legitimate operational footing, inflated valuation metrics, and ultimately led to:

- A stock price surge to \$19.75/share within two days of listing;
- A rapid collapse to \$5.94/share, wiping out +/- \$430 million in market capitalization;
- Alleged insider liquidation of shares totaling millions in personal enrichment of which Ralph Wright Brewer III is alleged to have benefited an amount less than 10% of the total market capitalization collapse;
- The exclusion and retaliation of those, like Fitzpatrick, who attempted to expose the irregularities.

**228.** That the U.S. Government, through its regulatory framework or lack thereof, allowed this transaction to proceed unchallenged demonstrates a systemic oversight failure, not a private contractual falling-out.

**229.** The SPAC process—intended to facilitate capital access and innovation—was here repurposed as a vehicle for private insiders to defraud public markets under the color of legitimacy. That legitimacy was conferred, in part, by regulatory agencies and public market structures. Courts, especially federal courts, must not be complicit in extending that failure by shielding the actors or excluding the whistleblowers.

**OBJECTION NO. 65 – OBJECTION TO MAGISTRATE'S AND OPPOSING PARTIES' CHARACTERIZATION THAT THIS IS A PRIVATE BUSINESS DISPUTE AND THAT FITZPATRICK'S KNOWLEDGE IS NOT FACTUAL, MERELY OPINION**

**230.** Fitzpatrick objects to the Magistrate's and opposing parties' repeated assertions that this is merely a "*private business dispute*" between Plaintiff BEN and Defendant AFG, and that Fitzpatrick "only has opinions." Both of these characterizations are factually incorrect, legally misleading, and unsupported by the record that notably does not yet include Fitzpatrick's official Complaint. A private business dispute is not one in which the parties facilitate a public merger

through frauds, misrepresentations, self-dealing, and enrichment to the detriment of Fitzpatrick, the public, and manipulation of publicly traded securities affecting public financial markets to the tune of +/- \$430 million dollars in market capitalization losses in a matter of several days.

A. This is **not** a Private Business Dispute — It Is a Matter of Securities Fraud, Insider Enrichment, Market Manipulation, and Public Harm.

**231.** The litigation arises not from a contract breach alone, but from the collapse of a SPAC transaction that resulted in:

- Material misrepresentations in public filings and investor communications;
- An artificial inflation of BNAI stock price immediately following the merger;
- An alleged \$32 million insider liquidation by AFG and Brewer III;
- A loss of +/- \$430 million in market capitalization within the first couple days of listing;
- Allegations by Fitzpatrick that he was misled, induced into employment, exploited, and then terminated when he became aware of the scheme and challenged executives.

**232.** The factual record, including these objections, Exhibit A (Stock Activity Chart) and Fitzpatrick's filings, shows a pattern of behavior that fits squarely within the definition of:

- Securities fraud (Rule 10b-5);
- Insider trading and market manipulation;
- Whistleblower retaliation under federal and state statutes;
- Civil RICO violations (18 U.S.C. § 1961 et seq.).

**233.** These are not private matters. They implicate public investors, the integrity of financial markets, inducement, misuse and exploitation of software and data engineers for nefarious and potentially criminal activity, whistleblower retaliation, and the abuse of judicial process to conceal fraud and retaliate against protected disclosures. See also Exhibit A (BNAI Stock

Activity, March 12–25, 2024), attached hereto and incorporated by reference, which documents the rapid price inflation, insider sales, and ensuing collapse in BNAI stock following the SPAC merger.

B. Fitzpatrick's Position Is Grounded in Firsthand Knowledge, Not Mere Opinion

**234.** Fitzpatrick is not a commentator, analyst, or armchair theorist. He is:

- A former employee of AFG, hired under false pretenses;
- A technical insider that witnessed and became aware of the false infrastructure and product representations made to regulators, investors, and the public as part of the SPAC transaction;
- A whistleblower who raised concerns internally and was retaliated against;
- A fact witness to conversations, codebases, executive communications, and internal operations that bear directly on the alleged fraud.

**235.** His filings, and factual assertions are admissible testimony, not personal speculation. To disregard his input as “*mere opinion*” is to ignore the rules of evidence and prejudicially discount direct, material evidence from the best-positioned witness to the fraudulent conduct at issue.

**236.** Courts routinely grant intervention or permit participation when a witness's factual knowledge bears on the integrity of the litigation. See *Rotstain v. Mendez*, 986 F.3d 931 (5th Cir. 2021).

**OBJECTION NO. 66 – THE COURT FAILED TO CONSIDER WHEN FITZPATRICK  
LEARNED OF THE TARRANT COUNTY CASE, THE TIMELINESS OF REMOVAL, AND  
THE FEDERAL QUESTIONS PRESENTED**

**237.** Fitzpatrick objects to the Magistrate's implication that his Notices of Removal were improper or untimely. In fact, Fitzpatrick did not become aware of the Tarrant County case

(Cause No. 017-352358-24) until he personally visited the Tarrant County District Clerk's office on October 29, 2024, and obtained records, as evidenced by the attached Exhibit D (receipt).

**238.** At the time, Fitzpatrick was still employed by AFG and unaware that this litigation secreted by AFG had been filed. In addition to the civil rights removal and federal question(s) presented, the procedural concealment of this case by AFG, followed by Fitzpatrick's subsequent wrongful termination and discovery of his name and work being used without full disclosure, for nefarious purposes and potential criminality on the part of AFG and others, is a critical part of the factual and legal basis for removal under 28 U.S.C. §§ 1441, 1443, and the anti-retaliation provisions of federal whistleblower law.

**239.** Failure to consider the timing of Fitzpatrick's discovery, and his good faith removal shortly thereafter, is a procedural and factual error that further invalidates the Magistrate's recommendation for remand.

**OBJECTION NO. 67 - MAGISTRATE FAILED TO CONSIDER FITZPATRICK'S PRIVATE RIGHT OF ACTION UNDER THE RICO ACT AS A PRIVATE ATTORNEY GENERAL (PRIVATE ATTORNEY GENERAL DOCTRINE) ENFORCING FEDERAL LAW**

**240.** Fitzpatrick objects to the Magistrate's failure to consider the plain language of his filings and his independent statutory right of action under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., and specifically his civil enforcement authority under § 1964(c) under the private attorney general doctrine and for direct harm.

**241.** Although Fitzpatrick has not yet been granted leave to file a formal complaint, his filings—including Dkt. No. 21, Dkt. No. 28, and others—clearly invoke a factual matrix involving:

- A fraudulent business combination;
- Wire fraud, mail fraud, and securities fraud;

- Insider profiteering and asset stripping;
- Use of shell companies, retaliatory lawsuits, and judicial and procedural abuse to conceal misconduct;
- Ongoing retaliation against a whistleblower with not only direct knowledge of the scheme, but who has been directly harmed by RICO predicate act violations on the part of two interconnected RICO enterprises.

**242.** Under § 1964(c), “[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor” in federal court and “shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.”

Courts have repeatedly emphasized that RICO was designed to empower private litigants as private attorneys general to expose and dismantle racketeering schemes—especially where public enforcement may be limited or delayed.

**243.** By failing to address this statutory right, the Magistrate’s Recommendation overlooks a core basis for federal subject-matter jurisdiction, standing, and intervention. Fitzpatrick’s interest is not merely that of a pro se litigant seeking redress—it is that of a citizen asserting a congressionally granted right to enforce federal law and uncover fraud affecting both the market and the courts. See Dkt. No. 52 at p. 4–5, where the Magistrate finds Fitzpatrick’s interests to be “*ideological, economic, or precedential*.” This fails to account for civil RICO standing under 18 U.S.C. § 1964(c), which permits suits for injury to business or property caused by a pattern of racketeering activity—precisely what Fitzpatrick alleges in sufficient detail even absent his official complaint which he has sought leave to file.

**244.** Accordingly, Fitzpatrick respectfully requests that the District Judge:

- Reject the Magistrate’s recommendation to strike his filings and deny intervention;

- Recognize that Fitzpatrick has asserted a legitimate and fact-supported basis to intervene as a civil RICO plaintiff with a personal and public interest in exposing racketeering activity;
- Further recognize that through an Act of Congress, Fitzpatrick retains this right separately, distinctly, and irrespective of any action that could be or would be brought by another governmental agency or body;
- Grant leave to intervene, and permit Fitzpatrick to file a complaint pursuant to § 1964(c).

## **VI. NOTICE OF INTENT TO APPEAL**

**245.** Fitzpatrick hereby gives formal notice that, should the District Judge adopt the Magistrate Judge's Findings, Conclusions, and Recommendation (Dkt. No. 52) in whole or in part, he intends to pursue an appeal to the United States Court of Appeals for the Fifth Circuit under 28 U.S.C. § 1291 and FRAP.

**246.** This notice is submitted to preserve all appellate rights, including the right to challenge constitutional violations, misapplications of law, jurisdictional errors, and procedural irregularities that may arise from adoption of the Recommendation. Fitzpatrick expressly reserves the right to appeal any final order or judgment affecting:

- The denial of intervention under FRCP Rules 24(a) or 24(b);
- The improper remand of removed state cases raising federal questions and civil rights claims;
- The failure to resolve or rule on multiple pending motions;
- Violations of due process, equal protection, First Amendment, and access-to-court rights;
- And the suppression or exclusion of whistleblower evidence and related claims via improper procedural mechanisms.

**247.** Fitzpatrick respectfully requests that any final ruling specify whether it constitutes a final order as to Fitzpatrick's rights and/or interests for the purposes of appeal, and that all objections, facts, and arguments presented herein be incorporated into the record for appellate review.

## **VII. NOTICE OF RESERVATION OF CLAIMS**

**248.** To avoid any risk of waiver or preclusion, Fitzpatrick hereby provides continuing notice that he expressly reserves all independent legal claims arising out of the facts, transactions, and injuries described in this action and in his related filings, including but not limited to:

- Claims for whistleblower retaliation under 15 U.S.C. § 78u-6(h) (Dodd-Frank Act);
- Claims for civil RICO liability under 18 U.S.C. § 1962, 18 U.S.C. § 1964(c);
- Claims for constitutional violations under 42 U.S.C. § 1983, 42 U.S.C. § 1985(2), and 42 U.S.C. § 1985(3);
- Claims for declaratory and injunctive relief under federal and equitable principles;
- And any additional claims or causes of action, for all damages, arising from Fitzpatrick's fraudulent inducement into employment, wrongful and retaliatory termination, or subsequent efforts to violate Fitzpatrick's legal and statutory rights, and to silence, intimidate, or punish Fitzpatrick's protected whistleblower conduct.

**249.** Fitzpatrick has been denied participation in this proceeding, despite timely and repeated attempts to intervene, assert jurisdictional rights, file pleadings, submit evidence, and clarify the nature of his distinct legal interests.

**250.** Accordingly, Fitzpatrick respectfully asserts that he has not been afforded a full and fair opportunity to litigate those claims in this forum. Any decision by the Court to deny intervention, strike filings, or remand cases must not be construed as a final adjudication of those claims or as a bar to subsequent litigation.



**251.** This notice is filed to preserve all claims for future adjudication and to preclude any assertion of res judicata, collateral estoppel, or waiver as to issues not fully and fairly litigated in this proceeding.

### **VIII. CONCLUSION & PRAYER FOR RELIEF**

**252.** To the extent any objection, factual dispute, procedural concern, or legal issue arising from the Magistrate's Recommendation is not explicitly raised herein, Fitzpatrick respectfully preserves and incorporates all such objections to prevent waiver and ensure full appellate review.

**253.** Fitzpatrick respectfully submits this Response and Exhibit A as evidence that this litigation involves material public market harm and whistleblower suppression—issues that merit full de novo review and appellate preservation.

WHEREFORE, Defendant Fitzpatrick, pro se, respectfully requests that this Court:

1. Reject the Magistrate's Recommendation (Dkt. No. 52) in its entirety, for the reasons stated herein, and for failure to address material factual evidence and specific harm to Fitzpatrick, which, while factual, only need be plausible at this stage;
2. Consider the full record, including this response and objections to the Magistrate's recommendation and its accompanying exhibits as part of de novo review and the FRCP Rule 24 analysis;
3. Reject the "*private dispute*" narrative as inconsistent with the factual and legal context, and the record thus far;
4. Schedule a hearing to evaluate the relevance and admissibility of the factual evidence on the record now before the Court.
5. GRANT Fitzpatrick's IFP Motion (Dkt. No. 22);

6. Acknowledge Fitzpatrick's factual, technical, and testimonial knowledge as legally cognizable under FRCP Rule 24;
7. GRANT Fitzpatrick's Motion to Intervene and relief sought therein (Dkt. No. 21);
8. DENY Defendant AFG's Motions to Remand (Dkt. Nos. 40 & #41) in the interest of judicial efficiency, consistency, fairness, and prejudicial to Fitzpatrick's rights and interests;
9. DENY the motion to strike Fitzpatrick's filings or any other request to strike, unfile, or disregard Fitzpatrick's pleadings, or, in the alternative, grant leave to refile in proper form and proceed under FRCP Rule 24(c) and 15(a);
10. Rule on all pending motions filed by Fitzpatrick, including his Emergency Motion to Expedite and Consolidate (Dkt. No. 50), Supplement to Motion to Expedite (Dkt. No. 51), Motion for Leave to File (Dkt. No. 45), and all pending Motions for Judicial Notice (Dkt. Nos. 36, #37, #39, and #46);
11. Preserve Fitzpatrick's rights and GRANT Fitzpatrick leave to file his full and formal complaint or allow Fitzpatrick leave to amend any pleading in this matter, should the Court find intervention procedurally premature or partially deficient;
12. Acknowledge and uphold Fitzpatrick's rights as a federal whistleblower under Sarbanes-Oxley and Dodd-Frank;
13. Acknowledge and preserve Fitzpatrick's right to clear his name from any implication of wrongdoing, fraud, or criminality arising from the conduct of opposing parties alleged in this action, and to distinguish himself as a whistleblower and victim of fraudulent inducement—not as a knowing participant in any misconduct; and

14. GRANT such other relief, at law or in equity, to which Fitzpatrick may be justly entitled.

In addition, to the extent the Magistrate's Findings, Conclusions, and Recommendation contain unresolved factual disputes material to the intervention, remand, or evidentiary exclusion determinations, Fitzpatrick respectfully requests that the District Court conduct a de novo evidentiary hearing or recommit those matters to the Magistrate Judge for further factual development under 28 U.S.C. § 636(b)(1) and Rule 72(b)(1).

Dated: April 1, 2025

Respectfully submitted,

/s/ Maurice Fitzpatrick  
Maurice Fitzpatrick, pro se  
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**JURY TRIAL DEMAND**

Defendant Maurice Fitzpatrick hereby demands a jury trial on all triable issues.

Dated: April 1, 2025

Respectfully submitted,

/s/ Maurice Fitzpatrick  
Maurice Fitzpatrick, pro se  
General Delivery  
Dallas, TX 75260-9999  
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Email: afglawsuit@yahoo.com

**CERTIFICATE OF SERVICE**

Defendant Fitzpatrick hereby certifies that a copy of the foregoing, Defendant Fitzpatrick's Response and Objections to Magistrate Judge's Findings, Conclusions, and Recommendation (Dkt. No. 52) and Exhibits A, B, C, and D, was served upon the attorneys of record of all parties to the above cause through the Court's CM/ECF e-filing system on April 1, 2025.

/s/ Maurice Fitzpatrick  
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