

Richard D. McLeod (SBN 022346)
KLARQUIST SPARKMAN, LLP
121 S.W. Salmon Street, Ste. 1600
Portland, OR 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301
richard.mcleod@klarquist.com

Matthew J. Zimmerman, Esq. (*pro hac vice pending*)
ELECTRONIC FRONTIER FOUNDATION
454 Shotwell Street
San Francisco, CA 94110
Telephone: (415) 436-9333
Facsimile: (415) 436-9993
mattz@eff.org

Attorneys for *Amicus Curiae*
Electronic Frontier Foundation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

Obsidian Finance Group, LLC, <i>et al.</i> ,	
	Plaintiffs,
v.	
Crystal Cox,	
	Defendant.

CASE NO. 3:11-cv-00057-HZ

**MOTION OF THE ELECTRONIC
FRONTIER FOUNDATION FOR LEAVE
TO FILE AN *AMICUS CURIAE* BRIEF IN
SUPPORT OF DEFENDANT CRYSTAL
COX'S MOTION FOR NEW TRIAL AND
IN THE ALTERNATIVE FOR
REMITTUR**

The Electronic Frontier Foundation (“EFF”) respectfully requests that this Court grant leave to file an *amicus curiae* brief in support of Defendant Crystal Cox’s motion for a new trial. EFF seeks leave to file because the Court’s erroneous jury instruction regarding defamation threatens to harm not only the Defendant but also speakers across the district. Indeed, especially when read in light of the Court’s troubling and unnecessary rulings regarding whether or not the Defendant constituted “media” or “press,” the jury instruction impermissibly chills speech in contravention of the First Amendment. Defendant has ably and correctly identified the correct First Amendment defamation intent standard and why her motion for a new trial should be granted. EFF asks that its own motion be granted so that it can both affirm Defendant’s arguments as well as underscore the chilling effect of the recent Court proceedings on the greater Internet community.

The Electronic Frontier Foundation is a donor-supported membership organization working to protect fundamental rights regardless of technology; to educate the press, policymakers, and the general public about civil liberties issues related to technology; and to act as a defender of those liberties. EFF currently has over 16,000 donating supporters worldwide, and over 150,000 subscribers to EFFector, its email newsletter, including over 1,300 subscribers in Oregon. Among its various activities, EFF opposes misguided legislation, initiates and defends court cases preserving individuals’ rights, launches global public campaigns, introduces leading edge proposals and papers, hosts frequent educational events, engages the press regularly, and publishes a comprehensive archive of digital civil liberties information on the most linked-to web sites in the world at www.eff.org.

As EFF will explain in detail in its brief, the incorrect defamation standard was applied in this case, impermissibly permitting the jury to impose strict defamation liability. Moreover, the jury’s damages award was excessive and unsupported by the evidence in the record. Both separately and together, the errors are grounds for a new trial. Combined with the Court’s other collateral decisions about the consequence of the Defendant’s “non-media” status, these errors

collectively operate to announce an unnecessarily risky legal landscape for online speakers in the district, one at odds with the First Amendment and Oregon law.

For the foregoing reasons, EFF asks that it be given leave to file an *amicus curiae* brief.

Respectfully submitted,

Dated: January 11, 2012

By: /s/ Richard D. Mc Leod

Richard D. Mc Leod (SBN 022346)
KLARQUIST SPARKMAN, LLP
121 S.W. Salmon Street, Ste. 1600
Portland, OR 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301
richard.mcleod@klarquist.com

Matthew J. Zimmerman, Esq. (*pro hac vice pending*)
ELECTRONIC FRONTIER FOUNDATION
454 Shotwell Street
San Francisco, CA 94110
Telephone: (415) 436-9333
Facsimile: (415) 436-9993
mattz@eff.org

Attorneys for *Amicus Curiae*
Electronic Frontier Foundation