

1 **I. FACTUAL BACKGROUND & PROCEDURAL HISTORY**

2 **1. ORDER DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**
3 **AND GRANTING DEFENDANT UNITED STATES’ CROSS-MOTION TO**
4 **DISMISS (“ORDER”)**

5 On May 28, 2020, the Court denied Plaintiff’s Motion for Summary Judgment (Dkt. 17).
6 Dkt. 28. Plaintiff is the subject of a permanent protection order. Dkt. 17-1, at 10. The Court held
7 that 18 U.S.C. § 922(g)(8) applies to Plaintiff and prohibits him from possessing a firearm or
8 ammunition that has been shipped or transported in interstate or foreign commerce. Dkt. 28, at
9 17.

10 U.S.C. 922(g)(8) prohibits the possession of a firearm, which has been shipped or
11 transported in interstate or foreign commerce, by anyone who is subject to a court order that:

12 **(A)** was issued after a hearing of which such person received
13 actual notice, and at which such person had an opportunity to
14 participate;

15 **(B)** restrains such person from harassing, stalking, or
16 threatening an intimate partner of such person or child of such
17 intimate partner or person, or engaging in other conduct that would
18 place an intimate partner in reasonable fear of bodily injury to the
19 partner or child; and

20 **(C)(i)** includes a finding that such person represents a credible
21 threat to the physical safety of such intimate partner or child; or

22 **(ii)** by its terms explicitly prohibits the use, attempted use, or
23 threatened use of physical force against such intimate partner or
24 child that would reasonably be expected to cause bodily injury[.]

18 U.S.C. 922(g)(8).

As to Plaintiff’s Motion for Summary Judgment, the sole issue before the Court was
whether the permanent protection order against Plaintiff was issued after a hearing at which
Plaintiff had an opportunity to participate. Dkt. 28, at 15–16. The Order correctly observed that
the opportunity to participate requirement in 18 U.S.C. 922(g)(8) is a “minimal one,” requiring

1 only “a proceeding during which the defendant *could* have objected to the entry of the order or
2 otherwise engaged with the court as to the merits of the restraining order.” Dkt. 28, at 16
3 (quoting *United States v. Young*, 458 F.3d 998, 1009 (9th Cir. 2006) (emphasis in original)).

4 The Order held that, although Plaintiff was unable to be physically present at the
5 September 11, 1996 hearing where the permanent protection order was entered against him, he
6 could have otherwise engaged with the court as to the merits of the permanent protection order.
7 Dkt. 28, at 16. The Court explained that:

8 Plaintiff had requested a modification of the permanent protection
9 order to vacate a one-mile restriction around the Olympia Top
10 Food store, which was granted on October 16, 1996. It is
11 uncontroverted that Plaintiff never challenged or appealed the
12 permanent protection order. *See, e.g.*, Dkt. 18, at 3.

13 It appears that Plaintiff could have filed a motion for
14 reconsideration or motion for amendment of judgment, requested
15 another modification of the protection order, or pursued an
16 appeal—but he did not. Physical presence at a proceeding is but
17 one way an individual may have the opportunity to object or
18 otherwise engage with the court as to the merits of a protection
19 order. Following the September 11, 1996 hearing, Plaintiff failed
20 to engage with the court as to the merits of the protection order,
21 despite opportunities to do so, and his inaction should not inure to
22 his advantage more than two decades later.

23 Dkt. 28, at 16 (footnotes omitted).

2. MOTION FOR RECONSIDERATION

24 On June 11, 2020, Plaintiff filed the instant Motion for Reconsideration. Dkt. 30.
Plaintiff’s Motion for Reconsideration contends that Plaintiff’s attempts to engage with the
Thurston County Superior Court as to entry of the permanent protection order had not been put at

1 issue,¹ so “documents [demonstrating Plaintiff’s attempts to engage with the court after entry of
2 the permanent protection order] were not previously submitted because there was no need to
3 submit them.” Dkt. 30, at 1–2.

4 Plaintiff’s Motion for Reconsideration provides that “Mr. Kinkaid attempted to terminate
5 the protection order on a couple of occasions shortly after it was issued without his participation,
6 and was denied every time.” Dkt. 30, at 2. In a declaration filed in support of the Motion to
7 Reconsider, Plaintiff’s counsel provides various records from between September 11, 1996, and
8 April 29, 1997. Dkt. 31. The declaration provides, in part, the following records for the first time:

- 9 • A Thurston County Corrections Facility Inmate Request Form (“Kite”), dated September
10 21, 1996, requesting an in-person hearing as to the entry of the permanent protection
11 order (Dkt. 31, at 17);
- 12 • A response from the Thurston County Clerk’s Office, dated October 1, 1996 (Dkt. 31, at
13 16);
- 14 • A Motion to Modify Order for Protection and Notice of Hearing, dated October 3, 1996,
15 with notice of a hearing scheduled for October 16, 1996 (Dkt. 31, at 13);
- 16 • Kites requesting that Plaintiff be physically present at the October 16, 1996 hearing (Dkt.
17 31, at 11–12); and
- 18 • An October 16, 1996 Thurston County Superior Court calendar report² showing that
19 Plaintiff was physically present at the hearing and had the opportunity to testify under
20 oath and that the court entered an order modifying the protection order (Dkt. 31, at 10).

21 Plaintiff’s Motion for Reconsideration makes three primary arguments. Dkt. 30. First,
22 that that Court violated principles of statutory construction by reading extra language into 18
23 U.S.C. 922(g)(8)(A). Dkt. 30, at 2–3. Second, that the Court violated principles of statutory

24 ¹ Defendant Thurston County Sherriff’s response brief filed in opposition to Plaintiff’s Motion for Summary
Judgment stated that the “Order of Protection remains in place [and] has never been challenged or appealed.” Dkt.
18, at 3.

² The calendar report indicates that there is tape footage of the hearing. Dkt. 31, at 10. No footage was provided to
the Court.

1 construction because it vitiates U.S.C. 922(g)(8)(A) entirely. Dkt. 30, at 3–4. Third, that the
2 Court did not account for the burden shift between a motion for a permanent protection order and
3 a motion to terminate a permanent protection order. Dkt. 30, at 4–5.

4 **II. DISCUSSION**

5 Local Rules W.D. Wash. LCR (7)(h)(1) provides that “[m]otions for reconsideration are
6 disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest
7 error in the prior ruling or a showing of new facts or legal authority which could not have been
8 brought to its attention earlier with reasonable diligence.”

9 None of Plaintiff’s three arguments show a manifest error in the Order or show new facts
10 or legal authority which could not have been brought earlier with reasonable diligence.

11 As to Plaintiff’s first and second arguments, the Court did not read extra language into nor vitiate
12 18 U.S.C. 922(g)(8)(A). The Court did not rule that Plaintiff had to file a motion for
13 reconsideration, a motion for amendment of judgment, a motion for modification of the
14 protection order, pursue an appeal, or as Plaintiff suggests, file a motion to terminate or revise
15 the protection order. Rather, the Court provided a non-exhaustive list of ways in which Plaintiff
16 could have engaged with the Thurston County Superior Court as to the merits of the permanent
17 protection order. *See* Dkt. 28, at 16. Plaintiff’s belated showing that he moved to modify and
18 terminate the permanent protection order shows only that Plaintiff was afforded the opportunity
19 to engage with the court.

20 As to Plaintiff’s third argument, the Order did not need to account for a burden shift
21 between a motion for a permanent protection order and a motion to terminate a permanent
22 protection order. Plaintiff has not shown that he was unable to engage with the Court as to
23 issuance of the permanent protection order and has thus failed in his burden of proof.

