

April 19, 2018

Elisabeth A. Shumaker
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CARL GENBERG,

Plaintiff - Appellant,

v.

STEVEN S. PORTER,

Defendant - Appellee,

and

JEFFREY SPERBER; AL BAUTISTA;
CHERYL HOFFMAN-BRAY; MICHELE
DARNAUD; PHILIPPE GASTONE,

Defendants.

NATIONAL WHISTLEBLOWER
CENTER,

Amicus Curiae.

No. 16-1368
(D.C. No. 1:11-CV-02434-WYD-MEH)
(D. Colo.)

ORDER

Before **HARTZ, HOLMES, and BACHARACH**, Circuit Judges.

This matter is before the court on the *Petition of Steven S. Porter for Panel Rehearing and Rehearing En Banc*. We also have a response from the appellant and Mr. Porter's reply.

Upon consideration, we grant panel rehearing only to clarify that the prior opinion addressed only the award of summary judgment to the defendant. The Court did not address, one way or another, whether the defendant can present the same-action defense in the district court's further proceedings.

In light of this limited grant and clarification, and noting the request for en banc consideration was dependent on it, that part of the petition seeking en banc review is denied as moot.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", with a long horizontal flourish extending to the right.

ELISABETH A. SHUMAKER, Clerk