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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

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9 Alan Singer,

10 Plaintiff,

11 vs.

12 Harvey Duro, Sr. et al.,

13 Defendant.

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) No. CV-08-1304-PHX-DGC

) **ORDER**

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In its April 22, 2009 order, the Court stated that it would “entertain a motion for monetary sanctions by Plaintiff against Mr. Zundel personally for the time Plaintiff invested in drafting the motion for summary judgment that must now be re-drafted after additional discovery.” Dkt. #70. Plaintiff has filed a motion for monetary sanctions, but instead requests monetary sanctions for the time Plaintiff will have to invest in drafting a subsequent motion for summary judgment now that the admissions have been withdrawn. Dkt. #72. Because the motion does not address the sanctions allowed by the Court – for the cost of drafting the previous summary judgment motion – the Court will deny the motion for sanctions without prejudice. Plaintiff may re-file the motion and seek sanctions for time invested in drafting his first motion for summary judgment after the Court has ruled on the forthcoming motions for summary judgment.

1 Plaintiff has also filed a request for certification of appeal under 28 U.S.C. § 1292(b),  
2 asking the Court to certify for appeal the Court's decision to allow Defendants to withdraw  
3 admissions. Dkt. #73; *see* Dkt. #70. Section 1292(b) states that a district court may  
4 designate an otherwise unappealable civil action as subject to appeal if "the order involves  
5 a question of law as to which there is substantial ground for difference of opinion" and "an  
6 immediate appeal from the order may materially advance the ultimate termination of the  
7 litigation." 28 U.S.C. § 1292(b). The Court will deny Plaintiff's request. The Court had  
8 discretion to permit the withdrawal of admissions, provided the Court addressed the two-  
9 pronged test of Rule 36(b). *See Conlon v. United States*, 474 F.3d 616, 625 (9th Cir. 2007);  
10 Fed. R. Civ. P. 36(b). Plaintiff does not dispute that the Court addressed both factors. *See*  
11 Dkt. #70. Nor will immediate appeal materially advance the ultimate termination of this  
12 litigation.

13 **IT IS ORDERED:**

- 14 1. Plaintiff's motion for sanctions (Dkt. #72) is **denied without prejudice**.  
15 Plaintiff may re-file a motion for sanctions seeking the expense incurred in  
16 preparing the first motion for summary judgment (Dkt. #51) after the Court has  
17 ruled on the forthcoming motions for summary judgment.
- 18 2. Plaintiff's request for certification of appeal under 28 U.S.C. § 1292(b) (Dkt.  
19 #73) is **denied**.

20 DATED this 19th day of June, 2009.

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David G. Campbell  
United States District Judge