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 11 **UNITED STATES DISTRICT COURT**
 12 **DISTRICT OF ARIZONA**

13 XCENTRIC VENTURES, LLC, an
 Arizona limited liability corporation, and
 14 JABURG & WILK, P.C., a professional
 corporation,

15 Plaintiffs,

16 v.

17 SHAWN RICHESON,

18 Defendant.
 19
 20
 21

Case No.: 2:10-cv-1931-PHX-NVW

**RESPONSE TO DEFENDANT SHAWN
 RICHESON'S MOTION FOR RULE
 11(C) SANCTIONS AGAINST MARIA
 CRIMI SPETH AND JABURG &
 WILK, P.C.**

AND

**CROSS-MOTION FOR SANCTIONS
 PURSUANT TO RULE 11,
 FED.R.CIV.P.**

22 Plaintiff Jaburg & Wilk, P.C. and Plaintiffs' counsel Maria Crimi Speth hereby
 23 respond to the pleading filed by Defendant Shawn Richeson and captioned as "Motion for
 24 Rule 11(c) Sanctions – Against Maria Crimi Speth & Jaburg and Wilk P.C." (Doc. No.
 25 27). Defendant Richeson has failed to comply with Rule 11, Fed.R.Civ.P. in the filing of
 26 this Motion. Because the Motion for Sanctions is procedurally improper, it must be
 27 denied on its face. In the alternative, because Defendant Richeson fails to establish any
 28 basis for an award of sanctions pursuant to Rule 11(b), the Motion must be denied.

1 Further, based on the false statements made by Defendant Richeson within his Motion for
2 Sanctions, Plaintiffs request that the Court award *them* sanctions pursuant to Rule 11(c).

3 **I. DEFENDANT RICHESON’S MOTION FOR SANCTIONS MUST BE**
4 **DENIED**

5 Pursuant to Rule 11(c)(2), any Motion for Sanctions pursuant to Rule 11(b):

6 must be served under Rule 5, but it **must not be filed or be presented to**
7 **the court** if the challenged paper, claim, defense, contention, or denial is
8 withdrawn or appropriately corrected **within 21 days after service** or
9 within another time the court sets.

10 Fed.R.Civ.P. Rule 11(c)(2). Defendant Richeson has filed his Motion for Sanctions
11 without first serving it and waiting twenty-one days before filing it. Courts “enforce this
12 safe harbor provision strictly.” *Holgate v. Baldwin*, 425 F.3d 671, 678 (9th Cir. 2005);
13 *see Radcliffe v. Rainbow Const. Co.*, 254 F.3d 772, 788-89 (9th Cir.2001) (citing *Barber*
14 *v. Miller*, 146 F.3d 707, 710-11 (9th Cir.1998)). Simply letting Plaintiffs know that he
15 planned on filing such a motion “does not satisfy Rule 11's strict requirement that a
16 motion be served on the opposing party.” *Matsumaru v. Sato*, 521 F. Supp. 2d 1013, 1015
17 (D. Ariz. 2007); *see Radcliffe v. Rainbow Constr. Co.*, 254 F.3d 772, 789 (9th Cir.2001)
18 (holding that “although a defendant had given informal warnings to the plaintiffs
19 threatening to seek Rule 11 sanctions, these warnings did not satisfy the strict requirement
20 that a motion be served on the opposing party twenty-one days prior to filing”); *Barber v.*
21 *Miller*, 146 F.3d 707, 710 (9th Cir.1998) (denying motion for sanctions because, despite
22 multiple warnings as to deficiency of plaintiff’s claim, Rule 11 requires service of a
23 motion). On this basis alone, the Motion for Sanctions is procedurally improper and must
24 be denied.

25 In the alternative, the Motion must be denied because it fails to identify any
26 sanctionable conduct on the part of Jaburg & Wilk or Ms. Speth. Defendant Richeson
27 continues to use this Court case as a forum to defame and harass Plaintiffs and to cause
28 Plaintiffs to incur unnecessary expenses by filing pleadings without any legitimate
purpose. The present Motion is symptomatic of this problem. Instead of raising any
cogent legal theories, or pointing the Court to specific facts within Plaintiffs’ Complaint

1 that he believes to be false, Defendant Richeson instead simply makes generic
2 unsupported statements. Worse, Defendant Richeson misquotes the Court and counsel for
3 Plaintiffs, falsely arguing that (1) Plaintiffs’ legal theories were “pointed out by the
4 honorable Judge Neil Wake as having no merit and no factual basis to support them;” and
5 (2) counsel for Plaintiffs’ “testified that neither Plaintiff would ever be able to meet its
6 Burden [sic] of proof of this Court’s minimal jurisdiction of \$75,000.00.” Each identified
7 statement is unsupported by the record of this Court, a point which is made worse when
8 noting that Defendant Richeson was present before the Court during the so-called
9 “testimony” which he believes to give rise to these mistaken conclusions. It is these two
10 points alone that Defendant Richeson has based his Motion for Sanctions. Because each
11 of these statements is false and unsupported by the record of the Court, Defendant
12 Richeson cannot support his Motion for Sanctions and it must be denied.

13 It appears that Defendant Richeson, while a sophisticated *pro per* litigant, may be
14 confused by certain legal processes. In particular, Defendant Richeson appears to be
15 under the mistaken belief that by simply making a statement in a pleading, and then
16 signing it, said statement is automatically considered truthful for the purpose of this
17 litigation. That is an improper conclusion by Defendant Richeson, and a notion which he
18 must be quickly disabused of by the Court. “[A] pro se litigant is not excused from
19 knowing the most basic pleading requirements.” *American Ass'n of Naturopathic*
20 *Physicians v. Hayhurst*, 227 F.3d 1104, 1107-08 (9th Cir.2000) (citations omitted).
21 Defendant Richeson cannot be allowed to file pleadings which rely solely on his personal
22 and otherwise unsupported avowals of “fact” and conclusions of law. *See Christian v.*
23 *Mattel, Inc.*, 286 F.3d 1118, 1129 (9th Cir. 2002) (“Simply saying so does not make it
24 so.”).

25 **II. PLAINTIFFS ARE ENTITLED TO SANCTIONS PURSUANT TO RULE 11**

26 Rule 11 motions themselves are subject to Rule 11, and by making false statements
27 to the Court in his Motion, Defendant Richeson has opened himself up to a request for
28 sanctions by Plaintiffs. “A party defending a Rule 11 motion need not comply with the

1 separate document and safe harbor provisions when counter-requesting sanctions.”
2 *Patelco Credit Union v. Sahni*, 262 F.3d 897, 913 (9th Cir. 2001). Plaintiffs request that
3 they be awarded sanctions pursuant to Rule 11(c) based on Defendant Richeson’s
4 violations of Rule 11(b)(3). Filing any document with the court constitutes a certification
5 by the filing party that they have made a reasonable inquiry, upon which they certify (to
6 the best of their knowledge, information and belief) that “factual contentions have
7 evidentiary support...” See *Golden Eagle Distrib. Corp. v. Burroughs Corp.*, 801 F.2d
8 1531, 1536 (9th Cir.1986). Defendant Richeson is aware that he has made certain factual
9 contentions without any evidentiary support¹, and therefore, his Motion violates Rule
10 11(b)(3).

11 “The reasonable inquiry test is meant to assist courts in discovering whether [a
12 filer], after conducting an objectively reasonable inquiry into the facts and law, would
13 have found the [allegations] to be well-founded.” *Holgate v. Baldwin*, 425 F.3d 671, 677
14 (9th Cir. 2005). There is no question that Defendant Richeson’s allegations regarding the
15 conclusions made by this Court and the statements made by counsel for Plaintiffs are not
16 well founded. Even if the statements by the Court were to be interpreted liberally, no
17 reasonable person could reach the conclusions advocated by Defendant Richeson.
18 Similarly, there is no testimony from counsel for Plaintiffs regarding the absolute inability
19 of Plaintiffs to prove their damages; indeed, as evidenced by the filing of Plaintiffs’
20 supplemental memorandum of law regarding that damage amount, Plaintiffs believe and
21 have advocated to the Court that their damages do meet the minimum threshold required
22 to establish diversity jurisdiction. After even the most minimal inquiry, no reasonable
23 person could find Defendant Richeson’s allegations regarding what occurred at the
24 Preliminary Injunction hearing to have evidentiary support. See, e.g., *Truesdell v. S.*
25 *California Permanente Med. Group*, 293 F.3d 1146, 1154 (9th Cir. 2002) (approving an
26 award of sanctions in cases where the filing party has personal knowledge of facts that
27 disprove his claims). Thus, Defendant Richeson has acted in violation of Rule 11(b)(3).

28 ¹ These contentions include the two statements regarding what occurred at the Preliminary Injunction hearing.

1 **III. CONCLUSION**

2 Based on the foregoing, it is requested that Defendant Richeson’s Motion for
3 Sanctions be denied in its entirety. Additionally, it is requested that Defendant Richeson
4 be sanctioned pursuant to Rule 11(b)(3) for his filing of the Motion for Sanctions, which
5 contained numerous false and unsupportable statements of “fact” regarding Plaintiffs and
6 their counsel.

7 DATED this 15th day of October, 2010.

8 **JABURG & WILK, P.C.**

9
10
11 s/Maria Crimi Speth
12 Maria Crimi Speth
13 David S. Gingras
14 Attorneys for Plaintiffs

15 *Certificate of Service*

16 I hereby certify that on the 15th day of October, 2010, I electronically transmitted the
17 attached document to the Clerk’s Office using the CM/ECF System for filing.

18 I have also caused to be delivered to Defendant, who is not registered with the CM/ECF
19 System, a copy of the attached document by First Class Mail and E-Mail:

20 Shawn Richeson
21 1906 Twilight Drive
22 Killeen, Texas 76543
23 Shawn@ClickaNerd.com
24 Defendant Pro Per

25 s/Debra Gower