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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Lee Michael Beitman,

10 Plaintiff,

11 v.

12 S. Herrick, et al.,

13 Defendants.
14

No. CV-17-08229-PCT-JAT

ORDER

15 Pending before the Court is Plaintiff Lee Michael Beitman's Motion for Rule 11(b)
16 Sanctions (Doc. 206).

17 On October 1, 2021, Defendant Betty Hahn filed a motion for extension of time to
18 file a motion for reconsideration of the Court's denial of her prior motion for summary
19 judgment. (Doc. 199). On October 14, 2021, Defendant Hahn filed a motion for
20 reconsideration of the Court's denial of her motion for summary judgment. (Doc. 203). In
21 both documents, Defendant Hahn's counsel signed the document but failed to sign the
22 mailing certificate appended to the last page of the filing. (Doc. 199 at 2-3; Doc. 203 at 6-
23 7). This is Plaintiff's first motion for sanctions against Defendant Hahn's counsel.

24 Plaintiff moves the Court to impose sanctions on Defendant Hahn's counsel for her
25 alleged intentional failure to provide mail service of court documents Doc. 199 and Doc.
26 203 to Plaintiff as required under Federal Rule of Civil Procedure 5(d). (Doc. 206 at 1). As
27 proof that Defendant Hahn's counsel's conduct was intentional, Plaintiff asserts that
28 Defendant Hahn's counsel failed to remedy the lack of service even after Plaintiff stated

1 “[t]he Plaintiff never received (Doc. 199) from the defense counsel. This was a violation
2 of Rule 5(d) Fed. R. Civ. P. and the denial of the ability to respond to the motion before
3 the Court made its ruling” in Plaintiff’s Objection to Ruling by Magistrate Judge. (Doc.
4 202 at 2).

5 Defendant Hahn’s counsel asserts that her failure to properly serve Plaintiff by mail
6 was inadvertent and went undiscovered until Plaintiff’s Motion for Sanctions, so sanctions
7 are not warranted in this instance. (Doc. 210 at 2). According to Defendant Hahn’s counsel,
8 because Doc. 202 was addressed to the Court and did not otherwise warrant a response
9 from Defendant, Defendant Hahn’s counsel did not believe a response was necessary nor
10 did Defendant Hahn’s counsel realize that Plaintiff was alleging that she failed to properly
11 mail the documents to Plaintiff. (Doc. 210 at 2). Defendant Hahn’s counsel further certifies
12 that “[m]oving forward, undersigned counsel will do her best to ensure copies of all court
13 filings will be mailed to Plaintiff via U.S. Mail.” (Doc. 201 at 3).

14 Sanctions are justified under Rule 11 “when a filing is frivolous, legally
15 unreasonable, or without factual foundation, or brought for an improper purpose.” *Estate*
16 *of Blue v. Cnty. of L.A.*, 120 F.3d 982, 985 (9th Cir. 1997). A filing is frivolous if it is “both
17 baseless and made without a reasonable and competent inquiry.” *Townsend v. Holman*
18 *Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1990). The purpose of Rule 11 is to
19 promote judicial economy by deterring baseless filings, thereby “streamlin[ing] the
20 administration and procedure of the federal courts.” *Cooter & Gell v. Hartmarx Corp.*, 496
21 U.S. 384, 393 (1990). Outside of Rule 11, “a district court has the inherent power to impose
22 sanctions on counsel who ‘willfully abuse[s] judicial processes.’” *U.S. v. Blodgett*, 709
23 F.2d 608, 610 (9th Cir. 1983) (quoting *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766
24 (1980)). Such a sanction must be supported by “something more” than a finding of
25 recklessness; inherent power sanctions also require an attorney to act with an improper
26 purpose or in bad faith. *Fink v. Gomez*, 239 F.3d 989, 993 (9th Cir. 2001).

27 Here, Plaintiff does not allege that Defendant Hahn’s filing was frivolous,
28 unreasonable, or otherwise filed for an improper purpose, so the Court disagrees that Rule

1 11 sanctions would be appropriate here. Instead, Plaintiff appears to argue that sanctions
2 are warranted because Defendant Hahn's counsel intentionally failed to serve documents
3 on Plaintiff in violation of the Federal Rules of Civil Procedure.

4 The Court is not convinced that sanctions are warranted here under the Court's
5 general authority to impose sanctions. While Plaintiff has shown that Defendant Hahn's
6 counsel has violated Federal Rule of Civil Procedure 5(d) by failing to properly serve two
7 of her filings on Plaintiff and certify that she did so, Plaintiff has not shown that Defendant
8 Hahn's counsel acted in bad faith or that her actions were otherwise for an improper
9 purpose. In the absence of other evidence, the Court is satisfied with Defendant Hahn's
10 counsel's explanation that her failure to serve the documents on Plaintiff was an
11 undiscovered mistake. *Silaev v. Swiss-America Trading Corporation*, No. CV-14-02551-
12 PHX-JAT, 2017 WL 394342, at *4 (D. Ariz. Jan. 30, 2017) ("Although this Court does not
13 condone Counsel's conduct, it is not convinced that it is appropriate here to exercise its
14 inherent power to impose sanctions as a result of that conduct.") However, the Court
15 cautions Defendant Hahn's counsel that inadvertence to serve documents on Plaintiff
16 "when repeated, reflects contempt for the law, the Court, and [Plaintiff]" and, if repeated,
17 will be viewed as Defendant Hahn's disregard of the Federal Rules of Civil Procedure, our
18 Local Rules, and this Order, at which point sanctions may be appropriate. *See In re Volpert*,
19 177 B.R. 81, 92 (Bankr. N.D. Ill. 1995); *see also De Foe v. Sprint/United Management*
20 *Co.*, 196 F.R.D. 392, 393 (D. Kansas 2000).

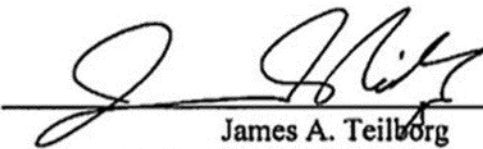
21 Finally, Plaintiff also asks the Court to require the Arizona Department of
22 Corrections (ADC) to institute the Prisoner Electronic Filing Program at the facility in
23 which Plaintiff is currently housed. However, the Court lacks the authority to require ADC
24 to unilaterally expand the Prisoner Electronic Filing Program outside the bounds of General
25 Order 14-17. Because Plaintiff is not currently incarcerated at a facility that participates in
26 the Prisoner Electronic Filing Program pursuant to General Order 14-17, his motion for an
27 order requiring ADC to "to start the E-file program at the South Unit facility like the other
28 facilities" is denied.

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Accordingly,

IT IS ORDERED THAT Plaintiff's Motion for Sanctions is **DENIED** in its entirety. (Doc. 206).

Dated this 25th day of January, 2022.


James A. Teilborg
Senior United States District Judge