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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ASIA ECONOMIC INSTITUTE, a California LLC; RAYMOND MOBREZ an individual; and ILIANA LLANERAS, an individual,

Plaintiffs,

vs.

XCENTRIC VENTURES, LLC, an Arizona LLC, d/b/a as BADBUSINESS BUREAU and/or BADBUSINESSBUREAU.COM and/or RIP OFF REPORT and/or RIPOFFREPORT.COM; BAD BUSINESS BUREAU, LLC, organized and existing under the laws of St. Kitts/Nevis, West Indies; EDWARD MAGEDSON an individual, and DOES 1 through 100, inclusive,

Defendants.

Case No.: 2:10-cv-01360-SVW-PJW

The Honorable Stephen V. Wilson

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SANCTIONS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 11; DECLARATION OF LISA J. BORODKIN

Hearing Date: October 4, 2010
Time: 1:30 PM
Courtroom: 6

I. INTRODUCTION

Plaintiffs submit this Opposition to Defendants' Motion for Rule 11 Sanctions filed September 3, 2010 ("Motion"). Defendants' Motion lacks the necessary evidentiary support showing that Defendants complied with the 21-day safe harbor provision under Rule 11(c)(2), which is strictly enforced in the Ninth Circuit. The Motion also lacks the certification showing compliance with Local Rule 7-3's meet and confer certification requirement. To the extent this Motion is based on the claim for RICO wire fraud, the motion violates clearly established Ninth Circuit authority stating that a Rule 15 motion to amend suffices to withdraw challenged claims. Defendants unreasonably refused and continue to refuse to stipulate to Plaintiffs' standing request to stipulate to the amendment eliminating the claim for RICO wire fraud, and take Plaintiffs' Rule 15 off calendar, even though the amendment is giving Defendants exactly what they requested in eliminating the challenged RICO wire fraud claim. The rest of Defendants' motion is legally and factual unsupportable. Defendants grossly misrepresent Plaintiffs' pleadings and legal arguments and cite irrelevant and out-of-context case law to support their untenable arguments. Worse, Defendants fail to identify **a single factual allegation unsupported by evidence**, claiming that the First Amended Complaint is rife with such allegations and that stating that these are pointed out in a chart purportedly attached as Exhibit "A" to their Motion but **Defendants did not file any such chart or Exhibit "A"** with their Motion. The alleged costs sought by Defendants are completely of their own making.

II. ADDITIONAL RELEVANT FACTS

Additional facts beyond those recited in Defendants' statement of facts are necessary. Defendants have failed to describe or submit proof that of this Motion's compliance with Rule 11's 21-day safe harbor. Indeed, they cannot.

This case was originally brought in state court. Defendants removed it. Immediately upon denying defendants' Anti-SLAPP motion, this Court bifurcated

the trial of this action to RICO predicated on extortion only.

Rather than following the Court's directive in bifurcating the case, Defendants then served broad, premature discovery on all claims and unreasonably refused to bifurcate discovery to match the bifurcated trial. This required Plaintiffs to bring a motion to bifurcate discovery, which was granted.

Defendants previously disregarded this Court's directive by improperly moving for summary judgment on all claims despite the Court's order bifurcating the case. This Court expressly stated in its Order of July 19, 2010 that "Although Defendants moved for summary judgment as to Plaintiffs' entire case, such a motion was inappropriate given the Court's prior Order bifurcating the RICO/extortion claims from the remaining claims and from the issue of Damages." DN-94 at 17 (emphasis added). This Court ordered, both at the hearing on July 12, 2010 and in the written order of July 19, 2010, that the case "remains bifurcated as to the RICO claims only." See DN-94 at 53 (emphasis added).

On August 3, 2010, Defendants served a proposed Rule 11 motion on counsel for Plaintiffs. See Declaration of Lisa J. Borodkin at Exs. 1-2. Defendants' proposed Rule 11 Motion contained numerous bad-faith and patently meritless challenges that were since eliminated from Defendants' Rule 11 Motion as filed. These included the outrageous claim[1] that "**Plaintiffs are aware that there is no such thing as a 'First Amendment right of petition'**." See Borodkin Dec. Ex. 2 at 23 (paragraph 242 of table in proposed Rule 11 motion) (emphasis added, quotes in original). Defendants' Motion as filed on September 3, 2010 does not contain

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[1] The First Amendment to the United States Constitution provides, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." (emphasis added)

this contention, or any contention of fact challenged by Defendants, as Defendants did not file the Exhibit A referenced in their motion papers purportedly containing the Appendix of challenged factual allegations. See Motion at 4:18.

Defendants continue to make inappropriate motions regarding claims that are part of the bifurcated case. On August 6, 2010, Defendants filed a Motion to Dismiss without conducting or requesting a prefiling conference of counsel, in violation of Local Rule 7-3. DN-110. Defendants did not file a Notice of Motion with the Motion, and did not provide the certification required by Local Rule 7-3 that "This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on (date)."

In addition, Defendants again directed their Motion to Dismiss improperly to all claims in the case, notwithstanding this Court's finding that their previous summary judgment motion against all claims in the case was improper. Defendants' motion to dismiss the First Amended Complaint ("FAC") filed on August 6, 2010, sought not only to dismiss the First and Second Causes of Action under RICO but also to dismiss Plaintiffs' state law claims in the Third, Eleventh and Twelfth Causes of Action. DN-110 at 20.

On August 14, 2010, Plaintiffs wrote to Defendants' counsel requesting to meet and confer in an effort to respond to Defendants' proposed Rule 11 Motion in part by amending the pleadings to eliminate the RICO wire fraud claim and other factual contentions. See Borodkin Dec. at Ex. 3. Within the 21-day safe harbor period commenced on August 3, 2010 with the service of Defendants' proposed Rule 11 motion, Plaintiffs on August 16, 2010 filed a motion under Federal Rule of Civil Procedure 15 seeking leave to amend the pleadings to eliminate the RICO claims predicated on wire fraud (DN-116) and lodged the Proposed Second Amended Complaint therewith. (DN-117)

Plaintiffs did not receive any response to the August 14, 2010 email from Defendants' counsel until August 18, 2010, when Defendants' counsel telephoned

Plaintiffs counsel on another motion and Plaintiffs renewed the request that Defendants stipulate to an amendment to the pleadings that would eliminate the RICO wire fraud claims and thus eliminate Defenedants' Rule 11 challenge to that claim. Borodkin Dec. ¶6 and Ex. 4. Following the August 18, 2010 telephone conference, Plaintiffs confirmed to Defendants' counsel in writing:

> "[W]e discussed that the proposed Second Amended Complaint did not add any new allegations to the First Amended Complaint and that another purpose of amending is to remove some of the allegations Defendants requested be withdrawn per your Rule 11 Motion for Sanctions. You stated unwillingness to stipulate to the proposed First Amended Complaint on that ground as well. As we stated, this makes it difficult, if not impossible, to comply with your Rule 11 Motion. We believe that this would undermine any request for attorneys' fees in asking that those allegations be withdrawn."

Borodkin Dec. ¶6, Exhibit 4.

In the August 18, 2010 call, Plaintiffs also advised Defendants that their previous Motion to Dismiss appeared to violate the spirit of the Court's Order of July 19, 2010 that the case remain bifurcated as to RICO claims only because it appeared to seek dismissal of either the entire First Amended Complaint and at a minimum three state law claims that were not part of the bifurcated case.

Subsequently, Defendants – amazingly -- on August 30, 2010, included a renewed request for summary judgment on all remaining claims in the action in their Opposition to Plaintiffs' Motion to Amend the Pleadings DN-129 at 5("Defendants urge this Court to decide the remainder of Defendants' Motion for Summary Judgment and throw this case out in its entirety."), notwithstanding that this Court had already denied that part of Defendants' summary judgment motion and stated such a request was inappropriate. DN-94 at 17.

Thus, during the 21-day "safe harbor" period provided by Rule 11(c)(2), Plaintiffs made many reasonable efforts to correct the alleged Rule 11 violations. Plaintiffs offered to amend the complaint, and sought to meet and confer with Defendants on a stipulation to file a Second Amended Complaint to eliminate the wire fraud RICO claims and certain of the factual allegations of which Defendants complained. Even after the motion was filed, Plaintiffs again sought a stipulation from Defendants permitting the to file a Second Amended Complaint which did not include a RICO wire fraud claim, and to take the matter off calendar. Again, Defendants refused, subsequently opposing Plaintiffs' motion to file a Second Amended Complaint.

On September 3, 2010, Defendants filed this motion, again in violation of Local Civil Rule 7-3, without conducting a conference of counsel and without including the required certification under Local Rule 7-3, even though nothing in Local Rule 7-3 exempts Rule 11 sanctions motions from such pre-filing conference requirement. DN-135. Both the Notice of Motion at footnote 1 and the Memorandum of Points and authorities refer to a purported "fact chart" or "Appendix of Facts" as an Exhibit A, but no such fact chart, Appendix or Exhibit was filed or served with the Motion. DN-135. On September 3, 2010, Defendants also filed a Second Motion for Sanctions, DN-134. The Court issued a Notice of Filing Deficiencies for that Motion, DN-139, and this Court sua sponte struck that Second Motion, and vacated the hearing date. DN-140.

III. LEGAL ARGUMENT

A. Defendants' Rule 11 Motion Violates the 21-Day Safe Harbor Provision Because Plaintiffs Withdrew the RICO Wire Fraud Claim

"When sanctions are sought by opposing counsel, opposing counsel must comply with Rule 11's 'safe harbor' provision. See Barber v. Miller, 146 F.3d 707, 710-11 (9th Cir. 1998) (reversing imposition of Rule 11 sanctions). "[T]he

procedural requirements of Rule 11[(c)(2)]'s 'safe harbor' are mandatory." Radcliffe v. Rainbow Constr. Co., 254 F.3d 772, 789 (9th Cir. 2001) (emphasis added)(reversing imposition of Rule 11 sanctions). In the Ninth Circuit, the 21-day safe harbor provision is strictly enforced. See Holgate v. Baldwin, 425 F.3d 671, 678 (2005) ("We enforce this safe harbor provision strictly."); Gomes v. Am. Century Cos., 2010 U.S. Dist. LEXIS 57400 (E.D. Cal. May 14, 2010) at *5.

Rule 11 sanctions may not be imposed if the challenged claim is "withdrawn" within 21 days after service of the sanctions motion. See Sneller v. City of Bainbridge Island, 606 F.3d 636, 639 (9th Cir. Wash. 2010) (reversing imposition of Rule 11 sanctions). Where a Rule 11 motion is directed to less than all claims in a pleading, filing a motion under Rule 15 to amend the pleading to eliminate the challenged claim within the 21-day safe harbor period constitutes "withdrawal" of the claim under Rule 11(c)(2). See Sneller v. City of Bainbridge Island, 606 F.3d 636, 639 (9th Cir. 2010)("Filing a motion for leave to amend the complaint under Rule 15 thus constitutes effective withdrawal because it is the only procedure available under the rules to withdraw individual challenged claims")(citing Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683, 687-88 (9th Cir. 2005)).

In Sneller, the Court of Appeals for the Ninth Circuit reversed an order of Rule 11 sanctions against the plaintiff, Sneller, as clearly erroneous. Defendants had served a motion for Rule 11 sanctions demanding the plaintiff withdraw claims under the state constitution and against individual defendants. Eighteen days later, the plaintiff filed a motion under Rule 15 to amend the pleadings to eliminate the claims. The plaintiff's proposed new pleading also added two new claims. The Court of Appeals reversed the imposition of sanctions, holding that moving to amend was all the plaintiff was required to do, and rejecting the defendants' argument that Rule 11 required the dismissal of the claims with prejudice. See Sneller, 606 F.3d at 639. The Ninth Circuit also held that Rule 11 does not

require a party to dismiss its entire case where the Rule 11 motion references only some of the claims in an action. See id.

This case is procedurally identical to Sneller. On August 3, 2010, Defendants served a Rule 11 motion directed at less than all claims in the First Amended Complaint, challenging primarily the claim for RICO wire fraud. See Borodkin Dec. at Ex. 2. After unsuccessfully seeking Defendants' stipulation to amend the pleadings to eliminate the claims for RICO wire fraud, see Borodkin Dec. at ¶6, Exs. 3-4, Plaintiffs on August 16, 2010 filed a Rule 15 motion to amend the pleadings to eliminate the RICO wire fraud claims. DN-116. Plaintiffs' Rule 15 motion was filed 13 days after service of the Rule 11 motion, well within the 21-day safe harbor under Rule 11(c)(2).

Accordingly, Defendants' Rule 11 motion is improper inasmuch as it challenges the RICO wire fraud claims. Page 8:26 to 9:23 and 10 to 12 of Defendants' Motion are devoted to attacking the RICO wire fraud claims, and RICO wire fraud damages. Because Plaintiffs offered to stipulate to amend the pleadings to eliminate the RICO wire fraud cause of action, and then filed a Rule 15 motion to amend the pleadings within the 21-day safe harbor specifically to eliminate the claims for RICO wire fraud -- which Defendants opposed, and continue to oppose -- Defendants' Rule 11 sanctions request based on RICO wire fraud is inappropriate.

B. Defendants Fail to Cite a Single Factual Contention that They Contend Is Without Merit.

Rule 11 places a high burden on counsel to show that factual allegations complained of were made without reasonable investigation under the circumstances. Misstating the Rule 11 standard over and over as "lacking in evidentiary support" (when the standard is "lacking in evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation and discovery," see Rule 11(b)(3)),

Defendants make the sweeping statement that the FAC is "rife with factual contentions that are wholly lacking in any evidentiary support," see Motion at 4:9-10, but fail to identify the actual factual contentions that Defendants claim lack support. The "fact chart" or "Appendix" or "Exhibit A" to which the Mtoion refers the Court, see Motion at 4:18 was not filed or served.

Moreover, Defendants themselves make numerous unsupported factual contentions in the Motion. Defendants persist in claiming falsely that it was "proven that . . . Plaintiffs committed perjury in this case." See Motion at 2:12-13. Defendants have no factual or evidentiary basis for claiming that Plaintiffs committed "perjury" or that such a contention was "proven. " Defendants fail to appreciate that this Court made a finding that Defendants **violated California Penal Code Section 632(a)**, by tape-recording conversations with Plaintiffs in California without consent, see Order of July 19, 2010, DN-94 at 22:2-5, and **refused to consider the contents of the recordings** because they were not authenticated and were thus held inadmissible as evidence, see DN-94 at 27:6-8. Moreover, no finding has ever been made as to Plaintiffs' state of mind or as to the materiality of the matters at issue. Thus, Defendants' repeated insistence to have "proven" that Plaintiffs committed "perjury" in this case are unfounded, if not bordering on contemptuous, given that the recordings were held inadmissible.

C. Defendants Ignore This Court's Order Bifurcating the Case

At page 9:24-10:7 of the Motion, Defendants again ignore this Court's order bifurcating the case as to the RICO claims only and again attempt to prematurely argue for the merits of Plaintiffs' state law causes of action for defamation, Defamation per se, false light, intentional interference with prospective economic relations, negligent interference with economic relations and injunction. This Court has already stated that motions addressed to claims outside the bifurcated action are **inappropriate**. Defendants are not deterred in attempting to circumvent this Court's Order.

Moreover, the claims challenged by Defendants at pages 9 and 10 baldly misrepresent the nature of Plaintiffs' allegations. These allegations do not attempt to hold Defendants liable for third-party pure expressive speech. Contrary to the allegations in other cases against Defendants for RipoffReport.com, Plaintiffs' new allegations do not focus on the statements in the contents of the "Ripoff Reports."

Instead, Plaintiffs' allegations seek to hold Defendants liable for their first-party conduct in creating functional computer code and for Defendants' conduct in writing HTML tags and code that optimize aspects of their website for search engines, which is written and controlled by Defendants, not by third parties. Thus, Plaintiffs are not seeking to hold Defendants liable under the same theories as in prior cases.

D. Defendants Misrepresent Plaintiffs' Copyright Allegations

Defendants' arguments at page 7 of the Motion regarding the distinction between ownership of copyright as a whole and of divisible rights under copyright are unintelligible. The very case cited by Defendants purportedly to show Plaintiffs' misinterpretation of copyright rejected Defendants' argument. Plaintiffs' point was to argue that Defendants are unusual in taking an ownership interest in the exclusive license of content, and for that purpose became the owner of an exclusive right under copyright.

Defendants complain at page 6 of the Motion of Plaintiffs' citation to the Second Circuit Case of Universal City Studios v. Corley, 273 F.3d 429, 448 (2d Cir. 2001) for the proposition that computer code can be "speech." The only argument Defendants make is that "the case has not been adopted by any court in the Ninth Circuit." Defendants thus acknowledge that Universal Cities is good law. A decision does not have to be "adopted" to make a contention under it non-frivolous. Indeed, Defendants have routinely cited to cases in other Circuits in other filings with this Court. Moreover, even an argument to overrule circuit precedent based on a conflicting decision taken in other circuits may be regarded

as a reasonable attempt to expand circuit law and therefore not sanctionable. See Hunter v. Earthgrains Co. v. Bakery, 281 F.3d 144, 156 (4th Cir. 2002), cited in Schwarzer, Tashima & Wagstaffe,California Practice Guide: Federal Civil Procedure Before Trial at 17:327 (Rutter Group: 2010) ("Rutter Guide").

Even Silvers v. Sony Pictures, 402 F.3d 881, 886 (9th Cir. 2005), cited by Defendants, supports the proposition that Plaintiffs advance in their pleadings – that Congress intended to unbundle the exclusive rights in copyright ownership, thus supporting Plaintiffs' allegation that an exclusive assignment of one of the six rights in copyright is an assignment of copyright ownship as to that exclusive right. Because Defendants take the unusual step of acquiring an exclusive license in third-party content before they post it on the web – unlike websites such as roommates.com, craigslist.com and facebook.com – Defendants' practices are easily distinguished from the section of Gardner v. Nike, 279 F.3d 774, 780 (9th Cir. 2002) cited in the Motion. That case concerned an assigned claim of copyright infringement, not an exclusive license as here.

E. Defendants Miscast the Citation to the FTC Guides

Defendants also miscast Plaintiffs' allegations in their argument at page 8 of the Motion by stating the FTC Guides under 15 U.S.C. 45 do not contemplate using these guides as the basis for a private right of action. This is a mischaracterization of the pleadings. The challenged pleadings do not attempt to assert a private right of action under the FTC guides. As the First Amended Complaint itself states, the violation of the FTC Guides establishes one of the elements of a California cause of action for tortious interference by "independently wrongful" means as proscribed "by some constitutional, statutory, regulatory, common law, or other determinable legal standard" as required by Korea Supply v. Lockheed Martin, 29 Cal.4th 1134, 1159 (Cal. 2003). The FTC Act provides such an independently wrongful, statutory standard.

F. Defendants' Legal Citations to Rule 11 Standards Are Inapposite

Defendants' citations to In re Girardi, 2010 WL 2735731 (9th Cir. 2010) and Mezzetti v. State Farm, 346 F. Supp. 2d 1058, 1067 (N.D. Cal. 2004) do not support Rule 11 sanctions. Girardi concerned a frivolous filing to enforce a foreign court judgment domestically and a frivolous appeal made with knowledge it was asserted against the wrong defendant. Mezzetti was not a Rule 11 case. Instead, it concerned the defendant, State Farm, that avoided a policyholder by sending letters that said both that there was not policy and also that there was not coverage under the policy. Mezzetti, 346 F.Supp. 2d at 1068. Neither case is on point here.

G. Defendants' Arguments Regarding HTML Do Not Meet Rule 11

Defendants' arguments at page 5 and 6 of the Motion admit that Defendants can be held liable for the HTML code that they write, which in fact supports Plaintiffs' amended pleadings. The reference to cases regarding Lanham Act violations arising from HTML and metatags is that Defendants are directly liable for such code, and cannot pass off liability to third parties for these allegations as they have done in the past.

Defendants arguments at pages 5 and 6 regarding HTML code and metatags thus fall grieviously short of the standard require under Rule 11 to show they are not made for a good-faith extension of the law. Defendants do not even argue that such claims are wrong. Instead, Defendants claim that such references are incomplete because they do not explain to the Court the "initial interest confusion test" for metatage. Motion at 6:12-14. Rule 11 does not require a party to argue every aspect of a legal theory in its pleading. This argument is inappropriate for a Rule 11 motion when the legal merits of the claim have not even been briefed. There will be ample time for such legal distinction in law and motion practice. Even the case cited by Defendants, Burnette v. Godshall, 828 F.Supp. 1439, 1449 (N.D. Cal. 1993) states, "Courts must resolve all doubts in favor of the signer of the pleading or paper."

Plaintiffs had no choice but to oppose the summary judgment motion in its entirety. The extent of counsel's advocacy of wire fraud claims at oral argument was to truthfully identify that a claim for wire fraud had been included in the original state court filing, to candidly identify to the Court that new evidence was discovered that may support the wire fraud claim, and that additional analysis of the new matter may be needed.

In fact, counsel did respond to the Court's question about causation, which Defendants fail to acknowledge or include in their papers. The causation was that "Plaintiffs may have declined to of relief pursue certain avenues ...."

H. Defendants' Citation to Oral Argument is Inappropriate

Defendants quote the oral argument from July 12, 2010 out of context and without relevance. A Rule 11 motion relates to a specific pleading. The pleading that was the subject of the quoted oral argument at pages 11 and 12 related to a state court filing not subject to Rule 11 and was superseded by the First Amended Complaint and now the Proposed Second Amended Complaint. Counsel answered the Court's colloquy truthfully and to the best of ability, given the circumstances.

I. Fees

The Court may award fees to a prevailing party on a Rule 11 sanctions motion. See Patelco Credit Union v. Sahni, 262 F.3d 897, 913 (9th Cir. 2001); Buster v. Greisen, 104 F.3d 1186, 1190 fn.5 (9th Cir. 1997). No cross-motion for Rule 11 is necessary. See Patelco. In this case, if the Court denies the Rule 11 motion, it may award fees Plaintiffs.

This Court may deny this mtooin based on Defendants' violation of the Rule 11 21-day safe harbor, refusal to stipulate to an amendment under Rule 15 and repeated failure to certify under Local Rule 7-3 and continued litigation of claims outside the bifurcated case. Defendants' conduct in opposing the very amendment that would have eliminated the wire fraud RICO claims this motion is based on would be enough to grant fees to Plaintiffs as prevailing parties.

III. CONCLUSION

For the foregoing reasons, this motion should be denied.

Dated: September 13, 2010

Respectfully Submitted,

/s/ Lisa J. Borodkin

Daniel F. Blackert, Esq.
Lisa J. Borodkin, Esq.
Attorneys for Plaintiffs

DECLARATION OF LISA J. BORODKIN

I, Lisa J. Borodkin, declare:

1. I am an attorney at law, duly admitted to practice before all the courts of the State of California and this Honorable Court. I am co-counsel of record for Plaintiffs Asia Economic Institute LLC, Raymond Mobrez and Iliana Llaneras ("Plaintiffs") in this action. I have first-hand, personal knowledge of the facts set forth below and, if called as a witness, I could and would testify competently thereto.

2. This Declaration is made in support of Plaintiffs' Opposition to Defendants' Motion for Sanctions under Federal Rule of Civil Procedure 11.

3. Attached hereto as **Exhibit "1"** is a true and correct copy of the August 3, 2010 email from counsel for Defendants, Maria Crimi Speth enclosing a proposed Rule 11 motion.

4. Attached hereto as **Exhibit "2"** is a true and correct copy of the proposed Rule 11 motion served by Defendants' counsel on August 3, 2010.

5. Attached hereto as **Exhibit "3"** is a true and correct copy of the August 14, 2010 email sent by Plaintiffs' counsel to Defendants' counsel requesting to meet and confer to resolve the challenges in Defendants' proposed Rule 11 motion without the need for Court intervention.

6. Plaintiffs did not receive any response to the August 14, 2010 email in Exhibit 3 until Defendants' counsel, Ms. Speth, telephoned me on August 18, 2010 requesting a conference of counsel on another motion. Attached hereto as **Exhibit "4"** is a true and correct copy of a confirming email from Plaintiffs' counsel regarding that telephone conference and the response from Ms. Speth. Palintiffs explained to Defendants' counsel regarding her unreasonableness in refusing to stipulate to an amendment eliminating the RICO wire fraud claim:

"we discussed that the proposed Second Amended Complaint did not add any new allegations to the First Amended Complaint and that another purpose of amending is to remove some of the allegations Defendants requested be withdrawn per your Rule 11 Motion for Sanctions. You stated unwillingness to stipulate to the proposed First Amended Complaint on that ground as well. As we stated, this makes it difficult, if not impossible, to comply with your Rule 11 Motion. We believe that this would undermine any request for attorneys' fees in asking that those allegations be withdrawn."

Exhibit 4.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 13th day of September, 2010, in Los Angeles, California.

/s/ Lisa J. Borodkin
Lisa J. Borodkin