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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

1 **I. INTRODUCTION**

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

23 **II. ADDITIONAL RELEVANT FACTS**

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

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

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

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

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

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

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

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

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

11 In addition, Defendants again directed their Motion to Dismiss improperly to  
12 all claims in the case, notwithstanding this Court’s finding that their previous  
13 summary judgment motion against all claims in the case was improper.

14 Defendants’ motion to dismiss the First Amended Complaint (“FAC”) filed on  
15 August 6, 2010, sought not only to dismiss the First and Second Causes of Action  
16 under RICO but also to dismiss Plaintiffs’ state law claims in the Third, Eleventh  
17 and Twelfth Causes of Action. DN-110 at 20.

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

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

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

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

13 Borodkin Dec. ¶6, Exhibit 4.

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

19 Subsequently, Defendants – amazingly -- on August 30, 2010, included a  
20 renewed request for summary judgment on all remaining claims in the action in  
21 their Opposition to Plaintiffs' Motion to Amend the Pleadings DN-129 at  
22 5(“Defendants urge this Court to decide the remainder of Defendants' Motion for  
23 Summary Judgment and throw this case out in its entirety.”), notwithstanding that  
24 this Court had already denied that part of Defendants' summary judgment motion  
25 and stated such a request was inappropriate. DN-94 at 17.

1  
2 Thus, during the 21-day “safe harbor” period provided by Rule 11(c)(2),  
3 Plaintiffs made many reasonable efforts to correct the alleged Rule 11 violations.  
4 Plaintiffs offered to amend the complaint, and sought to meet and confer with  
5 Defendants on a stipulation to file a Second Amended Complaint to eliminate the  
6 wire fraud RICO claims and certain of the factual allegations of which Defendants  
7 complained. Even after the motion was filed, Plaintiffs again sought a stipulation  
8 from Defendants permitting the to file a Second Amended Complaint which did  
9 not include a RICO wire fraud claim, and to take the matter off calendar. Again,  
10 Defendants refused, subsequently opposing Plaintiffs’ motion to file a Second  
11 Amended Complaint.

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

### 23 **III. LEGAL ARGUMENT**

#### 24 **A. Defendants’ Rule 11 Motion Violates the 21-Day Safe Harbor** 25 **Provision Because Plaintiffs Withdrew the RICO Wire Fraud Claim**

26 “When sanctions are sought by opposing counsel, opposing counsel must  
27 comply with Rule 11’s ‘safe harbor’ provision. See Barber v. Miller, 146 F.3d 707,  
28 710-11 (9th Cir. 1998) (reversing imposition of Rule 11 sanctions). “[T]he

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

7 Rule 11 sanctions may not be imposed if the challenged claim is  
8 "withdrawn" within 21 days after service of the sanctions motion. See Sneller v.  
9 City of Bainbridge Island, 606 F.3d 636, 639 (9th Cir. Wash. 2010) (reversing  
10 imposition of Rule 11 sanctions). Where a Rule 11 motion is directed to less than  
11 all claims in a pleading, filing a motion under Rule 15 to amend the pleading to  
12 eliminate the challenged claim within the 21-day safe harbor period constitutes  
13 "withdrawal" of the claim under Rule 11(c)(2). See Sneller v. City of Bainbridge  
14 Island, 606 F.3d 636, 639 (9th Cir. 2010)("Filing a motion for leave to amend the  
15 complaint under Rule 15 thus constitutes effective withdrawal because it is the  
16 only procedure available under the rules to withdraw individual challenged  
17 claims")(citing Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683,  
18 687-88 (9th Cir. 2005)).

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

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

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

12 Accordingly, Defendants' Rule 11 motion is improper inasmuch as it  
13 challenges the RICO wire fraud claims. Page 8:26 to 9:23 and 10 to 12 of  
14 Defendants' Motion are devoted to attacking the RICO wire fraud claims, and  
15 RICO wire fraud damages. Because Plaintiffs offered to stipulate to amend the  
16 pleadings to eliminate the RICO wire fraud cause of action, and then filed a Rule  
17 15 motion to amend the pleadings within the 21-day safe harbor specifically to  
18 eliminate the claims for RICO wire fraud -- which Defendants opposed, and  
19 continue to oppose -- Defendants' Rule 11 sanctions request based on RICO wire  
20 fraud is inappropriate.

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

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

1 Defendants make the sweeping statement that the FAC is “rife with factual  
2 contentions that are wholly lacking in any evidentiary support,” see Motion at 4:9-  
3 10, but fail to identify the actual factual contentions that Defendants claim lack  
4 support. The “fact chart” or “Appendix” or “Exhibit A” to which the Motion refers  
5 the Court, see Motion at 4:18 was not filed or served.

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

### 20 **C. Defendants Ignore This Court’s Order Bifurcating the Case**

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

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

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

12           **D. Defendants Misrepresent Plaintiffs’ Copyright Allegations**

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

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

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

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

#### 16 **E. Defendants Miscast the Citation to the FTC Guides**

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

#### 28 **F. Defendants’ Legal Citations to Rule 11 Standards Are Inapposite**

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

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

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

16 Defendants arguments at pages 5 and 6 regarding HTML code and metatags  
17 thus fall grievously short of the standard require under Rule 11 to show they are  
18 not made for a good-faith extension of the law. Defendants do not even argue that  
19 such claims are wrong. Instead, Defendants claim that such references are  
20 incomplete because they do not explain to the Court the "initial interest confusion  
21 test" for metatage. Motion at 6:12-14. Rule 11 does not require a party to argue  
22 every aspect of a legal theory in its pleading. This argument is inappropriate for a  
23 Rule 11 motion when the legal merits of the claim have not even been briefed.  
24 There will be ample time for such legal distinction in law and motion practice.  
25 Even the case cited by Defendants, Burnette v. Godshall, 828 F.Supp. 1439, 1449  
26 (N.D. Cal. 1993) states, "Courts must resolve all doubts in favor of the signer of  
27 the pleading or paper."  
28

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

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

#### 10 **H. Defendants’ Citation to Oral Argument is Inappropriate**

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

#### 17 **I. Fees**

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

23 This Court may deny this motion based on Defendants’ violation of the Rule  
24 11 21-day safe harbor, refusal to stipulate to an amendment under Rule 15 and  
25 repeated failure to certify under Local Rule 7-3 and continued litigation of claims  
26 outside the bifurcated case. Defendants’ conduct in opposing the very amendment  
27 that would have eliminated the wire fraud RICO claims this motion is based on  
28 would be enough to grant fees to Plaintiffs as prevailing parties.

1 **III. CONCLUSION**

2 For the foregoing reasons, this motion should be denied.

3  
4  
5 Dated: September 13, 2010

Respectfully Submitted,

6 /s/ Lisa J. Borodkin

7 Daniel F. Blackert, Esq.

8 Lisa J. Borodkin, Esq.

9 Attorneys for Plaintiffs



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

10 Exhibit 4.

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

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

15  
16 /s/ Lisa J. Borodkin  
17 Lisa J. Borodkin  
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