

1 In his objections, Plaintiff requests the imposition of sanctions based on his claim that
2 Defendant Keiley's motion to dismiss was frivolous and filed to impose an improper burden on
3 Plaintiff. Defendant Keiley opposes Plaintiff's request for imposition of sanctions.

4 Rule 11 sanctions is reserved "for the rare and exceptional case where the action is clearly
5 frivolous, legally unreasonable or without legal foundation ..." Operating Engineers Pension Trust v.
6 A-C Co., 859 F.2d 1336, 1344 (9th Cir. 1988). Here, although the Findings and Recommendations,
7 adopted in full herein, has resulted in the denial of Defendant Keiley's motion to dismiss, this is not
8 one of those rare instances in which it can be said the motion to dismiss was frivolous and/or legally
9 unreasonable, and there is no basis to find that defense counsel was motivated by an intent to harass or
10 cause harm to Plaintiff.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The Findings and Recommendation, filed on December 22, 2014, is adopted in full;
- 13 2. Defendant Keiley's motion to dismiss is DENIED; and
- 14 3. Plaintiff's request for imposition of sanctions is DENIED.

15 IT IS SO ORDERED.

16 Dated: February 9, 2015

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE