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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THOMAS VON THURY,  
Plaintiff,  
v.  
DORIS S. VON THURY, et al.,  
Defendants.

Case No. [17-cv-00637-MEJ](#)  
**ORDER DENYING MOTION TO  
DISQUALIFY AND MOTION FOR  
SANCTIONS**  
Re: Dkt. No. 12

Pending before the Court is Plaintiff Thomas Von Thury’s Motion to Disqualify Counsel and for Sanctions. *See* Mot., Dkt. No. 12. Defendants Cecile Von Thury Nagy Wahl, Doris Von Thury, and Klaus Wahl (collectively, “Defendants”) filed an Opposition (Dkt. No. 14), and Plaintiff filed a reply (Dkt. No. 16)<sup>1</sup>.

The Court finds the Motion suitable for disposition without oral argument and accordingly VACATES the hearing scheduled for August 3, 2017. *See* Civ. L.R. 7-1(b); Fed. R. Civ. P. 78(b). For the reasons stated below, the Court **DENIES** Plaintiff’s Motion in its entirety.

**A. Motion to Disqualify**

Attorney Jerome Synold represents Defendants in this action. *See* Opp’n. Plaintiff asks the Court to disqualify Synold, arguing Synold sent Plaintiff a misleading email that did not disclose he represents Defendants, thereby violating California Rule of Professional Conduct 1-400. *See* Mot.; *see also* Von Thury Decl. ¶¶ 4-11, Dkt. No. 12-1. Plaintiff does not attach the misleading email in question “due to the way Mr. Synold’s website was configured.” Von Thury

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<sup>1</sup> Defendants also filed a sur-reply without seeking leave to do so. *See* Dkt. No. 17. Absent approval of the Court, sur-replies are not permitted (*see* Civ. L.R. 7-3(d)), and the Court therefore will not consider this document.

1 Decl. ¶ 12. Plaintiff does not explain the basis for his belief that the configuration of Synold’s  
2 website affected Plaintiff’s ability to retain emails sent to Plaintiff’s own email address. He  
3 declares that, upon being informed by “a lawyer in Germany” that Synold represents Defendants,  
4 he “realized that Mr. Synold had been deceptive and that [Plaintiff] could very easily have  
5 disclosed confidences to him before learning the truth.” *Id.* ¶ 10. It is unclear why Plaintiff would  
6 have disclosed confidences to Synold, given his representation he deleted Synold’s email as spam.  
7 *Id.* ¶ 8. In opposition, Defendants attach what Synold declares are true and correct copies of the  
8 only correspondence Synold sent Plaintiff before answering the Complaint.<sup>2</sup> *See* Opp’n at 4-5; *id.*,  
9 Ex. A (cover email), Ex. B (letter); Synold Decl. ¶¶ 2-4, Dkt. No. 14. The letter explains  
10 Plaintiff’s attempts to serve Defendants were defective, and that the letter “shall serve as an  
11 attempt to meet and confer with you regarding your attempted service of process. . . . [and] as an  
12 attempt to advise you of the defects associated with your intended service of process thereby  
13 allowing you to rectify the defects should you choose to do so.” *Id.*, Ex. B. While Plaintiff is  
14 correct the letter does not explicitly state Synold represents Defendants, the Court finds that this is  
15 the only reasonable interpretation of the letter. The Court specifically disagrees with Plaintiff’s  
16 argument that “it was perfectly reasonable from the content of Mr. Synold’s email and the  
17 surrounding circumstances that it be understood as a solicitation for offering legal services which  
18 is why Plaintiff deleted it.” Mot. at 5. This argument is especially poorly taken given that  
19 Plaintiff has been “a practicing lawyer for over 40 years in multiple jurisdictions and courts” (*id.*)  
20 and the letter repeatedly mentions it is an attempt to meet and confer regarding the deficiencies of  
21 the Complaint and service thereof.

22 Plaintiff has not shown Synold’s letter contained any untrue statement; contained any  
23 matter which tends to confuse, deceive, or mislead the public; omitted to state any fact necessary  
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25 <sup>2</sup> In his Reply, Plaintiff declares the letter Defendants attached is not the correspondence he  
26 received, although he acknowledges it bears “definite similarities” to the document he recalls  
27 receiving. *See* Suppl. Von Thury Decl. ¶ 2. Besides stating the letter he recalls receiving did not  
28 contain any references to “meeting and conferring”, he offers no further detail to support his  
contention the letter Synold swears is a true and correct copy of the document he emailed Plaintiff  
is not that.

1 to make the statements made, in light of the circumstances under which they are made, not  
2 misleading to the public; or failed to clearly indicate “expressly, or by context” that it is a  
3 communication or solicitation. *See* Mot. at 5 (quoting Rule 1-400(1)-(4)). Synold’s inclusion of a  
4 standard polite closing inviting Plaintiff to contact him to discuss the contents of the letter does  
5 not “clearly” establish the letter is a solicitation. *See* Reply at 2. Plaintiff accordingly has not  
6 established any violation of Rule 1-400. The Court therefore DENIES the request to disqualify  
7 Synold as Defendants’ attorney in this action.

8 **B. Plaintiff’s Motion for Sanctions**

9 Plaintiff asks the Court to award him sanctions because Defendants declined to accept  
10 informal service of the Complaint and Plaintiff was forced to incur the expenses of serving  
11 Defendants pursuant to the requirements of the Hague Convention. Plaintiff may be able to  
12 recover the costs of international service if he prevails in this action; he may not recover these  
13 costs as a sanction for Defendants’ insistence that Plaintiff follow the Hague Convention  
14 requirements for international service. *See* Fed. R. Civ. P. 54(d); Civ. L.R. 54-3 (“Fees for service  
15 of process by someone other than the marshal acting pursuant to Fed. R. Civ. P. 4(c), are  
16 allowable to the extent reasonably required and actually incurred.”). Moreover, Plaintiff  
17 recognizes that the mandatory cost shifting provision contained in Rule 4(d)(2) is inapplicable in  
18 this instance because Defendants are not located in the United States. Mot. at 7. The Court  
19 DENIES Plaintiff’s request for sanctions. If he prevails in the action, he may seek to recover these  
20 costs at the conclusion of the suit.

21 **C. Defendants’ Request for Sanctions**

22 Defendants include in their Opposition a request for sanctions based on Plaintiff’s  
23 violation of Federal Rule of Civil Procedure 11. This is not procedurally proper. *See* Civ. L.R. 7-  
24 8. The Court denies without prejudice Defendants’ request.

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The Court ORDERS Plaintiff to review Federal Rules of Civil Procedure 1 and 11, and  
ORDERS all parties to review the Local Rules of this Court.

**IT IS SO ORDERED.**

Dated: July 12, 2017

  
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MARIA-ELENA JAMES  
United States Magistrate Judge