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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EUROSESMILLAS, S.A.,
Plaintiff,
v.
PLC DIAGNOSTICS INC., et al.,
Defendants.

Case No. [17-cv-03159-MEJ](#)
**ORDER RE: MOTION FOR
SANCTIONS**
Re: Dkt. No. 78

This matter is currently scheduled for a hearing on March 29, 2018 regarding Third Party Defendants' Motion for Sanctions. *See* Mot., Dkt. No. 78; Opp'n, Dkt. No. 85. Third Party Defendants did not file a reply. Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds this matter suitable for disposition without oral argument and hereby VACATES the March 29, 2018 hearing.

The Court DENIES the Motion for Sanctions. The Court did not make any findings regarding the merits of the Third Party Complaint or regarding the validity of the arguments which the Third Party Defendants asserted would be dispositive of the claims raised therein. The Court never ruled on the arguments upon which the Third Party Defendants base their Motion for Sanctions and repeatedly declined to address the arguments the Third Party Defendants raised for the first time in their reply brief. *See* Dkt. No. 67 at 1 n.1; Dkt. No. 72 at 1-2. Moreover, after the Court indicated it required further information from the Third Party Defendants regarding their supplemental jurisdiction argument (Dkt. No. 72 at 3), they abandoned that argument (Dkt. No. 74 at 3). The Court cannot accept the Third Party Defendants' invitation to accept they would prevail and obtain dismissal with prejudice. Even if Third Party Defendants did prevail, on this record, the Court cannot find the third party claims were sufficiently frivolous or brought for an improper

1 purpose. *See, e.g.*, Hochman Decl., Dkt. No. 85-1. The Court cannot find that this is the type of
2 “rare and exceptional case” justifying the imposition of Rule 11 sanctions. *Operating Eng’rs*
3 *Pension Tr. v. A-C Co.*, 859 F.2d 1336, 1343-45 (9th Cir. 1988) (“The simple fact that an
4 attorney’s legal theory failed to persuade the district court does not demonstrate that [counsel]
5 lacked the requisite good faith in attempting to advance the law. Rather, we reserve sanctions for
6 the rare and exceptional case where the action is clearly frivolous, legally unreasonable or without
7 legal foundation, or brought for an improper purpose. . . . Rule 11 is an extraordinary remedy, one
8 to be exercised with extreme caution.” (internal quotation marks and citation omitted)).

9 The Third Party Defendants’ Motion is DENIED.

10 **IT IS SO ORDERED.**

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12 Dated: March 19, 2018

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15 MARIA-ELENA JAMES
16 United States Magistrate Judge
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