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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

WILLIAM RUPERT,)	Case No.: 12-CV-05292-LHK
)	
Plaintiff,)	ORDER DENYING DEFENDANTS'
v.)	MOTION FOR RULE 11 SANCTIONS
)	
SUSAN BOND, et al.,)	
)	
Defendants.)	

Plaintiff William Rupert ("Plaintiff") brings this racketeering action against his siblings, as well as several attorneys who allegedly represented and/or advised Plaintiff's family members. Specifically, Plaintiff brings this action against: (1) his sister, Susan Bond ("Susan"); (2) his brother, James Rupert ("James"); (3) attorney Gile R. Downes ("Downes"); and (4) the law firm of Schulte, Anderson, Downes, Aronson & Bitner, P.C. ("Schulte"). In addition, Plaintiff brings this action against: (5) attorney Edward S. Zusman ("Zusman"); and (6) the law firm of Markun Zusman & Compton, LLP ("MZC") (collectively, the "MZC" Defendants"). Further, Plaintiff brings this action against: (7) attorney Matthew Whitman ("Whitman"); (8) attorney Michelle Johansson ("Johansson"); and (9) the law firm of Cartwright Whitman Baer, PC ("Cartwright") (collectively, the "Cartwright Defendants"). Plaintiff alleges that Defendants conspired to deprive him of his inheritance.

1 Before the Court is Defendant Downes and Schulte’s Motion for Sanctions against Plaintiff
2 under Rule 11. *See* ECF No. 65. Pursuant to Civil Local Rule 7-1(b), the Court found this matter
3 appropriate for resolution without oral argument. Having considered the submissions of the parties
4 and the relevant law, the Court hereby DENIES Defendants’ Motion for Sanctions.

5 **I. BACKGROUND**

6 This case arises out of a dispute between two siblings, Plaintiff William Rupert and
7 Defendant Susan Bond, over the management of their parents’ trusts. Plaintiff essentially alleges
8 that, through a series of conspiracies involving his sister, Susan; his brother, James; and several
9 Oregon and California attorneys, he was deprived of several hundred thousand dollars which
10 rightfully belonged to him as part of his inheritance. According to Plaintiff, the facts of the alleged
11 conspiracy are as follows:

12 **A. Creation of the Samuel and Irene Rupert Trusts in Michigan**

13 Samuel Rupert (“Samuel”) and Irene Rupert (“Irene”) (both now deceased) lived their adult
14 lives in Ann Arbor, Michigan. First Amended Complaint (“FAC”) ¶ 23. On November 1, 1995,
15 they had estate plans prepared by Alan Price (“Price”), a Michigan attorney. FAC ¶ 24. As part of
16 these estate plans, their assets were placed into revocable trusts: the Samuel J. Rupert Trust
17 (“Samuel’s Trust”) and the Irene E. Rupert Trust (“Irene’s Trust”). FAC ¶ 25. Under the terms of
18 these trusts, Samuel and Irene were to serve as trustee of their own respective trusts, and as
19 successor trustees for each other’s trust. FAC ¶ 24. The terms of Samuel’s trust included a
20 provision that, if he died first, the assets of the trust would be transferred to a Family Trust for the
21 benefit of Irene and their three children (Susan, William, and James). FAC ¶ 25. On January 26,
22 2004, Samuel and Irene had Price amend the estate plans to designate Plaintiff as the first
23 nominated, sole successor trustee of both of their trusts and as their sole personal representative.
24 FAC ¶ 27.

25 **B. Susan’s Management of the Trusts in Oregon**

26 In 2006, Samuel and Irene relocated to Oregon. FAC ¶ 29. On October 12, 2008, Samuel
27 died as a result of a head injury he sustained from falling in the shower. FAC ¶¶ 30-31. Following
28

1 the death of Samuel, Susan and Plaintiff had a number of discussions concerning who was
2 designated by their parent's estate plans to manage the estate. FAC ¶¶ 34-35, 40-46. During these
3 conversations, Susan allegedly misrepresented that she possessed updated documents naming her
4 as the sole trustee and permitting her to unilaterally amend the trust. FAC ¶¶ 40-41. In this
5 position, as sole trustee, Plaintiff claims that Susan directed funds from the Family Trust to Irene's
6 Trust and sold certain assets, the proceeds of which she retained for herself. FAC ¶ 101.

7
8 Around April of 2009, Plaintiff became concerned about how his parents' estate was being
9 managed. FAC ¶ 48. Over the next few months, he repeatedly asked Susan for an accounting of
10 the assets in the estate and began questioning the legitimacy of the documents placing her in charge
11 of the estate. FAC ¶¶ 48-49. Finally, in May of 2009, Plaintiff demanded that Susan relinquish
12 control of the estate and turn over all financial records and estate planning documents. FAC ¶ 50.

13 Susan retained the services of Defendant Downes of Schulte, Anderson, Downes, Aronson
14 & Bittner, PC ("Schulte"), an Oregon law firm also named as a defendant in this action, to respond
15 to Plaintiff's numerous letters and requests. FAC ¶ 51-52. On June 10, 2009, Downes sent a letter
16 to Plaintiff informing him that his prospective inheritance rights had been reduced to pay for the
17 legal fees charged by Downes, and that if he continued to make requests of Susan, his inheritance
18 would be further reduced to account for future legal fees. FAC ¶¶ 59-60. Plaintiff was further
19 instructed that he was required to sign an enclosed modification of trust agreement by June 19,
20 2009, and that failure to sign this agreement could potentially result in his being disinherited by
21 Irene. FAC ¶ 60.

22 **C. Plaintiff's First Lawsuit in the Northern District of California**

23 On June 20, 2009, Plaintiff filed a lawsuit in the Northern District of California against
24 Defendants Susan, Downes, and Schulte alleging interference with economic relations and
25 conspiracy to deprive him of his rights with respect to his parent's estate. FAC ¶ 66. The action
26 was amended on July 23, 2009, to add Irene as a defendant. *Id.* Defendants Markun, Zusman, and
27 their law firm Markun Zusman & Compton, LLP ("MZC"), a California law firm also named as a
28 defendant in this action, represented Susan, Downes, and Schulte in this action. *See* FAC ¶ 75.

1 The case was dismissed by Judge Fogel on September 9, 2010, for lack of personal jurisdiction.
2 FAC ¶ 73. As the events alleged concerned the planning of an estate in Oregon, Judge Fogel ruled
3 that “[n]one of Defendants’ alleged conduct has any nexus with California other than the fact that
4 [Plaintiff] happens to reside in California.” *See Rupert v. Bond*, No. C-09-2758, 2010 WL
5 3618662, at *4 (N.D. Cal. Sept. 9, 2010) (“Rupert I”).

6 **D. Susan and the Cartwright Defendants Commence Probate Proceedings**
7 **in Oregon**

8 On March 12, 2010, Irene died. FAC ¶ 76. On March 15, 2010, Susan—along with
9 Defendants Whitman and Johansson of Cartwright, Whitman, Baer PC (“Cartwright”), an Oregon
10 law firm also named as a defendant in this action—commenced probate proceedings in Oregon (the
11 “Oregon Proceedings”) for declaratory judgment concerning management and disbursement of Samuel
12 and Irene’s Trusts. FAC ¶ 77. Plaintiff claims that, during these proceedings, Defendants made
13 fraudulent representations to the Oregon courts and that the court proceedings unfolded as a
14 “Bum’s Rush Ambush” in which he was provided only minimal notice of the relevant trial dates.
15 FAC ¶¶ 77-79.

16 As a result of these alleged activities, Defendants were successful in obtaining a general
17 judgment disinheriting Plaintiff, as well as attorney’s fees and costs for the Oregon proceedings.
18 FAC ¶¶ 79-85. During the course of this litigation, numerous filings were mailed between
19 Defendants in Oregon and Plaintiff in California. FAC ¶ 82. Plaintiff timely appealed the
20 judgment, and the appeal is currently pending before the Oregon Court of Appeals. FAC ¶ 81.

21 **E. The Instant Proceedings**

22 Plaintiff filed the instant lawsuit on October 12, 2012, *see* Compl., ECF No. 1, and filed
23 the operative FAC on October 26, 2012, *see* FAC, ECF No. 3. Plaintiff alleges that Defendants
24 Susan, Downes, Zusman, Whitman, and Johansson have violated the Racketeer Influenced and
25 Corrupt Organizations Act (“RICO”) through numerous acts of wire, bank, and mail fraud,
26 interstate transportation of stolen property, attempted extortion, and obstruction of justice. FAC
27 ¶ 95. Plaintiff also alleges that all Defendants, except James, have conspired to violate RICO.
28 FAC ¶¶ 112-13. In addition, Plaintiff alleges several state law claims against Defendants for

1 conversion of trust assets, intentional interference with expected inheritance (“IIEI”), violations of
2 the Oregon Racketeer Influenced and Corrupt Organizations Act (“ORICO”), and conspiracy.
3 FAC ¶¶ 114-133.

4 On November 21, 2012, Defendants Downes and Schulte filed a Motion to Dismiss for lack
5 of personal jurisdiction. *See* Mot. to Dismiss FAC as against Downes and Schulte (“Downes
6 Mot.”), ECF No. 18. On November 30, 2012, Defendants Susan and James filed a Motion to
7 Dismiss for lack of personal jurisdiction. *See* Mot. to Dismiss FAC as against Susan and James
8 (“Susan Mot.”), ECF No. 23, which they subsequently amended, *see* Amended Mot. to Dismiss
9 FAC as against Susan and James (“Susan Amended Mot.”), ECF No. 33. On December 17, 2012,
10 the Cartwright Defendants filed a Motion to Dismiss for lack of personal jurisdiction. *See* Mot. to
11 Dismiss FAC as against Cartwright Defendants (“Cartwright Mot.”), ECF No. 36. On January 7,
12 2013, the MZC Defendants filed a Motion to Dismiss for failure to state a claim upon which relief
13 can be granted. *See* Mot. to Dismiss as against MZC Defendants (“MZC Mot.”), ECF No. 50.

14 Plaintiff filed an opposition to each of these respective motions. *See* Opp’n to Downes
15 Mot. (“Opp’n to Downes Mot.”), ECF No. 29; Opp’n to Susan Am. Mot. (“Opp’n to Susan Am.
16 Mot.”), ECF No. 42; Opp’n to Cartwright Mot. (“Opp’n to Cartwright Mot.”), ECF No. 46; Opp’n
17 to MZC Mot. (“Opp’n to MZC Mot.”), ECF No. 56.

18 Defendants filed replies in support of each of their respective motions. *See* Reply Supp.
19 Downes Mot. (“Downes Reply”), ECF No. 39; Reply Supp. Susan Am. Mot. (“Susan Reply”),
20 ECF No. 41; Reply Supp. Cartwright Mot. (“Cartwright Reply”), ECF No. 55; Reply Supp. MZC
21 Mot. (“MZC Reply”), ECF No. 61.

22 In addition, Plaintiff also filed a Motion for Leave to File a Second Amended &
23 Supplemental Complaint on June 11, 2013. *See* Mot. for Leave to File SA&SC (“Mot. to
24 Amend”), ECF No. 78. The Court has addressed these motions in a separate order. ECF No. 100.

25 Defendants filed the Motion for Sanctions on February 8, 2013. *See* Motion for Sanctions
26 (“Defendants’ Motion”), ECF No. 65. Rupert filed an opposition to the motion on February 22,
27 2013. *See* Rupert Memorandum In Opposition to Motion for Sanctions (“Rupert Mot.”), ECF No.
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1 73. The Defendants filed a reply on March 1, 2013. *See* Reply In Support of Motion for Sanctions
2 (“Reply”), ECF No. 76.

3 **II. LEGAL STANDARD FOR MOTION FOR SANCTIONS**

4 Federal Rule of Civil Procedure Rule 11 states in pertinent part:

5
6 **(b)** By presenting to the court a pleading, written motion, or other paper--whether by
7 signing, filing, submitting, or later advocating it--an attorney or unrepresented party
8 certifies that to the best of the person’s knowledge, information, and belief, formed after an
9 inquiry reasonable under the circumstances:

10 **(1)** it is not being presented for any improper purpose, such as to harass, cause unnecessary
11 delay, or needlessly increase the cost of litigation;

12 **(2)** the claims, defenses, and other legal contentions are warranted by existing law or by a
13 nonfrivolous argument for extending, modifying, or reversing existing law or for
14 establishing new law; . . .

15 **(c) Sanctions.** (1) *In General.* If, after notice and a reasonable opportunity to respond, the
16 court determines that Rule 11(b) has been violated, the court may impose an appropriate
17 sanction on any attorney, law firm, or party that violated the rule or is responsible for the
18 violation.

19 FED. R. CIV. P. 11(b)-(c).

20 “ [Rule 11] provides for the imposition of sanctions when a filing is frivolous, legally
21 unreasonable, or without factual foundation, or is brought for an improper purpose.’ *Estate of Blue*
22 *v. Cnty. of L.A.*, 120 F.3d 982, 985 (9th Cir. 1997). ‘When a reasonable investigation would reveal
23 that a claim is barred by res judicata or collateral estoppel, for example, Rule 11 sanctions may be
24 imposed within the district court’s discretion.’ *Id.* The analysis is slightly different where, as here,
25 a plaintiff proceeds pro se, since ‘arguments that a lawyer should or would recognize as clearly
26 groundless may not seem so to the pro se [litigant].’ ” *Coleman v. Teamsters Local 853*, No. 12-
27 05981 SC, 2013 WL 3790900 at *2 (N.D. Cal. July 18, 2013) (citation omitted). “[W]hat is
28 objectively reasonable for a *pro se* litigant and for an attorney may not be the same.” *Yack v.*
Washington Mut. Inc., No. C 07-5858 PJH, 2008 WL 3842918 (N.D. Cal. Aug. 14, 2008) (*citing*
Business Guides v. Chromatic Communications, 892 F.2d 802, 811 (9th Cir.1989), *aff’d*, 498 U.S.
533 (1991)). Ultimately, sanctions should “be imposed on the signer of a paper if either a) the

1 paper is filed for an improper purpose, or b) the paper is ‘frivolous.’” *Townshend v. Holman*
2 *Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1991) (en banc) (citation omitted).

3 **III. ANALYSIS**

4 Before addressing the substantive question of whether sanctions are warranted in this case,
5 the Court first addresses Defendants’ requests for judicial notice. In connection with their motion
6 for sanctions, Defendants attached the following exhibits of which they assert the Court may
7 properly take judicial notice: (1) Plaintiff’s First Amended Complaint, filed in *Rupert I*; (2) Judge
8 Fogel’s Order Granting Motion to Dismiss for Lack of Personal Jurisdiction in *Rupert I*; (3)
9 Response to Susan Bond’s Petition for Instructions and to Compel Distribution, filed by William
10 Rupert in the Circuit Court for the State of Oregon, County of Clackamas, Probate Dept., Case No.
11 CV10030498; (4) Declaration of Gile R. Downes in Support of Defendants’ Motion to Dismiss,
12 filed in *Rupert I*; (5) Page 38 of California’s current Vexatious Litigant List, which is made
13 publicly available on the California courts website and includes Plaintiff, ECF No. 66.

14 A matter may be judicially noticed if it is either “generally known within the territorial
15 jurisdiction of the trial court” or “capable of accurate and ready determination by resort to sources
16 whose accuracy cannot reasonably be questioned.” FED. R. EVID. 201(b). Here, Exhibits 1, 2, and
17 4 are all documents filed in *Rupert I*. As such, they are documents in the public record, and the
18 Court may properly take judicial notice of them to determine the validity of Defendants’
19 arguments. *Del Puerto Water Dist. v. U.S. Bureau of Reclamation*, 271 F. Supp. 2d 1224, 1233
20 (E.D. Cal. 2003) (“Judicially noticed facts often consist of matters of public record, such as prior
21 court proceedings”); *Chrisanthis v. United States*, 2008 WL 4848764, at *1 (N.D. Cal. Nov. 7,
22 2008) (“[D]ocuments publicly filed in [a] prior suit are proper subjects of judicial notice”).
23 However, the Court does not take judicial notice of disputed facts contained within the First
24 Amended Complaint filed in *Rupert I*. *Lee*, 250 F.3d at 689-90. Because the Court does not rely
25 on the Response to Susan Bond’s Petition for Instructions and to Compel Distribution in ruling on
26 this motion for sanctions, it denies as moot the request for judicial notice of that document. As for
27 the vexatious litigant list, the Court grants the request for judicial notice because it is “capable of
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1 accurate and ready determination,” *see* FED. R. EVID. 201(b), as it was prepared by the
2 Administrative Office of the California courts. *See Wolfe v. George*, 385 F.Supp.2d 1004,
3 1020n.10 (N.D. Cal. 2005) (granting request for judicial notice of comparable vexatious litigant
4 list).

5 Defendants raise various arguments regarding why sanctions should be imposed against
6 Rupert. They seek sanctions in the amount of \$22,902.11 to cover fees and costs incurred through
7 defending this action. Defendants’ Motion at 1, 14. For the reasons explained below, the Court
8 declines to grant sanctions at this time.

9 A pleading is “frivolous” if it “is both baseless and made without a reasonable and
10 competent inquiry.” *Townshend*, 929 F.2d at 1362. Defendants first argue that Plaintiff’s claims
11 are frivolous because a reasonable inquiry would have revealed either that his claims are barred by
12 the doctrine of res judicata or by the lack of personal jurisdiction. Defendants’ Motion at 7-10. As
13 explained in this Court’s order regarding Defendants’ Motions to Dismiss, *see* ECF No. 100 at
14 23n.7, the Court is not persuaded by Defendants’ argument that principles of res judicata prevent
15 Plaintiff from asserting, in this action, that jurisdiction is appropriate in California because this
16 issue was already decided in *Rupert I*. *See* Downes Mot. at 5-6 (raising the same res judicata
17 argument). “Res judicata, also known as claim preclusion, bars litigation in a subsequent action of
18 any claims that were raised or could have been raised in the prior action.” *W. Radio Servs. Co. v.*
19 *Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997). Res judicata is applicable whenever there is: “(1)
20 an identity of claims[;] (2) a final judgment on the merits[;] and (3) identity or privity between
21 parties.” *W. Radio Servs. Co.*, 123 F.3d at 1192 (citing *Blonder-Tongue Lab. v. Univ. of Ill.*
22 *Found.*, 402 U.S. 313, 323-24 (1971)). While Plaintiff’s present action is based on a similar nexus
23 of facts as *Rupert I*, the doctrine of res judicata is not applicable here because unlike Plaintiff’s
24 present action, his action in *Rupert I* did not include claims for violations of RICO. As such, there
25 is not an identity of claims between this action and *Rupert I*. The Court finds more credible
26 Defendants’ other argument that a reasonable inquiry would have revealed that Plaintiff’s claims
27 are barred because there is no basis upon which to assert personal jurisdiction over the Defendants
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1 in this court. Defendants’ Motion at 9-12. As explained in this Court’s prior order regarding
2 Defendants’ Motions to Dismiss, *see* ECF No. 100 at 18-29, the Court finds that Defendants’
3 argument regarding the lack of personal jurisdiction has merit. However, the mere fact that Rupert
4 brought a claim that ultimately failed on the merits does not mean his complaint was frivolous and
5 that Defendants are automatically entitled to sanctions against him. *See Rugroden v. State Bank of*
6 *Park Rapid*, C 08-1964 JF (RS), 2008 WL 4542971 (N.D. Cal. Oct. 1, 2008) (plaintiff’s
7 “misguided” suit failed on the merits, but sanctions were not granted because “the record [did] not
8 support unambiguously a conclusion that the suit was brought for an improper purpose”); *Schulken*
9 *v. Washington Mutual Bank*, 09-CV-02708-LHK, 2013 WL 11568 (N.D. Cal. Jan. 1, 2013)
10 (“[plaintiff] failed to raise meritorious legal theories,” but sanctions were not issued because there
11 was “no clear evidence that his [motions] [were] motivated by a bad faith desire to delay the
12 proceedings.”)

13 Defendants’ second principal argument is that sanctions are warranted because the
14 complaint was filed for an improper purpose. Defendants’ Motion at 13. “A district court
15 confronted with solid evidence of a pleading’s frivolousness may in circumstances that warrant it
16 infer that it was filed for an improper purpose.” *Townsend*, 929 F.2d at 1365. A court may also
17 find that a pleading was filed for an improper purpose where the pleading “needless[ly] increase[s]
18 [] the cost of litigation” or where the circumstances of the case suggest that the filing is vindictive
19 or filed for some other ulterior purpose. *Id.* at 1362. Here, Defendants argue that “the history of
20 litigation by Plaintiff against Defendants suggests that this third lawsuit was filed improperly in an
21 effort to avoid the consequences of two prior unsuccessful cases.” Defendants’ Motion at 13.
22 Indeed, Plaintiff’s unsuccessful repeat litigation in California and Oregon raises a specter of
23 judicial inefficiency and waste. This is in fact the third lawsuit he has filed against Defendants
24 Downes and Schulte in an effort to hold Defendants’ responsible for the same alleged actions.
25 And, Plaintiff has previously been censured for his unrestrained and careless use of the court
26 system by the California Judicial Council, which placed Plaintiff on the California Vexatious
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1 Litigant List pursuant to California Code of Civil Procedure § 391(b). RJN, ECF No. 66, Exhibit

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3 5. That section states the requirements to be placed on the list as such:

- 4 (1) In the immediately preceding seven-year period has commenced, prosecuted, or
5 maintained in propria persona at least five litigations other than in a small claims court
6 that have been (i) finally determined adversely to the person or (ii) unjustifiably
7 permitted to remain pending at least two years without having been brought to trial or
8 hearing.
9 (2) After a litigation has been finally determined against the person, repeatedly relitigates or
10 attempts to relitigate, in propria persona, either (i) the validity of the determination
11 against the same defendant or defendants as to whom the litigation was finally
12 determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or
13 law, determined or concluded by the final determination against the same defendant or
14 defendants as to whom the litigation was finally determined.
15 (3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions,
16 pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics
17 that are frivolous or solely intended to cause unnecessary delay.
18 (4) Has previously been declared to be a vexatious litigant by any state or federal court of
19 record in any action or proceeding based upon the same or substantially similar facts,
20 transaction, or occurrence.

21 CAL. CIV. PROC. § 391(b). The Court takes this designation on the vexatious litigant list
22 very seriously, and Plaintiff's numerous lawsuits are indeed troubling to this Court.¹ However,
23 "[w]hile the Court might be inclined to impose Rule 11 sanctions if Plaintiff were represented by
24 counsel, the present circumstances call for more leniency." *Coleman*, 2013 WL 3790900 at *2
25 (denying sanctions where pro se plaintiff brought claim barred under doctrine of res judicata). The
26 Court ultimately finds sanctions unwarranted at this time given Plaintiff's pro se status. *See Yack*
27 *v. Washington Mut. Inc.*, C 07-5858 PJH, 2008 WL 3842918 (N.D. Cal. Aug. 14, 2008) (pro se
28 litigant not sanctioned because of the complexity of the relevant law); *Johnson v. Chevron Corp.*, C
07-05756 SI, 2010 WL 459121 (N.D. Cal. Feb. 3, 2010) at *2 ("In light of plaintiff's pro se status,
the Court finds that plaintiff's [improper motion for stay] does not warrant imposition of monetary
sanctions."); *see also* Fed. R. Civ. P. 11 Advisory Comm. Notes ("[a]lthough the standard [under
Rule 11] is the same for unrepresented parties, who are obliged themselves to sign the pleadings,

¹ Indeed, this Court made a prior statement that Rupert's repeated lawsuits may "suggest[] that Plaintiff is bringing this action in 'bad faith' in response to the California and Oregon judgments." ECF No. 100 at 30.

1 the court has sufficient discretion to take account of the special circumstances that often arise in
2 pro se situations.”). Defendants argue that Judge Fogel had previously dismissed Plaintiff’s action
3 on the basis that no personal jurisdiction existed over Defendants in California, and thus analogize
4 to *Orange Prod. Credit Ass’n v. Frontline Ventures, Ltd.*, 792 F.2d 797 (9th Cir. 1986) (upholding
5 around \$50,000 in attorneys’ fees and some \$4,000 in costs against a plaintiff for ignoring the
6 consequences of a prior court ruling concerning whether the court had jurisdiction over plaintiff’s
7 claims). Defendants’ Motion at 2,13. However, *Orange Prod. Credit Ass’n* is distinguishable
8 because the plaintiff was a credit association represented by lawyers throughout the proceedings
9 whereas here the Plaintiff has represented himself as a pro se litigant. *Orange Prod.*, 792 F.2d at
10 798. Ultimately, in the instant case, the Court does not find that Plaintiff’s conduct rises to the
11 level of impropriety or frivolity necessary to warrant sanctions under Rule 11(c) at this time, and
12 thus Defendants’ Motion for Sanctions is DENIED.

13 Defendants also request an order requiring Plaintiff to obtain a pre-filing order before he
14 may file any future actions against either of the Defendants in this Court or any other federal court
15 in California. Defendants’ Motion at 14. Although the Court has found that Plaintiff fails to raise
16 meritorious legal theories, *see* ECF No. 100 (Order Granting Defendants’ Motions to Dismiss),
17 Plaintiff nonetheless maintains that “no disregard for the judicial process has been shown or
18 demonstrated by [himself] in either *Rupert I*, or in the instant case” and that he did not file the FAC
19 for a frivolous or harassing purpose. *Rupert Mot.* at 6.² There is no unambiguous evidence that
20 Plaintiff’s motions were in fact motivated by a bad faith desire to delay the proceedings or
21 otherwise needlessly increase the cost of litigation for both parties. Thus, the Court DENIES
22 Defendants’ request for a pre-filing order. Although the Court has authority to issue such a pre-
23 filing order under Rule 11(c)(1) (authorizing any “appropriate sanction”), it is not clear to the Court
24 that Rupert has demonstrated such a disregard for the judicial process by “preempt[ing] the use of
25 judicial time that properly could be used to consider the meritorious claims of other litigants.”
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27 ² The Court notes that the majority of Plaintiff’s Legal Argument section in his opposition brief
28 comprises references to his opposition to the Defendants’ Motion to Dismiss, “Downes Mot.,” ECF
No. 18. *Rupert Mot.* at 21-24.

1 *Molinski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007) (citation omitted). The
2 Ninth Circuit has clearly instructed that the entry of pre-filing orders is an “extreme remedy that
3 should rarely be used.” *Id.* at 1057. And, courts should not enter pre-filing orders “with undue
4 haste because such sanctions can tread on a litigant’s due process right of access to the courts.” *Id.*
5 (citation omitted); *see also Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429 (1982) (noting that
6 the Supreme Court “traditionally has held that the Due Process Clauses protect civil litigants who
7 seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs
8 attempting to redress grievances”) (citation omitted).

9 **IV. CONCLUSION**

10 Because the Court finds that Plaintiff has not violated Rule 11(b) at this time, Defendants’
11 Motion for Sanctions is DENIED.

12 **IT IS SO ORDERED.**

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14 Dated: 9/18/2013



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16 LUCY H. KOH
17 United States District Judge
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