

did not set forth adequate grounds for this Court to impose the requested sanctions¹ in this case. (May 20, 2014 Order [Doc. #401], at 22.) The Court determined that it did not find that Plaintiffs' claims in this case were "frivolous or vexatious² so as to warrant the imposition of Rule 11 sanctions." (May 20, 2014 Order [Doc. #401], at 22.) The Court further noted that many of the claims asserted against Defendant Wilson in this case were dismissed in this Court's March 31, 2011 Memorandum Opinion [Doc. #186] and Order [Doc. #187]; however, just because a claim does not survive a motion to dismiss "such a flaw will not in itself support Rule 11 sanctions." (May 20, 2014 Order [Doc. #401], at 23 (quoting Hunter, 281 F.3d at 153).) Specifically, the Court noted that Plaintiffs' claims, as asserted against Defendant Wilson, were not so frivolous or groundless that they would have "absolutely no chance of success" so as to warrant the imposition of Rule 11 sanctions. (See id. (quoting Morris v. Wachovia, 448 F.3d 268, 277 (4th Cir. 2006) (citation omitted).) The Court also noted that "the Fourth Circuit has

¹ Defendant Wilson's primary request for sanctions consisted of a request for \$3,000,000.00 in attorney's fees. However Defendant Wilson did not provide the Court with any basis for imposing such a large monetary sanction on Plaintiffs, or their counsel, nor did he provide the Court with a basis to determine that such an amount was reasonable in order to serve the deterrence purposes for imposing Rule 11 sanctions. Additionally, to the extent such a request sanctions could have been construed as a request for attorney's fees pursuant to 42 U.S.C. § 1988 for the section 1983, 1985, and 1986 claims asserted against Defendant Wilson in this case, the Court notes that the same rationale that the Court applied in declining to award Defendant Wilson's Motion for Rule 11 Sanctions in this case also would apply to any request that could have been made for attorney's fees pursuant to § 1988 in this case. See Unus v. Kane, 565 F.3d 103, 127 (4th Cir. 2009) (stating that the district court should only award attorney's fees when a plaintiff's claim is "frivolous, unreasonable, or groundless."); Young v. Annarino, 123 F. Supp. 2d 943 (W.D.N.C. 2000) (applying similar standards when declining to award both Rule 11 sanctions and attorneys fees pursuant to § 1988).

² In considering Defendant Wilson's allegations that Plaintiffs' claims were vexatious, which the Court did not find, the Court notes that Defendant Wilson did not provide an adequate basis for the Court to infer that the claims brought by Plaintiffs were brought vexatiously or with any intent to harass or intimidate Defendant Wilson.

‘recognized that [c]reative claims, coupled even with ambiguous or inconsequential facts,³ may merit dismissal, but not punishment.’” (*Id.* (quoting *Hunter*, 281 F.3d at 153 internal quotation marks and citations omitted).) Also, the Court notes that Defendant Wilson’s Motion for Rule 11 Sanctions was also purported to be made pursuant to Federal Rule of Civil Procedure 11(c)(3), in that Defendant Wilson requested that the Court issue a show cause order *on its own initiative*,⁴ which the Court declined to do. *See In re Bees*, 562 F.3d 284, 287 (4th Cir. 2009)

³ Thus, to the extent Defendant Wilson alleged that Plaintiffs should have been sanctioned because their claims lack evidentiary support or that they would not lead to a evidentiary support after a reasonable opportunity for discovery, the Court notes that the factual allegations in the Complaint asserted against Defendant Wilson are sufficient to preclude the imposition of sanctions. Specifically, while Defendant Wilson’s general allegations that Plaintiffs’ claims were groundless and lacked factual support, the Court has determined that Defendant Wilson had not provided an adequate basis to infer that Plaintiffs’ and their counsel did not conduct the proper pre-filing investigation to warrant the imposition of Rule 11 sanctions. Additionally, while Defendant Wilson has subjectively determined that his individual conduct and his conduct in working with other defendants in this case was innocent and thus did not support Plaintiffs’ claims against him in this case, the Court notes that Plaintiffs’ factual allegations against Defendant Wilson in the Second Amended Complaint [Doc. #136] appear to be at least objectively reasonable as a basis for their claims, prior to any pre-trial discovery in this case. *Edmonds v. Gilmore*, 988 F. Supp. 948, 957 (E.D. Va. 1997) (“When the court is considering sanctions on a factual claim, ‘the initial focus of the district court should be on whether an objectively reasonable evidentiary basis for the claim was demonstrated in pre-trial proceedings or at trial.’” (quoting *Calloway v. Marvel Entm’t Grp.*, 854 F.2d 1452, 1470 (2d Cir. 1988, *rev’d on other grounds*, 493 U.S. 120, 110 S. Ct. 456, 107 L. Ed. 2d 438 (1989))); *see also Brubaker v. City of Richmond*, 943 F.2d 1363, 1373 (4th Cir. 1991) (“To be reasonable, the pre-filing investigation must uncover *some* information to support the allegations in the complaint.” (emphasis added)).

⁴ It appears that Defendant Wilson originally filed a motion for sanctions (*see* [Doc. #218]) pursuant to Federal Rule of Civil Procedure 11(c)(2), which requires a party to adhere to the 21-day safe harbor provision, contained therein, before filing a motion for sanctions with the Court. Defendant Wilson subsequently withdrew his original Motion for Rule 11 Sanctions and later filed a similar Motion for Rule 11 Sanctions [Doc. #367], however requesting that the Court act on its own initiative to issue a show cause order to pursue sanctions. Nevertheless, the Court notes that when a party moves for sanctions, “by definition, a court responding to a

(“Court’s generally should reserve [*sua sponte*] sanctions for ‘situations that are akin to contempt of court.’ ” (quoting Hunter v. Earthgrains Co. Bakery, 281 F.3d 144, 153 (4th Cir. 2002)). Finally, the Court notes that the decision to impose sanctions or award attorney’s fees under Rule 11 is within the sound discretion of the district court, the court that is in the best position to determine whether sanctions should be imposed. See Fahrenz v. Meadow Farm P’ship, 850 F.2d 207, 210 (4th Cir. 1988) (“[T]he decision whether to impose sanctions pursuant to Rule 11 is within the sound discretion of the trial court”); Fed. R. Civ. P. 11(c)(1), (3); cf. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 407, 110 S. Ct. 2447, 2462, 110 L. Ed. 2d 359 (1990) (“Indeed, because the district court has broad discretion to impose Rule 11 sanctions, appeals of such sanctions may frequently be frivolous.”); Fed. R. Civ. P. 11 advisory committee’s note (1993) (“[T]he court should not ordinarily have to explain its denial of a motion for sanctions.”). Therefore, the Court certifies that the appeal is not taken in good faith because the Court finds the appeal to be frivolous, based on the nature of the issue sought to be raised on appeal by Defendant Wilson and the specific Order from which appeal is sought based upon a denial of Defendant Wilson’s Motion for Rule 11 Sanctions [Doc. #367].

Defendant Wilson, appearing *pro se*, has also filed a Motion for Certification of Appealability [Doc. #410]. On whatever basis Defendant Wilson has sought to appeal the

motion is not acting *sua sponte*.” Peer v. Lewis, 606 F.3d 1306, 1313 (11th Cir. 2010). However, it is not clear whether Defendant Wilson complied with the safe harbor provisions of Rule 11(c)(2), which is Plaintiffs’ contention, for the Court to impose sanctions pursuant to the Motion filed by Defendant Wilson. In its May 20, 2014 Order [Doc. #410], the Court noted the possibility of procedural defects regarding Defendant Wilson’s Motion for Rule 11 Sanctions [Doc. #367], however, the Court alternatively determined that it would not impose sanctions, *sua sponte* or otherwise, based on the allegations asserted in Defendant Wilson’s Motion for Rule 11 Sanctions [Doc. #367].

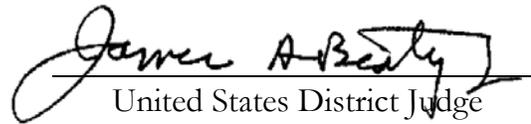
Court's Order denying his Motion for Rule 11 Sanctions [Doc. #367], either as a perceived interlocutory appeal pursuant to 28 U.S.C. § 1292(b), or as an attempted appeal of a final judgment with respect to the denial of his request for sanctions, for reasons similar to those stated above in the Court's denial of Defendant Wilson's Motion for Leave to Proceed In Forma Pauperis [Doc. #406], the Court will deny Defendant Wilson's separate Motion for Certification of Appealability [Doc. #410]. Furthermore, the Court is not of the opinion that the reasons that the Court has given for the denial of Defendant Wilson's Motion for Rule 11 Sanctions involve a controlling question of law that raises a substantial ground for difference of opinion as to whether Defendant Wilson's Motion for Sanctions should have been denied, given that the denial of Defendant Wilson's Motion for Rule 11 Sanctions was totally within the Court's discretion to do so. See 28 U.S.C. § 1292(b). For all of these reasons, the Court will deny Defendant Wilson's Motion for Certification of Appealability [Doc. #410].⁵

For all of these reasons, IT IS THEREFORE ORDERED that Defendant Wilson's Motion for Leave to Proceed In Forma Pauperis [Doc. #406] is DENIED.

⁵ The Court notes that as a result of rulings by the Court, or by way of concession by Plaintiffs, that certain claims previously asserted against Defendant Wilson should be dismissed, Defendant Wilson has been completely terminated as a litigant in this action, even though the case continues toward trial involving certain remaining litigants. Defendant Wilson nevertheless has filed a Notice of Appeal [Doc. #405] to the Court's denial of his Motion for Rule 11 Sanctions [Doc. #367] against Plaintiffs and their counsel.

IT IS FURTHER ORDERED that Defendant Wilson's Motion for a Certification of Appealability [Doc. #410] is DENIED.

This, the 30th day of May, 2014.


United States District Judge