



1 Defendants oppose Plaintiff's motion to take Defendants' Rule 11 Sanctions Motion off  
2 of this Court's Calendar. As an initial matter of clarification, Plaintiff mischaracterizes  
3 Defendants' sanctions motion. In addition to seeking sanctions pursuant to Fed. R. Civ. P. 11,  
4 Defendants' authority for sanctions is also found in Civ. L. R. 7-9(c).<sup>1</sup>

5 As required by Fed. R. Civ. P. 11(c)(1), Defendants served a copy of their Motion for  
6 Sanctions under LR 7-9(c) and Fed. R. Civ. P. 11 (hereinafter "sanctions motion") on Plaintiff on  
7 November 2, 2007. See Exhibit A to Plaintiff's Administrative Motion to Take Defendants'  
8 Motion for Rule 11 Sanctions off Calendar for Lack of Service (hereinafter "administrative  
9 motion"). Plaintiff does not dispute this. The motion itself, *i.e.* the request for relief from this  
10 Court to sanction Plaintiff's attorney for filing a second motion for reconsideration, has not  
11 changed. Defendants provided a draft legal memorandum in support of the sanctions motion to  
12 Plaintiff's attorney on November 2, 2007 in order to provide further explanation and notice to  
13 Plaintiff's counsel why Defendants believe that Plaintiff's action is sanctionable. Providing this  
14 legal analysis is not required by Fed. R. Civ. P. 11 and was done as a courtesy to Plaintiff's  
15 counsel. It is this courtesy that is the subject of Plaintiff's objection.

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17 Defendants did flesh out the legal memorandum in support of the sanctions motion  
18 between November 2, 2007 and November 28, 2007 (the date the sanctions motion was filed  
19 with this Court). Specifically, as Plaintiff points out, Defendants expanded on their legal  
20 argument, adding case cites and argument to the section on Rule 11 sanctions. Contrary to  
21 Plaintiff's assertion, a Rule 11 sanctions section did exist in the sanctions motion sent to  
22 Plaintiff on November 2, 2007. See Exhibit A to Plaintiff's Administrative Motion at 4.

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<sup>1</sup> The ultimate and best source of this Court's sanctions power for Plaintiff's conduct is contained in this Court's Civil Local Rules which clearly state that Plaintiff's filing of a second motion for reconsideration is sanctionable conduct. The "safe harbor" requirements of Fed. R. Civ. P. 11 do not apply to this sanctions power of this Court derived from these local rules, nor this Court's inherent sanctioning powers.

1           However, the offending conduct and the sanction requested remain the same in both  
2 motions. Plaintiff's filing the second motion for reconsideration is the offending conduct  
3 complained of in both motions. Defendants did add a paragraph in the final sanctions motion  
4 discussing how Plaintiff's conduct also violated Civ. L.R. 7-9(a) since the second motion for  
5 reconsideration was noticed without first obtaining leave from this Court. The sanctions request  
6 is also identical in both motions, however, Defendants liquidated their attorney fees in the  
7 sanctions motion filed with this Court. It would have been impossible to liquidate these attorney  
8 fees in the sanctions motion sent to Plaintiff's counsel on November 2, 2007 as these fees had  
9 not fully accrued at that point.

10           Plaintiff cites to no case (because none exists) for the proposition that a movant under  
11 Fed. R. Civ. P. 11(c)(1) must serve a copy of the *identical, word for word* motion and sanctions  
12 papers on the opposing party pursuant to the safe harbor provision prior to filing the motion in  
13 court. Rather, as Plaintiff's caselaw authority points out, the safe harbor provision is meant to  
14 put the opposing party on notice of their allegedly sanctionable conduct and allow that party to  
15 withdraw the offending papers. *Retail Flooring Dealers of Am., Inc. v. Beaulieu of Am., LLC*,  
16 339 F.3d 1146, 1150 ("the purpose of the safe harbor provision...is to give the offending party  
17 the opportunity...to withdraw the offending pleading and thereby escape sanctions) (9<sup>th</sup> Cir.  
18 2003). The thrust of the caselaw on Fed. R. Civ. P. 11(c)(1) discusses the idea that the sanction  
19 notice must be in the form of a motion and not an informal letter. *See e.g. Barber v. Miller*, 146  
20 F.3d 707, 710 (9th Cir. 1998); *Harding Univ. v. Consulting Servs. Group, L.P.*, 48 F.Supp.2d.  
21 765, 770 (ND Ill. 1999). The idea being that a motion conveys a more serious warning than an  
22 informal letter to opposing counsel. *Id.* In this case, Defendants' sanctions motion served on  
23 Plaintiff met the letter and the spirit of Rule 11 as it formally put Plaintiff on notice of the  
24 offending conduct and the sanction requested. Indeed, Plaintiff does not appear to allege  
25 inadequate notice of the offending conduct.  
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1 Plaintiff's administrative motion also rings hollow as Plaintiff never contends that he is  
2 now considering withdrawing the second motion for reconsideration based on the facts and  
3 argument presented in the filed sanctions motion. Were this the case, Defendants would have  
4 considered withdrawing the sanctions motion. Rather, Plaintiff is merely requesting a pointless  
5 exercise of waiting 21-extra days before noticing the sanctions motion again.

6 Lastly, the undersigned noticed the sanctions motion on January 18, 2007 after only  
7 calling this Court's clerk and receiving confirmation that it was acceptable to notice the sanctions  
8 motion on January 18, 2007 (the date of the hearing on Plaintiff's Amended Motion to file his  
9 Second Amended Complaint).

10 **CONCLUSION**

11 Based on the above, Defendants respectfully request that Plaintiff's Administrative  
12 Motion be denied.

13 Dated: December 3, 2007.

14 Respectfully submitted,

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16 /s/

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**CERTIFICATE OF SERVICE**

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2 I also that on December 3, 2007, I served Matthew Katzer's and KAM's Memorandum in  
3 Opposition to Plaintiff's Administrative Motion to take Defendants' Rule 11 Motion off of  
4 Calendar on Robert Jacobsen and his attorney Victoria Hall to the following address via the  
5 Court's ECF filing system:

6 Victoria K. Hall  
7 Attorney for Robert Jacobsen  
8 3 Bethesda Metro Suite 700  
9 Bethesda, MD 20814  
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R. Scott Jerger (*pro hac vice*)