UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BMADDOX ENTERPRISES LLC,

Plaintiff,

-against-

MILAD OSKOUIE, OSKO M LTD, and PLATINUM AVENUE HOLDINGS PTY, LTD,

Defendants.

MILAD OSKOUIE and PLAITINUM AVENUE HOLDINGS PTY, LTD,

Counterclaim Plaintiffs,

-against-

BMADDOX ENTERPRISES LLC and BRANDON MADDOX,

Counterclaim Defendants.

Case No. 17-cv-1889-RA-HBP

Plaintiff and Counterclaim Defendants' Memorandum in Support of Their Second Motion for Rule 11 Sanctions

PRELIMINARY STATEMENT

Plaintiff BMaddox Enterprises LLC ("BMaddox") and Counterclaim Defendants BMaddox with Brandon Maddox ("Brandon") (referred to collectively herein as "Maddox"), by and through its attorneys, Revision Legal, PLLC, ask this Court to sanction Defendants Milad Oskouie ("Oskouie"), Osko M Ltd ("Osko"), and Platinum Avenue Holdings Pty, Ltd ("Platinum") as well as Counterclaim Plaintiffs Oskouie and Platinum (Milad, Osko, and Platinum are referred to herein collectively as "Defendants") pursuant to Rule 11 of the Fed. R. Civ. P. for their wasteful, abusive filings as detailed below as well as Oskouie's continued misrepresentations to the Court. Maddox files its second motion for sanctions under Rule 11 because Defendants acquired new counsel who, despite receiving a copy of the current motion in accordance with Rule 11(c)(2) of the Fed. R. Civ. P., continued to waste judicial resources and Maddox's resources with abusive filings.

"A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b)." Fed. R. Civ. P. 11(c)(2). Although the Court may order an attorney or party to show cause why conduct specifically described in such an order has not violated Rule 11(b) of the Fed. R. Civ. P., the Court need not do so in this case even where it so inclined because Maddox served a motion for sanctions under Rule 11 on Defendants with an April 5, 2018 letter in compliance with Rule 11(c)(2). A true and correct copy of this letter and the motion is attached as **Exhibit A**. While the conduct identified in Maddox's present motion is covered by Maddox's third motion for sanctions pending before the court, Maddox's third motion for sanctions relies on the broad authority of the Court to preserve order in judicial proceedings. (Pl.'s Mot. Sanctions 3, 4, ECF No. 138.) Maddox files the present motion to provide an additional basis for the imposition of sanctions. Because much

of the conduct described below is described in detail in Plaintiff's Third Motion for Sanctions, the facts described here are abbreviated.

PROCEDURAL HISTORY AND RELEVANT FACTS

I. BMaddox's Prior Rule 11 Motion and Defendants' Substitution of Counsel

BMaddox its first motion for sanctions pursuant to Rule 11 of the Fed. R. Civ. P. on September 7, 2017. (Pl.'s Mot. Sanctions, ECF No. 55.) On January 30, 2018, the Parties filed a Stipulation for Substitution of Counsel by which Defendants sought new counsel, namely, the Law Offices of Saul Roffe, Esq. (Stipulation for Substitution of Counsel, ECF No. 86.) Because Defendants' pattern of abusive filings escalated after this substitution of counsel, BMaddox respectfully requests that the Court issue sanctions as allowed under Rule 11 of the Fed. R. Civ. P. to discourage bad actors from engaging in similar conduct in future proceedings.

II. Defendants' Attempt to Secure a Stay of these Proceedings

The first action of Defendants' new and current counsel was requesting a six-month stay of the proceedings "due to the illness of Defendant Oskouie." (Defs.' Mot. Stay, ECF No. 87.) Defendants argued that Oskouie "was diagnosed with Stage B Leukemia" and would "be required to undergo numerous treatments, likely including chemotherapy and radiation treatments." (Defs.' Mem. Supp. Mot. Stay 2, ECF No. 88.) Defendant Oskouie submitted a declaration in support of the motion for a stay stating that he had been diagnosed with Stage B Leukemia and must take "approximately 16 pills each day." (Oskouie Decl. ¶ 2, ECF No. 89.) Defendant Oskouie's declaration stated that, because of his treatment and illness he "suffer[s] from memory loss, tiredness, frequent headaches and severe pain" and is "frequently unable to concentrate or focus on matters and ha[s] difficulty reading and retaining information. *Id.* Defendant Oskouie further stated "[m]y physician has said that I will be in this condition for approximately six months while I undergo treatment." *Id.* Defendants' counsel submitted a

declaration in support of Defendants' motion for a stay that attached a "letter from the physician of Defendant Oskouie indicating that he has stage B Leukemia." (Roffe Decl. ¶ 2, Ex. A, ECF No. 90.) BMaddox counsel immediately began attempting to verify Defendant Oskouie's claimed illness because Oskouie's prior behavior and the timing of the motion for a stay immediately after substituting counsel was suspicious. One week after Defendants filed their motion for a stay, Defendants' counsel submitted a letter to the Court accusing Brandon Maddox of "harassing people and making false statements to, among other things, Matthew Miller an FBI agent falsely claiming that Mr. Oskouie is lying about his cancer." (Feb. 8, 2018 Letter, ECF No. 92.) The letter also accused Brandon Maddox of "harassing Mr. Oskouie's doctor and having people call him and ask privileged information about his illness." *Id.* As evidence for these claims Defendants' counsel attached "emails and a post seeking people to act on [Brandon Maddox's] behalf." *Id.*

The first attachment to this letter was an email exchange between an FBI agent, Matthew Miller, and Defendant Oskouie. (Feb. 8, 2018 Letter Ex. 1, ECF No. 92-1; Feb. 8, 2018 Letter Ex. 2, ECF No. 92-2.) The emails show only that Brandon Maddox informed agent Miller that a brief investigation demonstrated that Oskouie was not ill. *Id.* Defendant Oskouie initiated the email thread writing "I'm just keeping you update [sic], but Mr Maddox decided to hire someone in Iran to call my doctor's office and obtain information about me." *Id.* The second attachment is a screenshot from a job description. (Feb. 8, 2018 Letter Ex. 2, ECF No. 92-2.) The screenshot shows only that Plaintiff sought to perform basic due diligence in investigate the truth of Oskouie's allegations.

As described in Plaintiff's Memorandum Opposing Defendants' Motion for a Stay, any claim that Defendant Oskouie's doctor had been harassed was a fabrication because Plaintiff's

investigation indicated that Oskouie's doctor did not exist. (Pl.'s Mem. Opp'n Mot. Stay 2-4, ECF No. 93.) In response, Defendants' filed a Reply attacking the credibility of an investigator who submitted a declaration submitted to the Court by Plaintiff in connection with its memorandum opposing Defendants' motion for a stay. (Defs.' Reply Supp. Mot. Stay, ECF No. 103.) In an effort to discredit Plaintiff's investigator, Defendants' filed an irrelevant declaration from Amir Jaafari who stated that he is "in the banking and finance industry in Iran and frequently work[s] with and exchange[s] documents with the Iranian government." (Jaafari Decl. ¶ 1, ECF No. 105.)

In its March 6, 2018 Order, the Court noted that:

> defendants do not dispute, or even directly address, any of the concerns raised by plaintiff regarding the authenticity of the doctor's note. Defendants do not dispute that Dr. Nasab's telephone number does not connect to a medical office, but rather an elevator repair company. Defendants do not contest that Dr. Nasab's address is illegitimate. Instead, defendants assert, based on Jaafari's analysis, that the IRIMC Letter is fraudulent and, therefore, plaintiff's attack on the authenticity of the doctor's note should not be believed.

(March 6, 2018 Order 11, ECF No. 110.) Addressing the doctor's note submitted to the Court by Defendants, the Court recognized that "the note provides no details with respect to Oskouie's limitations or his treatment plan." (March 6, 2018 Order 13, ECF No. 110.) The Court found that "[e]ven assuming the veracity of the doctor's note, it does not provide adequate detail to support the conclusion that Oskouie is so impaired that defendants would be prejudiced by proceeding in this action." *Id.* The Court also found that "defendants do not explain why Oskouie is receiving medical treatment in Iran, as opposed to his country of residence, the United Kingdom, or his country of origin, Australia." *Id.* The Court denied Defendants' application for a stay without prejudice to renewal. (March 6, 2018 Order 14, ECF No. 110.) On March 15, 2018, Defendants' filed a renewed motion to stay these proceedings. (Defs.' Renewed Mot. Stay, ECF No. 116.) As

described in Maddox's Memorandum Opposing Defendants' Renewed Motion for a Stay, Defendants submitted fraudulent "test results" that were actually lifted from two separate medical journals. (Pl.'s Mem. Opp'n Renewed Mot. Stay 1, 2, ECF No. 123.) Defendants' counsel responded in a March 27, 2018 letter to the Court requesting a three-week extension "on Defendants' renewed motion for a stay in order to schedule and take the deposition of Defendant Oskouie's doctor via video conferencing." (March 27, 2018 Letter 1, ECF No. 125.) Defendants' letter stated:

> it appears that, rather than send Oskouie his test results, they send [sic] their general information packet on leukemia and told him it was something else. According to the Doctor, his staff was concerned about sending out the actual results because they were getting threatening calls regarding Mr. Oskouie and these results.

Id. This letter from Defendants' counsel attached as an exhibit a declaration from Defendant Oskouie acknowledging that the test results he submitted to the Court were not his own. (Oskouie Decl. ¶ 4, ECF No. 125-1.) Neither Defendants' letter nor Oskouie's declaration explain why the images were taken from two separate medical journals and edited to remove information that would have made that clear on the face of the documents. Similarly, the proffered excuse, that Oskouie's doctor received threatening phone calls about the test results is absurd. No one presumed that any test results existed until Defendant Oskouie submitted them to the Court. (March 27, 2018 Letter, ECF No. 126.) In denying Defendants' request to conduct a video deposition of Oskouie's purported doctor, the Court stated "[t]he reasons proffered for the request are not credible." (March 28, 2018 Order 1, ECF No. 127.) Nevertheless, Defendants persisted in their position that Defendants believed the "test results" were Oskouie's and were presented to the Court after a clerical error. (Defs.' Mem. Supp. Mot. Stay 1-4, ECF No. 133.)

Defendants admitted that the test results submitted to the Court were not Oskouie's test results. Only when caught did Defendants attempt to explain away their most recent attempt to

lie to the Court. Even after the Court told Defendants that their proffered explanation was not credible, they pushed forward with the same explanation. The only explanation is that Defendants lied to the Court, were caught, and have wasted judicial resources and Plaintiff's resources attempting to explain their lie with additional lies.

III. Defendants' Motion for Sanctions Pursuant to Rule 11 of the Fed. R. Civ. P.

The day after the Court issued its Order notifying Defendants that their explanation for submitting fraudulent test results to the Court was "not credible," Defendants filed a motion for sanctions against Plaintiff pursuant to Rule 11 of the Fed. R. Civ. P. (Defs.' Mot. Rule 11 Sanctions, ECF No. 128.) Defendants' memorandum in support of their Rule 11 motion vaguely accuses Plaintiff of threatening Oksouie, Oskouie's parents, and Oskouie's alleged doctor. (Defs.' Mem. Supp. Mot. Rule 11 Sanctions 8-10, ECF No. 129.) Defendants' further argued that "there is evidence that Plaintiff's claims of harassment were created by Plaintiff for the very purpose of harming Oskouie and making him look like the perpetrator." (Defs.' Mem. Supp. Mot. Rule 11 Sanctions 10, ECF No. 129.) Defendant Oskouie previously made this argument, that Plaintiff had been behind the extensive harassment of Plaintiff's own undersigned counsel, in a telephone call with Plaintiff's counsel, John Di Giacomo. (Di Giacomo Decl. ¶¶ 19-24, ECF No. 114.) Despite the suspect nature of Oskouie's allegations, Di Giacomo immediately conducted an investigation into the matter and concluded that Oskouie's allegations were unfounded. (Di Giacomo Decl. ¶¶ 22-24, ECF No. 114.)

In a surreal twist, Defendants, while alleging that Plaintiff was the party harassing Plaintiff's counsel, Defendants twice submitted a police report from December 24, 2007 concerning Plaintiff's counsel that is of no relevance to this proceeding. (Oskouie Decl. Ex. A, ECF No. 130-1; Roffe Decl. Ex. A, ECF No. 132-1.) Plaintiff's undersigned counsel has faced anonymous postings of the information contained in this police report while litigating this case.

(Duff Decl. Ex. A 1-2, ECF No. 115-1.) Defendants' counsel also failed to abide by the procedures outlined in Rule 11 of the Fed. R. Civ. P. (Pl.'s Mem. Opp'n Defs.' Mot. Rule 11 Sanctions 1, 2, ECF No. 135.) Through their submission of a baseless motion for sanctions under Rule 11 of the Fed. R. Civ. P., Defendants have wasted judicial resources and forced Plaintiff to expend additional resources.

IV. Defendants' Mischaracterization of Submitted Exhibits

In support of their procedurally deficient motion for sanctions under Rule 11, Defendants grossly mischaracterize email correspondence with agent Miller of the FBI as well as screenshots submitted in support of their argument that Plaintiff was behind the harassment of Plaintiff's own counsel. The email correspondence between agent Miller and Oskouie is recited and described in Plaintiff's memorandum of its third motion for sanctions. (Pl.'s Mem. Supp. Third Mot. Sanctions 2, 3, ECF No. 138.) Nothing in these emails suggests that agent Miller was "of the opinion that the threats Oskouie has been receiving, and the hacking of his site, was done by Plaintiff" as alleged by Defendants. (Defs.' Mem. Supp. Mot. Rule 11 Sanctions 6, ECF No. 129.) Defendant also submitted screenshots to the Court in support of their argument that Plaintiff had hired a third party "to plant and create 'evidence' that would make it look like Oskouie was harassing Plaintiff." (Oskouie Decl. Ex. D, ECF No. 130-4.) Nothing in these screenshots comes close to suggesting that Plaintiff did so.

ARGUMENT

"Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name . . . ." Fed. R. Civ. P. 11(a). By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney . . . certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is not being

presented for any improper purpose, such as to . . . cause unnecessary delay, or needlessly increase the cost of litigation; (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; (3) the ***factual contentions have evidentiary support*** or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) ***the denials of factual contentions are warranted on the evidence*** or, if specifically so identified, are reasonably based on belief or a lack of information." Fed. R. Civ. P. 11(b) (emphasis added). "If, after notice and a reasonable opportunity to respond" a party obstinately maintains positions in violation of Fed. R. Civ. P. 11(b), "the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c). "Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee." *Id.* "By presenting to the court a pleading, written motion, or other paper . . . an attorney . . . certifies that to the best of the person's knowledge, information, and belief, ***formed after an inquiry reasonable under the circumstances*** . . . the factual contentions [therein] ***have evidentiary support***, or, if specifically so identified, will likely" be supported by evidence uncovered through discovery or a reasonable investigation. *Revellino & Byczek, LLP v. Port Auth. of New York & New Jersey (PANYNJ)*, 682 F. App'x 73 (2d Cir. 2017) (citing Fed. R. Civ. P. 11(b)(3)). Rule 11 "unambiguously states that a party who signs a pleading or other paper without first conducting a reasonable inquiry shall by sanctioned, and there is nothing in [Rule 11's] full text that detracts from this plain meaning." *Bus. Guides, Inc. v. Chromatic Commc'ns Enterprises, Inc.*, 498 U.S. 533, 533 (1991).

"For sanctions issued pursuant to a motion by opposing counsel, courts have long held that an attorney [may] be sanctioned for conduct that [is] objectively unreasonable." *Id.*; *see also ATSI Communications, Inc. v. Shaar Fund, Ltd.*, 579 F.3d 143, 150 (2d Cir. 2009) ("[L]iability for Rule 11 violations 'requires only a showing of objective unreasonableness on the part of the attorney or client signing the papers.'" (citation omitted)). A legal claim is objectively unreasonable if, at the time a pleading or paper is signed, it is clear that there is absolutely no chance of success under existing precedent and there can be no reasonable argument to extend, modify, or reverse the extant law. *Goldberger Co., LLC v. Uneeda Doll Co., Ltd.*, 2017 WL 3098110, *4 (S.D.N.Y. 2017) (citation omitted). When considering whether a claim is objectively unreasonable, the Second Circuit provides the following factors: (1) the amount of time available for investigation available to the signer; (2) whether a signer necessarily relied on his or her client for information; (3) whether the claim advanced was based on a plausible view of the law; or (4) whether a signer depended on forwarding counsel or another member of the bar. *Goldberger*, 2017 WL 3098110 at *5 (citing *Kamen v. AT&T*, 791 F.2d 1006, 1012 (2d Cir. 1986)).

In *Business Guides*, the Northern District of California, applying the standard of objective reasonableness, dismissed plaintiff's claims *and* imposed sanctions against it after the court determined that the plaintiff and its attorney had clearly violated Rule 11 by: (1) filing a meritless TRO application; and (2) failing to conduct a reasonable inquiry once put on notice of several inaccuracies. 498 U.S. at 538-39. The Ninth Circuit affirmed these two holdings relying on the "plain language of Rule 11, which 'draws no distinction between the state of mind of attorneys and parties.'" *Id.* (citing *Bus. Guides, Inc. v. Chromatic Commc'ns Enterprises, Inc.*, 892 F.2d 802, 811 (9th Cir. 1989)). Upon review, the Supreme Court was unequivocal, "[a]

party who signs a pleading or other paper without first conducting a reasonable inquiry shall be sanctioned." *Id.* at 541. The same standard is applied to attorneys. *Id.* at 931. "When parties and lawyers make false statements to their adversaries and to the court that generate costs, there is every reason for them to pay those costs." *Margo v. Weiss*, 213 F.3d 55, 62 (2d Cir. 2000) (citing *Watts v. Indiana*, 338 U.S. 49, 52 (1949) ("And there comes a point where this Court should not be ignorant as judges of what we know as men [and women]."). Echoing Justice Frankfurter's plurality opinion in *Margo*, the Second Circuit, considering a plaintiff's counsel who submitted affidavits, delayed deposition errata sheets, and supplemental responses to interrogatories that contradicted plaintiff's earlier deposition testimony and interrogatory answers, wrote that "[f]or [the court] to say [it] believe[d such misrepresentations] would be to affect a level of naiveté about human affairs that is not required even of judges." 213 F.3d at 62.

Defendants' conduct described above and in more detail in Plaintiff's Third Motion for Sanctions shows that Defendants filed fraudulent documents with the Court and attempted to explain their fraudulent filings with absurd arguments even after the Court told Defendants that their arguments were not credible.

CONCLUSION

Defendants' conduct since their substitution of counsel warrants the imposition of sanctions under Rule 11 of the Fed. R. Civ. P. Plaintiff respectfully requests that monetary sanctions be awarded in its favor including at least reasonable costs and attorneys' fees associated for all filings necessitated by Defendants' above-described conduct. Plaintiff respectfully requests that additional sanctions under Rule 11 be imposed as the Court sees fit.

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Dated: New York, New York
June 18, 2018

Respectfully submitted,

By: /s/ Anderson J. Duff

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