

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARC ANDERSON, et al.,
Plaintiffs,
v.
SEAWORLD PARKS AND
ENTERTAINMENT, INC.,
Defendant.

Case No. [15-cv-02172-JSW](#)

**ORDER DENYING MOTION FOR
SANCTIONS**

Re: Dkt. No. 156

Now before the Court for consideration is the motion for sanctions filed by Defendant SeaWorld Parks and Entertainment, Inc. (“SeaWorld”). The Court has considered the parties’ papers, relevant legal authority, and the record in this case, and the Court has had the benefit of oral argument. For the reasons set forth herein, the Court DENIES SeaWorld’s motion.

BACKGROUND

The facts underlying this dispute are well-known to the parties, and are set forth in more detail in the Court’s Orders resolving SeaWorld’s motions to dismiss and in its Order granting, in part, and denying, in part, SeaWorld’s motion for summary judgment. (*See* Dkt. Nos. 46, 90, 188; *see also* Dkt. No. 80, published at *Anderson v. SeaWorld Parks and Entertainment, Inc.*, 15-cv-2172-JSW, 2016 WL 4076097 (N.D. Cal. Aug. 1, 2016).) SeaWorld asks the Court to impose sanctions under Federal Rule of Civil Procedure 11 (“Rule 11”) against Plaintiffs’ counsel on the basis that Plaintiffs’ deposition testimony shows their claims were groundless and counsel knew – or should have known – that to be true. SeaWorld also argues that the involvement of Earth Island Institute (“EII”) and the International Marine Mammal Project in this case demonstrates that counsel filed and pursued the case for an improper purpose. The Court will address additional facts as necessary in its analysis.

1 ANALYSIS

2 Federal Rule of Civil Procedure 11(b) provides, in pertinent part, that:

3 [b]y presenting to the court a pleading, written motion, or other
4 paper – whether by signing, filing, submitting, or later advocating it
5 – an attorney ... certifies that to the best of the person’s knowledge,
6 information, and belief, formed after an inquiry reasonable under the
7 circumstances,

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

11 (2) the claims, defenses, and other legal contentions therein are
12 warranted by existing law or by a nonfrivolous argument for the
13 extension, modification, or reversal of existing law or the
14 establishment of new law; [or]

15 (3) the allegations and other factual contentions have evidentiary
16 support or, if specifically so identified, are likely to have evidentiary
17 support after a reasonable opportunity for further investigation or
18 discovery[.]

19 Fed. R. Civ. P. 11(b).

20 “Rule 11 imposes a duty on attorneys to certify by their signature that (1) they have read
21 the pleadings or motions they file and (2) the pleading or motion is ‘well-grounded in fact,’ has a
22 colorable basis in law, and is not filed for an improper purpose.” *Smith v. Ricks*, 31 F.3d 1478,
23 1488 (9th Cir. 1994). This test is objective. *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 831
24 (9th Cir. 1986). “[I]f an independent examination reveals ‘some credible evidence’ in support of a
25 party’s statements,” a court can conclude a claim is well grounded in fact. *Himaka v. Buddhist*
26 *Churches of America*, 917 F. Supp. 698, 710 (N.D. Cal. 1995) (citing *Kendrick v. Zanides*, 609 F.
27 Supp. 1162, 1172 (N.D. Cal. 1985)).

28 “A cause of action is not ‘warranted by law’ where no ‘plausible, good faith argument can
be made by a competent attorney’ in support of the proposition asserted.” *Id.* (quoting *Zaldivar*,
780 F.2d at 833). A court may make a finding of improper purpose after conducting its own
review of the facts and the law, and “[w]here there is no legal or factual basis for a claim,
improper purpose may be deduced. ... Similarly, where there is a basis for a claim in law and fact,
the ‘subjective intent of the pleader ... is of no moment.’” *Id.* (quoting *Zaldivar*, 780 F.2d at 830).

If a court imposes sanctions under Rule 11, sanctions shall be limited to what is sufficient

1 to deter “repetition of such conduct or comparable conduct by others similarly situated.” Fed. R.
2 Civ. P. 11(c)(4). Rule 11 sanctions may include non-monetary sanctions or “if imposed on motion
3 and warranted for effective deterrence, an order directing payment to the movant of part or all of
4 the reasonable attorney’s fees and other expenses directly resulting from the violation.” *Id.*

5 Based on the deposition testimony and other documents presented to the Court, it is
6 evident that EII and Plaintiffs’ counsel were in search of class representatives well before the case
7 was filed. However, before the Court considers whether sanctions should be imposed based on the
8 “improper purpose” prong of Rule 11, the Court considers whether Plaintiffs’ claims had a
9 colorable basis in law and whether the various iterations of the complaint were well-grounded in
10 fact. The Court has granted SeaWorld’s motions to dismiss portions of Plaintiffs’ claims.
11 However, the Court cannot say the Plaintiffs did not have a colorable basis for asserting the claims
12 that have since been dismissed.

13 As it stated at the hearing, the Court was troubled by the portions of Nelson’s deposition
14 testimony relating to the allegations that “Ms. Nelson purchased a ticket to SeaWorld San Diego
15 from the ticket counter at the park’s entrance,” when the record shows her husband conducted that
16 transaction. It also was troubled by the allegation that Ms. Nelson “enjoy[s] ... the kind of animal
17 entertainment and education SeaWorld provides,” which during her deposition she claimed was
18 not true. Thus, some statements in the TAC appear to be inaccurate given Ms. Nelson’s
19 deposition testimony. In its Order on SeaWorld’s motion for summary judgment, the Court also
20 concluded that Mr. Anderson did put forth sufficient evidence to show he relied on at least one of
21 the statements he claimed to have relied on. In its motion for sanctions, SeaWorld repeats many
22 of the same arguments it made about the Plaintiffs’ testimony and the conclusions to be drawn
23 from that testimony. However, the Court found there were triable issues of fact on most of the
24 issues raised in that motion.

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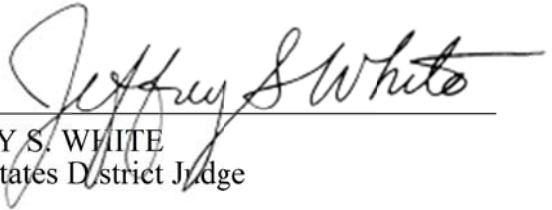
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Accordingly, for all of these reasons, the Court DENIES SeaWorld's motion for sanctions under Rule 11.

IT IS SO ORDERED.

Dated: February 27, 2018



JEFFREY S. WHITE
United States District Judge