UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK

ISRAEL PEREZ and MAGDALENO ESTRADA ESCAMILLA, on behalf of themselves and all other Mexican/Chicano Day Laborers and/or Latino Day Laborers similarly situated,	)	
Plaintiffs,	)	CIVIL ACTION NO. 01-6201 (JS) (WDW)
v.	)	
POSSE COMITATUS, SHERIFF'S POSSE COMITATUS, AMERICAN PATROL, THE CREATIVITY MOVEMENT, NATIONAL ALLIANCE, SACHEM QUALITY OF LIFE ORGANIZATION, INC., WORLD CHURCH OF THE CREATOR, CHRISTOPHER SLAVIN, and RYAN WAGNER,	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR RULE 11 SANCTIONS BY DEFENDANT
SACHEM QUALITY OF LIFE ORGANIZATION, INC.

TABLE OF CONTENTS

Introduction 1

Legal Standard 2

Argument 6

PLAINTIFFS' COUNSEL SHOULD BE SANCTIONED UNDER RULE 11 BECAUSE THEIR COMPLAINT IS FACTUALLY FRIVOLOUS, LEGALLY GROUNDLESS, AND BROUGHT FOR AN IMPROPER PURPOSE 6

I. THE FACTUAL ALLEGATIONS ARE GROUNDLESS 6

II. THE CLAIMS BASED ON SPEECH ARE LEGALLY FRIVOLOUS ... 12

III. THE COMPLAINT WAS BROUGHT TO HARASS SQL 15

IV. SANCTIONS SHOULD TAKE THE FORM OF AN AWARD OF ATTORNEYS' FEES TO SQL 18

Conclusion 18

Introduction

Sachem Quality of Life Organization, Inc. ("SQL") submits this memorandum of law in support of its motion for Rule 11 sanctions against plaintiffs' counsel, including Frederick K. Brewington, the Law Offices of Frederick K. Brewington (collectively "Brewington"), and any others who "are responsible for the violation." Rule 11(c), Fed. R. Civ. P.[1] Mr. Brewington signed a complaint seeking $66 million in damages from SQL, a small public-interest group, based on frivolous accusations accusing it of complicity in violent attacks on the plaintiffs, two Mexican day laborers. These allegations were not objectively reasonable because they lacked any basis in law or fact. Accordingly, SQL is entitled to Rule 11 sanctions against Mr. Brewington for the filing of the complaint in this action.

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[1] News reports have stated that other individuals not listed on the complaint have assisted Brewington in bringing this lawsuit. *See, e.g.*, Elissa Gootman, *Lawsuit by Laborers Seeks to Tie Attackers to Hate Groups*, N.Y. Times, Sept. 30, 2001, at A36, Col. 5 (Randolph McLaughlin of the Social Justice Center at Pace University is co-counsel in this action).

Although the Complaint is murky about why SQL was named in the complaint, a generous reading of it discloses two theories of liability. First, that SQL conspired with two individual defendants, Slavin and Wagner, to attack the plaintiffs, and currently is engaged in other unspecified violent attacks and conspiracies against the entire class of Mexican and Latino day laborers. Second, that SQL is liable based on its speech against illegal immigration, as a result of which Slavin and Wagner felt encouraged to attack the plaintiffs. The former theory is factually groundless, since SQL had nothing to do with any conspiracy to attack the plaintiffs, or anyone else, and the allegation of conspiracy is conclusory, containing no supporting factual allegations. The latter theory is legally frivolous, since speech about immigration is protected by the First Amendment even if others react to it by committing crimes.

The Complaint is an attempt to silence SQL, a small non-profit public interest group devoted to stemming illegal immigration, by forcing it to run up litigation expenses fighting a frivolous lawsuit and by smearing it as a racist hate group. This improper purpose for bringing the lawsuit is an additional justification for imposing Rule 11 sanctions, and a strong reason for this court to make those sanctions take the form of an award of attorneys' fees to SQL.

Legal Standard

Rule 11 requires that "allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery." Rule 11(b)(3). Similarly, it requires that "the claims . . . and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Rule 11(b)(2). Finally, it requires that a paper "not be[] presented for any improper purpose, such as to harass." Rule 11(b)(1).

Rule 11 makes every signature on a pleading, motion or other paper a certification of merits of the documents signed and authorizes sanctions for violation of the certification. Fed. R. Civ. P. 11. Any signing party has "an affirmative duty to conduct a reasonable inquiry into the facts and the law before filing." *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 551 (1991). "`Rule 11 explicitly and unambiguously imposes an affirmative duty on each attorney to conduct a reasonable inquiry into the viability of a pleading before it is signed.'" *Gutierrez v. Fox*, 141 F.3d 425,

427 (2d Cir. 1998), *quoting Eastway Construction Corp. v. City of New York*, 762 F.2d 243, 253 (2d Cir. 1985). "Reasonable inquiry" requires attorneys to seek credible information rather than proceed on mere suspicions or supposition. *California Architectural Building Products v. Franciscan Ceramics*, 818 F.2d 1466, 1472 (9th Cir. 1987); *see also Cabell v. Petty*, 810 F.2d 463, 466 (4th Cir. 1987)(lawsuit cannot be used as a "speculative effort to find someone financially liable for plaintiff's injuries"). Thus, "a complaint containing allegations unsupported by any information obtained prior to filing, or allegations based on information which minimal factual inquiry would disprove, will subject the author to sanctions." *In re Kunstler*, 914 F.2d 505, 516 (4th Cir. 1990).

It is no longer acceptable to file suit first and find out later whether or not the plaintiff has a case against the defendant. *See* Hon. William W. Schwarzer, *Sanctions Under the New Federal Rule 11 -- A Closer Look*, 104 F.R.D. 181 (1985); *Hale v. Harney*, 786 F.2d 688, 692 (5th Cir. 1986). "It is not permissible to file suit and use discovery as the sole means of

finding out whether you have a case. Discovery fills in the details, but you must have the outline of a claim at the beginning." *Szabo Food Service, Inc. v. Canteen Corp.*, 823 F.2d 1073, 1083 (7th Cir. 1987).

Thus, Rule 11 authorizes "the imposition of sanctions upon a finding that a factual allegation has no evidentiary support, unless there was a specific disclaimer that additional investigation was necessary." *O'Brien v. Alexander*, 101 F.3d 1479, 1489 (2d Cir. 1996). Accordingly, "[f]actual allegations on information and belief are proper only if they are *specifically identified* as `likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.'" Hon. William W. Schwarzer, et al., *California Practice Guide: Federal Civil Procedure Before Trial*, ¶ 17:55 at 17-24.2 (Rutter Group 1999)(emphasis in original), *quoting* Fed. R. Civ. P. 11(b)(3); *accord* 2 *Moore's Federal Practice* § 11.11[9][a] at 11-36 (3d ed. 2001). "A litigant is not relieved from its obligation to conduct an appropriate investigation into the facts that is `reasonable under the circumstances.'" Schwarzer, *Federal Civil Procedure Before Trial*, ¶ 17:55.3 at 17-25, *quoting* Fed. R. Civ. P. 11(b).

Rule 11 is also violated where the claim is not warranted by existing law or a "nonfrivolous" argument for change of that law. Legal arguments are held to an "objective standard of

reasonableness," and Rule 11 is violated where, for example, it is "clear . . . that there is no chance of success and no reasonable argument to extend, modify, or reverse the law as it stands." *Caisse Nationale v. Valcorp., Inc.*, 28 F.3d 259, 264 (2d Cir. 1994). Rule 11 "establishes an objective standard, intended to eliminate any `empty-head pure-heart' justification" for frivolous arguments, *Margo v. Weiss*, 213 F.3d 55, 64 (2d Cir. 2000)(frivolous legal argument need not be intended as such). "Subjective good faith . . . provides [no] safe harbor." *Eastway Construction Corp. v. City of New York*, 762 F.2d 243, 253 (2d Cir. 1985), *citing, e.g.,* William W. Schwarzer, *Sanctions Under the New Federal Rule 11 -- A Closer Look*, 104 F.R.D. 181 (1985). Thus, if a controlling case is fatal to a claim, and a reasonably competent attorney would have found it, the claim is not well-grounded in law. *Balfour Guthrie, Inc. v. Hunter Marine Transp., Inc.*, 118 F.R.D. 66, 74 (M.D. Tenn. 1987); *see Eastway Construction Corp. v. City of New York*, 762 F.2d 243, 252-53 (2d Cir. 1985); *In re Kunstler*, 914 F.2d 505 (4th Cir. 1990); *Rodgers v. Lincoln Towing Services, Inc.*, 771 F.2d 194, 205 (7th Cir. 1985).

Not only the signing attorney but his or her law firm is responsible. *See* Rule 11(c)(1)(A)("Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees"); 2 *Moore's Federal Practice* § 11.23[6][b] at 11-50-51

(3d ed. 2001). Even if a pleading states a meritorious claim against one defendant, that does not justify adding others against whom the claim is frivolous. *Townsend v. Holman Consulting Corp.*, 914 F.2d 1136, 1141 (9th Cir. 1990); *see also Cross & Cross Properties v. Everett Allied Co.*, 886 F.2d 497, 505 (2d Cir. 1989)(Rule 11 is violated even where only part of a pleading, rather than the entire pleading, is frivolous).

Argument

PLAINTIFFS' COUNSEL SHOULD BE SANCTIONED UNDER RULE 11 BECAUSE THEIR COMPLAINT IS FACTUALLY FRIVOLOUS,

LEGALLY GROUNDLESS, AND BROUGHT FOR AN IMPROPER PURPOSE

I. THE FACTUAL ALLEGATIONS ARE GROUNDLESS

The Complaint repeatedly alleges a conspiracy to attack the plaintiffs, including SQL among the many alleged conspirators. *See* Complaint, ¶¶ 78-80, 84; *see also id.*, ¶¶ 2, 71 (alleging defendant organizations provided unspecified assistance to Slavin and Wagner). But the Complaint contains no supporting details. It does not provide the time or place of any agreement to enter into a conspiracy, or allege even a single statement suggesting the existence of any such conspiracy. Nor does it list any SQL officers (or even members) who allegedly participated in any conspiracy. In short, it never places SQL on notice of any misconduct constituting a conspiracy. See Memorandum in Support of Motion to Dismiss by Sachem Quality of Life Organization, Inc. ("SQL"). Thus, it is sanctionable. *See D'Orange v. Feely*, 877 F. Supp. 152, 159 (S.D.N.Y. 1995)(sanctions would have been appropriate when there was no evidence of pattern of predicate acts comprising conspiracy; even under Rule 8(a), conspiracy claims "must allege specifically such an agreement [to commit predicate acts]"), *quoting Hecht v. Commerce Clearing House, Inc.*, 897 F.2d 21, 25 (2d Cir. 1990).

Nor does it make any allegations that could support an inference that SQL is connected with Slavin or Wagner. It does not allege that they mentioned SQL in the course of the attack.

Nor does it even allege that Slavin or Wagner were members of SQL or attended any of its meetings -- facts that would, in any event, be insufficient to hold SQL liable, in light of the First Amendment.[2] Finally, it alleges that SQL has engaged in multiple other conspiracies against Mexican day laborers which it does not bother to describe. In short, the conspiracy allegations are too vague and conclusory to comply with Rule 11. *See Rodgers v. Lincoln Towing Service, Inc.*, 771 F.2d 194, 205 (7th Cir. 1985)(awarding Rule 11 sanctions where conspiracy allegations were "conclusory ones, not factual ones, and so cannot withstand a motion to dismiss"; conspiracy not shown by fact that arresting officer was friend of individuals who allegedly conspired to have plaintiff falsely arrested); *In re Kunstler*, 914 F.2d 505 (4th

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[2] *Barnes Foundation v. Tp. of Lower Merion*, 242 F.3d 151, 163 (3d Cir. 2001)(rejecting allegations of discriminatory conspiracy because "the First Amendment requires more than evidence of association to impose liability for conspiracy and, in fact, prohibits liability on that basis alone"), *citing NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 918-19 (1982); *See also, e.g., Elfbrandt v. Russell*, 384 U.S. 11, 17 (1966); *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539 (1963).

Cir. 1990)(conclusory civil rights conspiracy allegations warranted Rule 11 sanctions); *Abner Realty. Inc. v. Administrator of General Services Administration*, 1998 WL 410958, *2-3 (S.D.N.Y. July 22, 1998)(imposing Rule 11 sanctions on lawyer "because the minimum required factual allegations to support . . . the allegations of conspiracy and corruption cannot be supported by evidence"); *Hall v. Dworkin*, 829 F. Supp. 1403, 1414 (N.D.N.Y. 1993)(imposing sanctions in civil rights action because "plaintiff's conspiracy allegations are wholly conclusory and substantiated by nothing more than supposition without the barest of factual information"); *Rodriguez-O'Ferral v. Trebol Motors Corp.*, 154 F.R.D. 33 (D.P.R. 1994)(awarding Rule 11 sanctions where plaintiff made vague and conclusory conspiracy allegations and attempted to rely on discovery to fill in the gaps of their complaint).[3]

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[3] *See also Lazzarino v. Kenton Assocs. Ltd.*, 998 F. Supp. 364

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(S.D.N.Y. 1998)(imposing sanctions under court's inherent power due to conclusory allegations of conspiracy made with no good faith basis); *Evers v. Custer County*, 745 F.2d 1196, 1204 (9th Cir. 1984)(unsupported allegation of conspiracy based on defendant's speech warranted sanctions under 42 U.S.C. § 1988); *Ellis v. Cassidy*, 625 F.2d 227, 229 (9th Cir. 1980)("sweeping assertions of conspiracy" warranted award of attorneys' fees against plaintiff under § 1988 where plaintiff "failed to allege facts which would permit the court to conclude that these assertions had substantive validity"); *Hutchinson v. Staton*, 994 F.2d 1076 (4th Cir. 1993)(allegations based on "conjecture" or "speculation" warranted fee award under § 1988); *Glass v. Pfeffer*, 657 F.2d 252, 257 (10th Cir. 1981) (where summary judgment was granted to defendant based on lack of evidence that he conspired with the other defendants, that defendant was entitled to fees); *Anderson v. Glismann*, 577 F. Supp. 1506 (D.

Even worse, the Complaint does not contain any allegations that support its sweeping allegation that SQL engaged in numerous violent acts against the entire class of Mexican or Latino day laborers. This extraordinarily broad allegation is made in a single, conclusory sentence alleging that SQL has "engaged in a continuing pattern and practice of unjustifiably harassing, humiliating, assaulting, battering, and other conspiracies [sic] calculated to deprive Mexican/Chicano Day Laborers and/or Latino Day Laborers similarly situated of their rights." Complaint, ¶ 118. Not a single one of these alleged acts of violence is described. Nor does the Complaint hint at the number, location, or time of the alleged conspiracies, or why the plaintiffs believe that such conspiracies exist, or why they believe SQL is involved in any such conspiracy.

The vague and conclusory nature of the plaintiffs'

(..continued)

Colo. 1984)("conclusory allegations" of conspiracy).

conspiracy allegations against SQL demonstrate that plaintiffs' counsel failed to comply with their duty to investigate whether SQL was in fact connected in any way with Slavin or Wagner, and instead based their claims on wild speculation. Plaintiffs' counsel had a duty to conduct a reasonable factual inquiry before accusing SQL of complicity in the plaintiffs' beatings. At a minimum, that meant interviewing available witnesses and reviewing relevant documents before including them in the suit. *King v. Idaho Funeral Services Ass'n*, 862 F.2d 744, 747 (9th Cir. 1988). (allegation of boycott by three defendant funeral businesses, without interviewing them, supported sanctions).

For example, *Barnes Foundation v. Tp. of Lower Merion*, 242 F.3d 151 (3d Cir. 2001), imposed sanctions under 42 U.S.C. § 1988[4] against a black-run charity for bringing conspiracy claims alleging discrimination and constitutional violations

[4] The standards for awarding fees to a defendant under § 1988 are similar to those under Rule 11. *See Forsberg v. Pacific Northwest Bell Tel. Co.*, 840 F.2d 1409, 1422 (9th Cir. 1988) (applying same standard).

against neighbors who opposed its reopening. In its complaint, the charity pointed to evidence that one of the neighbors was racially motivated, and relied on that to draw the inference that the neighbors who opposed its reopening were participating in a racially motivated conspiracy. The Third Circuit found that this Complaint was frivolous, since there was no specific evidence of racial animus on the part of the other neighbors. *Id.* at 164-65.

"[T]he First Amendment requires more than evidence of association to impose liability for conspiracy, and in fact, prohibits liability on that basis alone." *Id.* at 163, *citing NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 918-19 (1982). "[T]here must be evidence, judged according `to the strictest law,' that the individual held a specific intent to further those illegal aims." *Barnes*, 242 F.3d at 165, *quoting Claiborne Hardware*, 458 U.S. at 919. A failure to set forth such evidence makes a conspiracy allegation frivolous. *Barnes Foundation*, 242 F.3d at 165 ("it is outrageous that [plaintiffs], while

purportedly securing [their] own civil rights, brought a groundless action against [SQL], thereby trampling [its] First Amendment rights").

Moreover, the allegations are not just conclusory, but outright false. As the Declaration of Margaretann Bianculli-Dyber (docketed 12/19/2001) attests, neither SQL nor any of its officers has ever attacked, or entered into any agreement or conspiracy to attack, any day laborer, much less the plaintiffs. *Id.* at ¶ 6. At the time of the attack on the plaintiffs, SQL did not even know of the existence of the plaintiffs or their alleged attackers, Slavin and Wagner. *Id.* at ¶ 2. Slavin and Wagner are not and never have been members of SQL, nor have they ever participated in any of its activities or received any assistance from it. *Id.* at ¶ 3. SQL has never advocated violence or breaking the law. *Id.* at ¶ 4. And its officers have never met with or communicated with any officers, agents, or members of the other defendants that have appeared in this

action. *Id.* at ¶ 5. The class-action allegation of conspiracy is especially frivolous, since it fails to set forth allegations supporting any of the four elements needed to certify a class action. *See Retired Chicago Police Ass'n v. Firemen's Annuity & Benefit Fund of Chicago*, 145 F.3d 929, 934 (7th Cir. 1998)(awarding sanctions for failure to investigate whether plaintiffs could satisfy the four prerequisites to class certification). The Complaint alleges a class of "Mexican/Chicano and/or Latino Day Laborers similarly situated" to the plaintiffs in facing violence. *See, e.g.*, Complaint, ¶ 2. But it utterly fails to adequately plead the existence of such a class, since the Complaint "never identifies any . . . injured persons" other than the plaintiffs, and fails to support an allegation that it was anything other than "an isolated incident." *Durr v. Intercounty Title Co.*, 14 F.3d 1183, 1188 (7th Cir. 1994)(awarding sanctions based on complaint that failed to identify other injured persons to support boilerplate class

action allegations).

II. THE CLAIMS BASED ON SPEECH ARE LEGALLY FRIVOLOUS

As SQL's memorandum in support of its motion to dismiss explained, Plaintiff's attempt to hold SQL liable for the alleged attack by Slavin and Wagner based on its speech against immigration is foreclosed by binding Supreme Court precedents including *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Plaintiffs allege that SQL engaged in anti-immigrant rhetoric and promoted "ideologies" that Slavin and Wagner were "subjected to" and that Slavin and Wagner thus felt "encouraged and empowered" to attack the plaintiffs. Complaint, ¶¶ 2, 12, 20, 72. Specifically, the Complaint alleges that SQL "advocates hatred and intolerance against immigrants," *id.* at ¶ 12; *see also id.* at ¶ 2, that created a "climate of fear," *id.* at ¶ 80, and inspired "unlawful discriminatory acts." *Id.* at ¶ 70.

But the Supreme Court long ago settled the fact that speech does not lose its First Amendment protection merely because others engage in violence or illegal conduct after being exposed to it. The First Amendment does not allow the government "to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or

producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Advocacy is unprotected only if it is "intended to produce, and likely to produce, imminent disorder"; "advocacy of illegal action at some indefinite future time" is protected. *Hess v. Indiana*, 414 U.S. 105, 108-09 (1973). None of the plaintiffs' speech allegations asserts that SQL advocated committing any illegal conduct at all, much less imminent violence. Instead, the complaint describes only constitutionally protected speech.

"Advocating hatred and intolerance against immigrants" is protected speech; indeed, even racist speech inciting acts of bigotry is protected. *E.g., R.A.V. v. St. Paul*, 505 U.S. 377 (1992)(hate speech ordinance banning bigoted fighting words that aroused "anger, alarm, or resentment" in others violated the First Amendment because it selectively restricted "messages of `bias-motivated' hatred" and "messages of racial, gender, or religious intolerance").

These First Amendment principles are so well-established that it is objectively unreasonable to bring a lawsuit based on

such speech. *See White v. Lee*, 227 F.3d 1214 (9th Cir. 2000)(denying qualified immunity to government officials who investigated citizens for speech that advocated zoning decisions that would violate the antidiscrimination provisions of the Fair Housing Act, since the Supreme Court's First Amendment precedents, such as *Brandenburg*, were so clear that no reasonable official could have failed to understand that such speech is protected).

Since binding Supreme Court precedent such as *Brandenburg* precludes any recovery by the plaintiffs, their position is frivolous as a matter of law, and SQL is entitled to fees against them. *E.g.*, *Eastway Construction Corp. v. City of New York*, 762 F.2d 243, 252-53 (2d Cir. 1995); *In re Kunstler*, 914 F.2d 505 (4th Cir. 1990)(awarding Rule 11 sanctions for bringing double jeopardy claim barred by Supreme Court decision); *Thompson v. Sundholm*, 726 F. Supp. 147 (S.D. Tex. 1989)(sanctions awarded based on controlling Supreme Court authority).

For example, in *Eastway*, the plaintiff, a contractor, brought a claim against the City for excluding it from involvement in publicly financed projects. The Second Circuit

reversed the denial of Rule 11 sanctions against the contractor because its constitutional due process claim was foreclosed by two Supreme Court's decisions: *Board of Regents v. Roth*, 408 U.S. 564,577 (1972), whose reasoning prevented involvement in publicly financed projects from rising to the level of a constitutionally-protected property interest, and *Parratt v. Taylor*, 459 U.S. 527, 543-44 (1981), which held that state judicial remedies, such as Article 78 proceedings, constitute constitutionally adequate post-deprivation due process for any such property interest. *See also Rodgers v. Lincoln Towing Services, Inc.*, 771 F.2d 194, 205 (7th Cir. 1985)(sanctions appropriate where circuit precedent foreclosed plaintiff's due process claim).

Similarly, in this case, plaintiffs' claims against SQL are foreclosed by Supreme Court decisions such as *Brandenburg* and *R.A.V.* Their claims against SQL are thus legally frivolous and sanctionable under Rule 11.

III. THE COMPLAINT WAS BROUGHT TO HARASS SQL

In addition to being factually groundless and legally frivolous, the Complaint is also sanctionable because it was filed for an improper purpose, to harass SQL because of its political beliefs. The Complaint is designed to chill the speech of SQL and its members by forcing them to run up litigation expenses fighting a frivolous lawsuit and by falsely smearing them as racists.

When experienced lawyers like Brewington assert meritless claims, "a strong inference arises that their bringing of an action . . . was for an improper purpose." *Huettig & Schromm, Inc. v. Lanscape Contractors*, 790 F.2d 1421, 1427 (9th Cir. 1986). Brewington must be aware of the pleading requirements for civil rights and § 1983 claims, since he has repeatedly brought such claims in this court and the Second Circuit.[5] Yet, the complaint not only fails to satisfy the most basic pleading rules for such claims, but also contains outright false allegations.

Thus, it is reasonable to infer that the Complaint is an attempt to chill the speech of SQL and its members by forcing this small non-profit public interest group to incur expenses (and bad publicity) litigating baseless claims. The Complaint is filled with legally irrelevant references to SQL's alleged speech and philosophy, and unsupported and scurrilous accusations of

[5] *E.g.*, *Hargett v. Nat'l Westminster Bank*, 78 F.3d 836 (2d Cir. 1996)(rejecting discrimination claim); *King v. Town of Hempstead*, 161 F.3d 112 (2d Cir. 1998)(dismissing § 1983 claim).

racism.[6] And plaintiffs' counsel have publicly conceded that this case is a fishing expedition based on SQL's public advocacy against illegal immigration. *See, e.g.,* Elissa Gootman, *Lawsuit By Day Laborers Seeks to Tie Attackers to Hate Groups*, N.Y. Times, Sept. 30, 2001, at A36, Col. 5 (In response to SQL's protestations that it had nothing to do with the attacks and that the lawsuit was an attempt to chill its speech, "Mr. Brewington, the lawyer for the day laborers, said he would *search* for evidence that the groups created `an atmosphere by which the lives and well-being of Mexican day laborers are jeopardized.' It will be a difficult task, said Randolph M. McLaughlin, the director of the Social Justice Center at Pace University School

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6 *See, e.g.,* Complaint, ¶ 12 ("the SACHEM QUALITY OF LIFE, INC. [SIC] (Hereinafter "Sachem Quality of Life") is an incorporated association of white persons which advocates hatred and intolerance against immigrants, and in particular, day laborers. . .The association also works closely with other organizations which advocate white supremacy and intolerance against various minorities and religions. Among other things, SACHEM QUALITY OF LIFE refers to the presence of day laborers on Long Island as an `invasion' and advocates the belief that immigration is part of a Mexican governmental plot to annex United States territories").

of Law, who will serve as co-counsel. `Do we have a lot of *digging* to do? Sure,' he said.")(emphasis added); Associated Press, *Mexican Day Laborers File $66M Suit in Beatings*, Albany Times Union, Sept. 29, 2001, at B2 (quoting Mr. Brewington as saying that the lawsuit was brought because the defendants, "including the Farmingville-based Sachem Quality of Life, allegedly influenced the suspects by `putting out a message of hate'")(available at 2001 WL 24812597); Robert E. Kessler, *Beating Suit a Free-Speech Issue*, Newsday, Oct. 2, 2001, at A19 (quoting Mr. Brewington as saying that the lawsuit was brought because the defendant organizations, through their rhetoric, "are lighting a match in a room filled with gasoline")(available at 2001 WL 9253704).[7]

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[7] These articles were attached as Exhibits A, B, and C to the Declaration of Glenn Greenwald, which accompanied the Rule 11 motion served by the other defendant organizations in this action.

IV. SANCTIONS SHOULD TAKE THE FORM OF AN AWARD OF ATTORNEYS' FEES TO SQL.

Although Rule 11 sanctions generally take the form of an order to pay a monetary penalty into court, Rule 11(c)(2), where a suit is brought for an improper purpose, such as to harass, Rule 11 sanctions should take the form of an award of attorneys' fees to the defendant's counsel. *See Union Planters Bank v. L & J Development Co.*, 115 F.3d 378 (6th Cir. 1997)("a direct payout to the injured party is particularly appropriate for Rule 11(b)(1) violations involving [improper] motivations"), *citing* Fed. R. Civ. P. 11, Advisory Committee Notes (1993 Amendment).

Conclusion

Since plaintiffs' claims are all factually groundless or legally frivolous, their attorneys should be sanctioned under Rule 11. Moreover, since the complaint was brought for an improper purpose, to harass, the sanctions should take the form of an award of attorney's fees to SQL.

DATED: Jan. 7, 2002

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CERTIFICATE OF SERVICE

I, Hans Bader, hereby certify that on January 7, 2002, a copy of the **MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RULE 11 SANCTIONS BY DEFENDANT SACHEM QUALITY OF LIFE ORGANIZATION, INC.**, was served by first-class mail, postage prepaid, upon the following individuals:

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