

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMES MCGIBNEY, an individual; and
VIA VIEW, INC., a corporation.
Plaintiffs,

v.

CASE NO. 5:14-cv-01059-BLF

THOMAS RETZLAFF, an individual;
NEAL RAUHAUSER, an individual;
LANE LIPTON, an individual;
and DOES 1-5, individuals whose true
names are not known,
Defendants.

**DEFENDANT RETZLAFF'S ADMINISTRATIVE MOTION TO STRIKE
PLAINTIFFS' MOTION AS BEING NONCOMPLIANT WITH THE RULES**

Defendant Thomas Retzlaff submits this Local Rule 7-11 administrative motion asking the court to strike plaintiffs' motion for Rule 11 sanctions against nonparty Susan Basko, ECF 144, as being noncompliant with the Rules and this Court's prior orders.

I. Argument

1. This Court has warned plaintiffs' counsel, Jason (Jay) Leiderman, time and time again not to be filing nonsense pleadings, pleadings that have no basis in law, or Motions to Call 911. Yet time and time again, Leiderman has violated this Court's

instructions. Defendant wishes to draw the Court's attention to plaintiffs' motion for Rule 11 sanctions against a nonparty named Susan Basko, ECF144.

2. This time Leiderman has committed two violations. Number One: Leiderman filed a motion and decided to make up his own hearing date, as opposed to the proper procedure of getting one from the Court's clerk, as required by Local Rule 7-2(a). This caused problems for the clerk, who was forced to take action to correct this matter. See ECF 148 – CLERK'S NOTICE RESETTING UNRESERVED HEARING as to 144. This is also a violation of Local Rule 7-8(a), which requires that “the date for hearing must be set in conformance with Civil L.R. 7-2”.

3. Number Two: Leiderman filed a motion seeking Rule 11 sanctions against a nonparty. This is a major problem because Federal Rule of Civil Procedure 11 does not allow for sanctions against a nonparty. Specifically, the court can impose sanctions on a party, the party's attorney, or the attorney's firm, (Fed. R. Civ. P. 11(c)(1)), and that is all. There is no language in this Rule that would authorize this Court to grant plaintiffs the relief that they are requesting against a nonparty.

4. Thus, plaintiffs' motion is in violation of Local Rule 7-8(c) (“The motion must comply with any applicable Fed. R. Civ. P.”).

4. Number Three: Leiderman's motion does not contain a Certificate of Service showing that it was served on anyone.

5. Thus, Leiderman has filed a bogus motion that has absolutely no basis in law and is completely frivolous and a waste of time.

6. If necessary, defendant would be willing to attach Ms. Basko's document as an exhibit and/or adopt it as his own.

Respectfully submitted,

/s/ Thomas Retzlaff
Thomas Retzlaff
PO Box 92
San Antonio, TX 78291-0092

Defendant, pro se

CERTIFICATE OF SERVICE

I certify that on February 2, 2015, a copy of this document was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on the following attorney in charge for plaintiffs ViaView & James McGibney:

Jason Scott Leiderman, of 5740 Ralston Street Ste 300, Ventura, CA 93003, Email: Jay@Criminal-Lawyer.me.

I certify that Jay Leiderman is a registered CM/ECF user and that service will be accomplished by the CM/ECF system.

I certify that on February 2, 2015, a copy of this document was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on the following attorney in charge for defendant Lane Lipton:

Clark Anthony Braunstein, of 11755 Wilshire Boulevard, Suite 2140, Los Angeles, CA 90025, Email: Clarkbraunstein@gmail.com.

I certify that Clark Anthony Braunstein is a registered CM/ECF user and that service will be accomplished by the CM/ECF system.

/s/ Thomas Retzlaff
Thomas Retzlaff

Defendant, pro se

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**ORDER GRANTING
DEFENDANT RETZLAFF'S MOTION TO STRIKE PLAINTIFFS' MOTION
FOR RULE 11 SANCTIONS ECF 144**

It is hereby ordered that plaintiffs' motion for sanctions against nonparty Susan Basko, ECF 144, is hereby stricken due to plaintiffs' failure to comply with prior court orders and Rules violations.

IT IS SO ORDERED.

The Honorable Beth Freeman,
U.S. District Judge

Dated: _____