Filed in District Court
State of Minnesota
October 13, 2023

STATE OF MINNESOTA **IN DISTRICT COURT**

COUNTY OF OTTER TAIL **SEVENTH JUDICIAL DISTRICT**

Craig Stevenson and Marie Stevenson,

Plaintiffs,

vs.

Sean Stevenson, Renee Stevenson, Lisa Stevenson-Allen, and Ashley Anderson,

Defendants.

ORDER AND MEMORANDUM DENYING MOTION FOR RULE 11 SANCTIONS

Court File No.: 56-CV-20-2928.

On September 25, 2023, the above-entitled matter came on before the undersigned Judge of District Court, remotely via Zoom, for a Motion Hearing, pursuant to Defendants' motion for sanctions (Doc. 435). Attorney Matthew Schaap appeared on behalf of Plaintiffs. Attorneys Stephen Couilard, Ross Tentinger, and Anthony Schrier appeared on behalf of Defendants. The parties submitted briefing in advance of the hearing, and the Court heard argument orally and on the record. Based on the motion, the memoranda, the contents of the file, the proceedings, the arguments of counsel, and the applicable law, and having been advised in the premises, the Court now makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. Defendants' motion for sanctions is DENIED as untimely.
2. Plaintiffs' request for attorney fees incurred in responding to that motion is DENIED.
3. The attached MEMORANDUM is incorporated by reference herein.

Dated this 13th day of October, 2023.

BY THE COURT:

Court File No. 56-CV-20-2928

Honorable Kevin M. Miller
Judge of District Court

MINNESOTA JUDICIAL BRANCH

MEMORANDUM

Following an award of summary judgment dismissing Plaintiffs' claims of defamation *per se*, intentional infliction of emotional distress, and civil conspiracy, Defendants move for sanctions under Rule 11 and its statutory analogue. The Court denies this motion as untimely.

Procedural Background

This lawsuit was commenced in November 2020. On December 1, 2020, counsel for Defendants sent counsel for Plaintiffs a safe-harbor letter with a copy of a Notice of Motion and Motion for sanctions. The date on the notice was blank. It also spoke of a supporting memorandum and affidavits to be filed later; but those documents were not provided. Plaintiffs moved to amend their complaint on September 17, 2021, in part to add Defendant Ashley Anderson as a party. Defendants resisted the motion, but, in doing so, they did not argue, as they now do, that the entire complaint was frivolous. An amended complaint was permitted in part, and it was served on or about January 5, 2022.

Shortly after, counsel for Defendants served another safe-harbor letter with a revised Notice of Motion and Motion for sanctions. Again, the date on the notice was blank, and there were no accompanying affidavits or memoranda. On January 25, 2022, counsel for Plaintiffs sent counsel for Defendants a letter arguing that Defendants' motion was deficient because it lacked specific explanations and because it was attacking a pleading just approved by the Court. The letter accused Defendants of using the safe-harbor letters as a litigation tactic, and it invited Defendants to respond with "a substantive explanation for [the Rule 11] motions." Defendants did not reply further, and did not file their motions when allowed.

This matter was heavily litigated thereafter. This included a large amount of discovery and several discovery motions. Defendants first filed a Motion for Summary Judgment on August 2, 2022. An amended motion was ultimately heard on March 15, 2023, and the Court issued its order granting summary judgment on June 16, 2023. More than a month later, on July 20, 2023, Defendant filed their present motion for sanctions. Electronic service was noted the same day. There was no affidavit of service indicating that this particular motion was served prior to filing — although its contents were functionally the same as the contents of the two prior motions served upon Plaintiffs immediately following the initial and amended complaints. The affidavits and memorandum in support of sanctions were not filed until September 1, 2023. In the meantime, Plaintiffs appealed the judgment in this matter on August 15, 2023.

Legal Analysis

1. Defendants' Motion for Sanctions

When parties or counsel present pleadings to a court, they must certify, to the best of their knowledge, (a) that the pleading is not vexatious, (b) that the claims in it are not frivolous, and (c) that the factual assertions therein have evidentiary support, or if based on information and belief, are likely to have evidentiary support. *See* Minn. R. Civ. P. 11.02; Minn. Stat. § 549.211, subd. 2. If this rule is violated, another party may demand that the offending pleading be withdrawn, and the trial court may impose sanctions for a failure to do so, including payment of the moving party's attorney fees. Minn. R. Civ. P. 11.03. Minn. Stat. § 549.211, subds. 3-5. The rule in Minnesota "conform[s] completely to the [analogous] federal rule," Minn. R. Civ. P. 11, *cmt*. Therefore, as Defendants themselves note, this means that decisions interpreting Fed. R.

Civ. P. 11 "are valuable guidelines in understanding its purpose and application." *Uselman v. Uselman*, 464 N.W.2d 130, 142 (Minn. 1990).

Defendants move for sanctions against Plaintiffs and their counsel, arguing that Plaintiffs' original and amended complaints violate each of the three certifications listed above. Specifically, they argue that each count of Plaintiffs' complaint was brought vexatiously — for an improper purpose, such as harassing them or causing them to incur unnecessary costs of litigation. They further argue that each count of the complaint was frivolous as to the three original defendants. And they argue that all counts, save count three, were unsupported by fact. Although Defendants pursue each of these arguments, the assertion that Plaintiffs' complaint was frivolous is clearly the central assertion. This is reflected in the fact that Defendants served their first safe-harbor letter shortly after service of the complaint, when the frivolousness of claims was the main reason, and perhaps the only reason, to believe they were vexatious.

Plaintiffs and their counsel resist Defendants' motion for sanctions on both substantive and procedural grounds. While their substantive arguments are mostly unpersuasive, their procedural arguments are more compelling. In particular, Plaintiffs and their counsel argue that Defendants' notice of motion and motion for sanctions is untimely because (i) it was filed years after the service of a similar notice, (ii) it was filed only after the entry of summary judgment and final judgment, and (iii) it was presented to the Court only once any deterrent effect that could have been realized from the motion was impossible, such that it has simply become a mechanism for shifting costs and assigning punishment after-the-fact. The Court agrees.

Although no explicit deadlines appear in the rule, timeliness is a prerequisite to the grant of relief under Rule 11. Rule 11 sanctions should be sought "as early as possible during the

proceedings to provide the attorney and party the opportunity to correct future conduct." *Uselman*, 464 N.W.2d at 143. Ordinarily a motion for sanctions "must be presented to the district court at a stage in the proceedings where the deterrent effect of [sanctions] will be advanced." *Johnson ex rel. Johnson v. Johnson*, 726 N.W.2d 516, 519 (Minn. App. 2007). "Only in very unusual circumstances will it be permissible … to wait until the conclusion of the litigation" to raise the possibility of sanctions. *Uselman*, 464 N.W.2d at 143.

Numerous courts have said that the rule implicitly provides that "a party should make a Rule 11 motion within a reasonable time." *Muthig v. Brant Point Nantucket, Inc.*, 838 F.2d 600, 604 (1st Cir. 1988); *Montgomery v. Jimmy's Tire & Auto Ctr., Inc.*, 566 A.2d 1025, 1032 (D.C. 1989); *Griffin v. Sweet*, 525 S.E.2d 504, 506 (N.C. App. 2000); *Pee Dee Health Care, P.A. v. Est. of Thompson*, 818 S.E.2d 758, 767 (S.C. 2018); *cf. Kaplan v. Zenner*, 956 F.2d 149, 152 (7th Cir. 1992) ("Prompt filings of motions for sanctions … best serve … [the] deterrent functions of Rule 11.").[1] Some courts have gone even further, stating that "motions for Rule 11 sanctions should be *filed* … as soon as practicable after discovery of a Rule 11 violation." *Divane v. Krull Elec. Co.*, 200 F.3d 1020, 1027 (7th Cir. 1999) (emphasis added); *Mary Ann Pensiero, Inc. v. Lingle*, 847 F.2d 90, 100 (3d Cir. 1988) (same).

This requirement of expeditious service *and filing* makes sense. In addition to providing deterrence, sanctions are also meant to prevent "unnecessary delay or needless increase in the cost of litigation." *Spicer, Watson & Carp v. Minnesota Laws. Mut. Ins. Co.*, 502 N.W.2d 400, 405 (Minn. App. 1993); *see also Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990) (goal to "streamline the administration and procedure of … courts"); *Vallejo v. Amgen, Inc.*, 903

[1] Defendants do not appear to disagree. They state that "[t]he appropriate time to … file … a motion for sanctions is … to be determined on a case by case basis…." (Reply Br. 5)

F.3d 733, 747 (8th Cir. 2018) ("Part of the purpose of the sanctioning power ... is … to preserve the integrity of the judicial process."). Delaying the filing of a motion for sanctions will often deprive a trial court of the ability to determine what the appropriate time to decide the motion will be, and thus deprive the trial court of the ability to prevent needless litigation.

"The timeliness of [a] Rule 11 motion rests within the judge's discretion." *Cmty. Elec. Serv. of Los Angeles, Inc. v. Nat'l Elec. Contractors Ass'n, Inc.*, 869 F.2d 1235, 1242 (9th Cir. 1989); *Levine v. F.D.I.C.*, 2 F.3d 476, 479 (2d Cir. 1993) ("The time limit for filing Rule 11 motions either is governed by local rule … or lies within the discretion of the trial judge."); *cf. Wolf v. Oestreich*, 956 N.W.2d 248, 256 (Minn. App. 2021) ("refusal to impose sanctions" is reviewed "for an abuse of discretion"); *Kalenburg v. Klein*, 847 N.W.2d 34, 41 (Minn. App. 2014) (same); *also cf. Davitt v. Bloomberg*, 8 N.W.2d 16, 17 (Minn. 1943) ("reasonable time" for civil motion was "within the discretion of the trial court"); *Anderly v. City of Minneapolis*, 552 N.W.2d 236, 241 (Minn. 1996) ("reasonable time" in civil action was within "the district court's discretion"). This is because "[t]he optimum timing of sanctions … depends on the circumstances" of each case. *Cmty. Elec.*, 869 F.2d at 1242; *cf. Palladium Holdings, LLC v. Zuni Mortg. Loan Trust*, 775 N.W.2d 168, 177 (Minn. App. 2009) ("Generally, what constitutes a reasonable time for seeking … relief varies based on the facts of each case.").

a. Post-Judgment Filing of Motion

Plaintiffs argue that Defendants' motion is untimely for several reasons, chief among them that the motion was not *filed* until more than a month after the final judgment in this case. This deprived Plaintiffs and their counsel of the opportunity to respond to the filing of the motion by withdrawing their pleadings. The key procedural feature of both Rule 11 and its statutory

analogue is a safe-harbor provision. This provision dictates that "[a] motion for sanctions … shall describe the specific conduct alleged to violate" the rule, and that a motion for sanctions "shall be served" on the offending party, "but shall not be filed with or presented to the court unless, within 21 days after service of the motion … the challenged document … is not withdrawn or appropriately corrected." Minn. R. Civ. P. 11.03(a)(1); Minn. Stat. § 549.211, subd. 4(a). This safe-harbor provision is meant to advance the primary purpose of Rule 11, which is "to deter litigation abuse," and not to serve as "a punitive or cost-shifting device. *Uselman*, 464 N.W.2d at 142, 143; *Wolf v. Oestreich*, 956 N.W.2d 248, 256 (Minn. App. 2021). And it advances this purpose by providing opportunities for voluntary withdrawal of offending filings.

Although not explicitly stated in the rule, it is widely thought that failing to pursue a Rule 11 motion until after the entry of judgment undermines the goals of deterrence, especially when the basis of the Rule 11 motion is that the pleadings themselves were sanctionable all along. When a party delays in bringing a motion alleging that a complaint was frivolous, the party is not advancing the efficient administration of justice because the party and attorney who filed the frivolous claim no longer have the opportunity to withdraw the filing. If the frivolousness of a complaint is "so obvious from the face of the complaint, then [the defendant] should [raise this] when the complaint [is] first filed…." *Hyde v. Irish*, 962 F.3d 1306, 1311 (11th Cir. 2020).

As such, the majority position articulated by the federal courts is that a motion for Rule 11 sanctions that faults the filing of a pleading is untimely unless it is *filed* prior to a court's dismissal of the challenged pleading. *See, e.g., In re Pennie & Edmonds LLP*, 323 F.3d 86, 89 (2d Cir. 2003) ("[M]otions have been disallowed as untimely when filed after … the lawyer … lacked an opportunity to … withdraw the challenged submission."); *Pensiero*, 847 F.2d at 100 ("[A]ll motions requesting Rule 11 sanctions [must] be filed … before the entry of a final

judgment."); *Brickwood Contractors, Inc. v. Datanet Eng'g, Inc.*, 369 F.3d 385, 389 (4th Cir. 2004) ("[T]he very structure of the safe-harbor provisions makes it clear that a sanctions motion must be … filed before the conclusion of the case."); *Tompkins v. Cyr*, 202 F.3d 770, 788 (5th Cir. 2000) ("[D]enial of Rule 11 sanctions was appropriate" because "the winning defendants did not file their Rule 11 motion until after" the plaintiffs had no "reasonable opportunity to correct their complaint."); *Ridder v. City of Springfield*, 109 F.3d 288, 297 (6th Cir. 1997) ("filing must occur prior to final judgment"); *Islamic Shura Council of S. California v. F.B.I.*, 757 F.3d 870, 873 (9th Cir. 2014) (motion was untimely where "district court had already resolved the underlying dispute at the time [moving party] filed its motion for sanctions"); *Roth v. Green*, 466 F.3d 1179, 1193 (10th Cir. 2006) ("motions for sanctions should [be] denied [when] not filed until after the district court had dismissed the complaint"); *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 875 (Fed. Cir. 2010) ("The general practice is that the motion must be filed before the offending contention has been … resolved."); *see also* 5A Fed. Prac. & Proc. Civ. § 1337.2.

The Court need not adopt the majority position of the federal courts wholesale — nor must it follow any *per se* rule regarding the filing of post-judgment sanctions motions — in order to recognize that the filing of a motion for sanctions only after the entry of judgment can weigh heavily against the equity of awarding sanctions. The Court does find that, under the facts of this case, that delay does strongly weigh against the timeliness of Defendant's motion.

Defendants respond by acknowledging that a motion for Rule 11 sanctions must be *served* before the entry of final judgment. *See* Fed. R. Civ. P. 11, 1993 *cmt*. ("Given the 'safe harbor' provisions ... a party cannot delay serving its Rule 11 motion until conclusion of the case."). But they argue that the motion need not be *filed* before the entry of final judgment. They point out, in effect, that various of the decisions cited above could only speak to when a motion

should be filed in *obiter dicta*, as there were also other procedural problems in many of those cases. That is precisely the same argument advanced by *Huggins v. Lueder, Larkin & Hunter, LLC*, 39 F.4th 1342, 1348 (11th Cir. 2022), which articulates the minority federal position. But *Huggins* has not attracted substantial support, and the Court finds it unpersuasive as to the real question here — whether a post-judgment filing weighs against a finding of timeliness.

Defendants also point to a number of cases where a trial court *decided* a motion for sanctions following final judgment. It is well-established that a court has discretion to defer determination of a motion for sanctions to an appropriate time. S*ee* Fed. R. Civ. P. 11, *cmt.* (contemplating "resolution on a case-by-case basis … [of] when a motion … should be decided"). But that does not mean that there is no urgency to *filing* such a motion. Indeed, in the majority of cases cited by Defendants, the motion for sanctions was properly brought before the trial court *prior to* judgment. *See Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 146 (Minn. App. 2011); *Buscher v. Montag Dev., Inc.*, 770 N.W.2d 199 (Minn. App. 2009); *Krasner v. Hoffman*, 2018 WL 6442164 (Minn. App. Dec. 10, 2018) (unpublished); *Want Some Weather, Inc. v. Tuaolo*, 2009 WL 1375316 (Minn. App. May 19, 2009) (unpublished). These cases support, rather than undermine, the idea that prudent practice requires a pre-judgment filing.

Only two of the cases Defendants cite involved a motion filed *after* judgment. The first is *Radloff v. First Am. Nat. Bank of St. Cloud, N.A.*, 470 N.W.2d 154, 156 (Minn. App. 1991). But *Radloff* did not involve a claim of untimeliness; and it was issued before the civil rules were amended to include the current safe-harbor provision. *See Order Promulgating Amendments to the Rules of Civil Procedure*, C6-84-2134 (April 13, 2000, eff. July 1, 2000). Thus, *Radloff* does not undermine the conclusion that it is contrary to the spirit of the *current* Rule 11 to delay filing a motion for sanctions until after final judgment. The second of the cases Defendants cite is

Hammann v. Falls/Pinnacle, LLC, 2008 WL 933446 (Minn. App. Apr. 8, 2008) (unpublished). That was a case where the motion for sanctions was both served and filed after final judgment, but the timeliness of the motion was not addressed. *Hammann* does not support the distinction between timely service of motions and time filing of motions that Defendants advance — under the rule that Defendants articulate, the motion in that case was *served* untimely. Rather, *Hammann* seems only to represent a case where the issue of timeliness was waived and not addressed. It has little persuasive value in this case, where Plaintiffs have affirmatively raised the issue of timeliness.

In summary, the Court is persuaded that Defendants' decision not to file their motion with the Court until after the entry of final judgment is a factor that weighs against the timeliness of the motion.

b. Failure to Otherwise Pursue Arguments

Plaintiffs also argue that they have suffered surprise from Defendants' motion because Defendants did not articulate or pursue their arguments during litigation. The Court agrees that the timing of a motion can undermine the purposes of Rule 11 if the moving party 'submarines' its arguments, passing up opportunities to assert that a pleading is frivolous at appropriate times, but then reviving those arguments later during litigation, to the surprise of an opponent who might have rationally concluded that the threat of sanctions was mere posturing. It undermines the goals of deterrence when a defendant waffles about the seriousness of a threat of sanctions.

As commentators have noted, "[a] party who has survived … a motion to dismiss certainly has no reason to believe that the court considers its claim … frivolous." *Uselman*, 464 N.W.2d at 144-45 (quoting law review article). It stands to reason that, to prevent unfair surprise,

"[a] party who survives [dispositive] motions with the major claims intact should not be subject to sanctions after trial predicated on [the non-viability of] these surviving claims." *Uselman*, 464 N.W.2d at 144. A litigant thus risks losing an argument that a pleading is frivolous if he keeps it stowed in his 'hip pocket,' allowing a frivolous pleading to survive regular motion practice.

In this case, Defendants allowed their sanctions notices to lay long dormant, without any express indication within those notices that Defendants planned to wait until the conclusion of the case to litigate them. *Contra, e.g., Matrix IV, Inc. v. Am. Nat. Bank & Tr. Co. of Chicago*, 649 F.3d 539, 552 (7th Cir. 2011) (safe-harbor letter noticed intent to file motion only upon dismissal). Indeed, it is arguable that the motion Defendants are now pursuing was not even *served* until after final judgment, because it is not technically the same motion paper previously served with Defendants' safe-harbor letters.

The result is that Defendants did not bring their arguments for sanctions before the Court until well after Plaintiffs had secured an order of the Court permitting them to file the amended complaint that Defendants now challenge. Defendants could have resisted that order by pointing to the frivolousness of the original and proposed amended complaints. *See Ag Servs. of Am., Inc. v. Schroeder*, 693 N.W.2d 227, 235 (Minn. App. 2005) ("courts can deny motions to amend when the additional claims cannot withstand summary judgment"); *Copeland v. Hubbard Broad., Inc.*, 526 N.W.2d 402, 405 (Minn. App. 1995) ("It is not an abuse of discretion to deny a motion to amend a complaint to assert a claim that is not legally recognized."). Instead, they largely kept their arguments in reserve, causing the Court to approve Plaintiffs' filing of the

most-recent complaint. Plaintiffs could justly complain of surprise if the Court were to hold that Defendants had not waived the arguments that they could have raised earlier.[2]

Defendants respond that a motion to amend a complaint does not call upon the court to review the proposed amended pleadings under the standards applicable to Rule 11. But that is only partially true. A claim that pleadings are frivolous as a matter of law can certainly be litigated as part of such a motion. And the frivolousness of the complaints lies at the core of Defendants' present motion. Moreover, even separate and apart from the motion to amend the complaint, Defendants had opportunities to raise their arguments earlier in the proceedings. For reasons that Defendants have not satisfactorily explained, they elected to wait.[3]

[2] Plaintiffs also argue that they were surprised because Defendants' Rule 11 motions were "boilerplate" motions that did not specify why their pleadings were sanctionable. And they note that their counsel responded to the second safe-harbor letter with a letter asking for clarification about the basis of a Rule 11 motion, to which Defendants did not respond. At hearing, they argued that this violated a duty to meet and confer prior to bringing the Rule 11 motion. Defendants responded that they had first heard this argument at hearing. The Court need not accept the entirety of Plaintiffs' arguments to find that the spirit of Rule 11 was not upheld. Even if Defendants' Rule 11 motions were not procedurally deficient for lack of specificity, they did not do much to warn Plaintiffs why they should take specific action. And even if no meet-and-confer obligation should be imposed on a Rule 11 motion, Defendants' lack of response to Plaintiffs' letter asking for clarification does show a lack of zeal in asserting the arguments that Defendants now seek to raise. Although it is not necessary for the Court's decision, the Court would find that these events support the conclusion that Defendants failed to vigorously advance their present arguments at the expected time, and that this undermined the goal of deterrence, while creating an opportunity for surprise.

[3] Defendants argued at hearing that context is important to the validity of a defamation claim, and that this context could not be presented to the Court until summary judgment. The Court is skeptical. When a pleading references part of a document, the entirety of that document may be considered for purposes of a Rule 12 motion. *See N. States Power Co. v. Minnesota Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004); *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995). Thus, it has been stated that, when a publication is alleged to be defamatory, the complete document containing the publication may be considered in a Rule 12 motion. *Nexus v. Swift*, 785 N.W.2d 771, 781 (Minn. App. 2010); *Marchant Inv. & Mgmt. Co. v. St. Anthony W. Neighborhood Org., Inc.*, 694 N.W.2d 92, 95 (Minn. App. 2005). Although the cases just cited have been abrogated on other grounds — *see Leiendecker v. Asian Women United of Minnesota*, 848 N.W.2d 224 (Minn. 2014) — the Court has no reason to doubt this portion of their reasoning. Under this rule, the context for many of the statements which Plaintiffs alleged to be defamatory *per se* in their complaint would have been available prior to summary judgment because the referenced publications appeared within documents that contained that context.

The Court finds that Defendants failed to diligently pursue their arguments that Plaintiffs' complaints were frivolous. That delay has at least the faint scent of bad faith about it. And it makes it appear that Defendants may have purposely elected to try to use Rule 11 as a sword, rather than a shield. Based on the nature of this case and the nature of the Rule 11 motion, the Court finds that Defendants' litigation conduct weighs against the timeliness of their motion.

c. Prejudice to the Parties and the Judicial System

Finally, the Court believes that Defendants' delay unreasonably contributed to the expense and duration of this litigation, including expenses that were attributable to separate misconduct on the part of Defendants. In general, the timeliness of civil filings is judged by weighing the length of the moving party's delay, and any legitimate reasons for that delay, against any prejudicial effects of the delay on others. *Cf. Finden v. Klaas*, 128 N.W.2d 748, 750 (Minn. 1964) (motion to vacate judgment); *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 896 N.W.2d 115, 126 (Minn. App. 2017) (amendment of scheduling order and complaint); *Winters v. Kiffmeyer*, 650 N.W.2d 167, 170 (Minn. 2002) (laches). The same considerations have been applied to judge the timeliness of Rule 11 motions. *See, e.g., Baker v. Alderman*, 158 F.3d 516, 523 (11th Cir. 1998); *see also Langham-Hill Petroleum Inc. v. S. Fuels Co.*, 813 F.2d 1327, 1331 (4th Cir. 1987) ("The discretion of the trial judge will support denial of fees in cases in which a post-judgement motion unfairly surprises or prejudices the affected party.").

The Court finds that events which occurred during discovery constitute prejudice that weighs against the timeliness of Defendants' motion. During discovery, Plaintiffs provided sensitive information that, in retrospect, was not necessary. For instance, they provided medical records regarding Marie Stevenson's cancer treatment. And Marie Stevenson also sat for an

Independent Medical Examination. Plaintiffs also incurred expenses attending depositions, conducting forensic analysis, and bringing motions for discovery sanctions as a result of Defendants' misconduct, such as Sean Stevenson's deletion of phone messages and his perjury about that conduct. This was in order to seek information that, in retrospect, was not necessary. Plaintiffs were also forced to defend against discovery requests — such as the request for video recordings and the request for Craig Stevenson's confidential book — which, even at the time, seemed unnecessary due to the flaws in Plaintiffs' own pleadings. The Court finds that the substantial amount of unnecessary discovery and discovery disputes in this case constituted a prejudice to Plaintiffs, not to mention a drag upon the Court's own limited resources.

The unnecessary prolonging of this case would also complicate any attempt to award attorney fees to Defendants as a sanction. It is clear that extravagant amounts of attorney fees have been expended on this case. But to be awardable, fees must arise from Plaintiffs' conduct in filing their complaints, not their separate conduct in discovery. Minn. R. Civ. P. 11.04. It would be difficult to say that the fees reasonably caused solely by the filing of the complaint exceed the fees that would have been necessary to obtain a Rule 12 dismissal of most or all of that complaint. Had Defendants diligently sought dismissal of as many claims as possible, it would now be much easier to say that all of their fees were attributable to the filing of frivolous claims. But their delay means that it would be much more difficult to disentangle what caused what. The Court trusts that Defendants' attorneys have kept detailed billing records, but that is not a perfect solution because attorney activities often relate to multiple counts of a complaint or multiple facets of litigation. The imperfection that would result is another form of prejudice.

d. Conclusion

In summary, it should not take more than two and a half years, more than twenty motions, multiple tens of thousands of dollars of costs, and multiple hundreds of thousands of attorney fees in order to dismiss a complaint so frivolous that it is sanctionable under Rule 11. As the saying goes: it takes two to tango. It seems clear that Defendants came to dance; having already paid the band to play overtime, and having already worn down Plaintiffs' dancing shoes, Defendants are hardly in a position to complain that Plaintiffs erred when taking their first steps.

Based on all of the circumstances of these proceedings, the Court finds that Defendants' delay in filing and pursuing their motion for sanctions went against the spirit of Rule 11. Because the motion was not filed within a reasonable time, it would not be equitable to award relief based upon the motion, as any such relief would be more in the nature of cost-shifting and after-the-fact punishment than in the nature of deterrence. The Court denies Defendants' motion.

2. Plaintiffs' Request for Attorney Fees

In response to Defendants' motion for sanctions, Plaintiffs have asked for their own reasonable attorney fees in having to defend against the motion. "If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney fees incurred in … opposing the motion." Minn. R. Civ. P. 11.03(a)(1). Given that a timely motion for Rule 11 sanctions would almost-certainly have provided some measure of relief for Defendants, Plaintiffs and their counsel have already reaped a sufficient windfall from Defendants' delay. The addition of an award of attorney fees for resisting the untimely motion is unwarranted. *See State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 324 (Minn. App. 2007) ("[C]osts and fees [are] within the

district court's broad discretion," such that a procedural defect in an overwise-meritorious Rule 11 motion "does not automatically entitle" the opposing party "to costs and attorneys' fees.").

MINNESOTA JUDICIAL BRANCH