

## Western District Case Notes

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### RECUSAL AND RULE 11 SANCTIONS

In *Adams III v. Taylor*, 21-cv-6056-EAW (Nov. 29, 2022), an action brought pro se under 42 U.S.C. § 1983, plaintiff moved to disqualify the judge and for sanctions under Rule 11 after multiple attempts to serve defendant did not succeed.

The court denied the recusal motion after finding that plaintiff failed to present any, let alone sufficient, grounds upon which the judge's impartiality might reasonably be questioned. The court had both issued a *Valentin* Order directing the attorney general to identify the correct name and address of defendant and extended the deadline within which to complete service, and plaintiff's frustration in accomplishing the task of service did not justify the

requested recusal. The court then denied the Rule 11 sanctions motion for two separate reasons. First, a Rule 11 sanctions motion was not the proper vehicle for seeking the relief sought by plaintiff where, as here, the motion was not based on any alleged misrepresentation in a pleading, frivolous defense, or unsupported factual contention, as required by Rule 11. In addition, the motion did not comply with the safe harbor provision under Rule 11 that requires the moving party to serve the motion 21 days before filing it with the court.

### STANDING

In *Animal Welfare Institute et. al. v. Vilsack et. al.*, 20-cv-6595-CJS (Oct. 31, 2022), plaintiffs — two private organizations dedicated to seeking better treatment for animals and promote vegan living — filed suit under the Administrative Procedures Act contending that two rule-making petitions they filed were unlawfully denied by defendants. The court previously had ruled, before denying a motion to dismiss, that plaintiffs had alleged sufficient facts with respect to standing to survive the motion to dismiss on that ground. Turning

now to motions for summary judgment, however, the court found that plaintiffs failed to set forth by affidavit or other proof specific facts sufficient to establish standing as required by Article III. The actions by defendants about which plaintiffs complained did not impose an involuntary burden on plaintiffs' core activities, but rather perpetuated the *status quo*, thus falling short of what is required to establish organizational standing. Plaintiffs also failed to establish an injury sufficiently particularized, actual, and imminent to establish associational standing on behalf of any of their members. The court also held that, even if plaintiffs had standing to bring their lawsuit, defendants had not acted inconsistent with law or abused their discretion when they denied the two rule-making petitions, because the conduct that plaintiffs sought to regulate falls outside the scope of what defendants are charged with regulating under the implicated statute.

### WAIVER OF ATTORNEY-CLIENT PRIVILEGE

In *Lakehal-Ayat v. St. John Fisher College*, 18-cv-06916-CJS-MJR (Dec. 15, 2022) — an action alleg-



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ing employment discrimination and retaliation — the magistrate judge issued a Decision and Order addressing competing requests by the parties for production of documents. Dissatisfied with the decision, plaintiff then filed objections in accordance with Fed. R. Civ. P. 72(a) arguing, among other things, that the written communications he sought between defendants' counsel and the faculty members who conducted defendants' internal investigation and hearing were not cloaked with privilege because defendants raised defenses that may involve those communications, thereby placing defendants' internal investigation "squarely at issue." In response, defendants maintained that their counsel's communications are protected by the attorney-client privilege, and that such privilege had not been waived since defendants were not relying on the privileged communications to establish their affirmative defenses. Noting that the "clearly erroneous" standard of review is highly deferential to a magistrate judge's ruling on discovery disputes, the district judge denied plaintiff's objections, finding that he failed to meet his "heavy burden" to establish that the magistrate judge's rulings were clearly erroneous or contrary to law. In doing so, the district judge found that merely pleading affirmative defenses that on their face suggest potential waiver of the privilege does not operate as a waiver of all protected information relevant to the defense unless the party relies, to some extent, on the protected in-

formation to advance their defense. The district judge then held, however, that the question of defendants' implied waiver of the attorney-client privilege could be revisited if it later becomes apparent, upon further development of the record, that defendants are indeed pursuing defenses that implicate their reliance on particular communications with their counsel.

## SCOPE OF DISCOVERY

In *Fresh Air for the Eastside, Inc. et. al. v. Waste Management of New York, L.L.C. et. al.*, 18-cv-6588-FPG (Nov. 23, 2022), an action alleging various state tort claims and violations of the Clean Air Act and the Resource Conservation and Recovery Act, plaintiffs objected to an order from the magistrate judge that, *inter alia*, compelled them to produce authorizations to obtain medical records reflecting numerous alleged physical complaints such as stress, anxiety, headaches, nausea, coughing, nose and throat irritation, and loss of sleep. Plaintiffs argued that the alleged conditions were "garden variety" or "quality of life" claims, for which they had disavowed any claim for personal injury damages and explicitly stated they would not offer any medical testimony or records to support. The court agreed the alleged conditions did not amount to more than allegations of garden variety impacts and, based on the weight of case law within the circuit, vacated the order compelling the production of medical authorizations.

## MOTION TO SEAL

In *Miami Products & Chemical Co. v. Olin Corp. et. al.*, 19-cv-385-EAW (Dec. 1, 2022), and a series of similar consolidated actions, various parties filed motions to seal documents that previously were designated "Confidential," "Highly Confidential," or "Outside Counsel Eyes Only" under a protective order. The court first noted that there exists a strong presumption of public access to judicial documents, and that a "substantial showing" was required by the Local Rule to restrict access. The court then observed that it was required to make "specific, on-the-record findings that sealing is necessary to preserve higher values" and that, even then, any sealing order must be narrowly tailored to achieve that aim. Notwithstanding the apparent absence of any opposition, the court denied the motions, finding that confidentiality agreements alone were not an adequate basis for sealing, and the parties had otherwise uniformly failed to submit the required support necessary to satisfy the applicable standard.

## DISCOVERY-RELATED SANCTIONS

In *Travco Ins. Co. v. Gree U.S.A., Inc.*, 22-cv-06157-FPG-MJP (Nov. 15, 2022), plaintiff moved to compel discovery and for sanctions, contending that defendants willfully failed to respond to plaintiff's document requests, interrogatories and requests for admissions. After recounting defendants' multiple discovery failures — including that

defendants repeatedly missed interrogatory and deposition deadlines – the court reviewed the relevant rules regarding a party’s discovery obligations and the standard governing a motion for sanctions (*i.e.*, willfulness or bad faith of the non-compliant party; the history, if any, of noncompliance; the effectiveness of lesser sanctions; and whether the noncompliant party had been warned about the possibility of sanctions). The court then found that sanctions were appropriate given defendants’ non-compliance with discovery. Consequently, the court held that defendants had forfeited any objections to plaintiff’s discovery requests, and that defendants’ failure to timely respond to plaintiff’s requests for admissions resulted in deemed admissions that defendants would not be permitted to withdraw. The court also found that an award of costs, including attorneys’ fees, was warranted, and even ordered defendants to file a copy of the court’s Decision and Order in any case in the Western District of New York in which they are a plaintiff or a defendant. Finally, the court warned defendants that their failure to respond to all outstanding discovery demands may result in their answer being stricken.

## MOTION TO ENFORCE SETTLEMENT

In *Travco Ins. Co. v. Gree U.S.A., Inc.*, 22-cv-06157-FPG-MJP (Nov. 24, 2022), plaintiff’s attorney

sent an email to defendants’ attorney demanding a certain sum of money to settle the case, along with additional conditions. Defendants’ attorney responded by email later that day, indicating an agreement on the settlement sum, and attaching a proposed settlement agreement for plaintiff’s signature. Plaintiff’s attorney responded by altering the terms of defendants’ proposed settlement agreement so as to directly mirror the terms of his prior email. Defendants then moved to enforce the terms of their proposed settlement agreement, claiming it complied with the terms of plaintiff’s demand. Observing that the court has the power to enforce a settlement agreement reached in a case, and that “Courts in New York, both federal and state, have held that email exchanges constitute binding writings in the context of settlement negotiations,” the court nonetheless denied the motion, finding that the correspondence between counsel and the edits to defendants’ proposed settlement agreement made clear that there was no meeting of the minds. As a result, the email correspondence did not constitute a binding settlement.

## INFORMATION SUBPOENA

In *Am. Builders & Contractors Supply Co., Inc. v. CRI Contracting, LLC*, 20-cv-06302-EAW (Nov. 7, 2022), following entry of a de-

fault judgment, plaintiff served an information subpoena on one of the defendants seeking disclosure about defendants’ bank accounts, business records, assets, accounts receivables and debts. Defendant was personally served with the information subpoena and acknowledged receipt but failed to respond. Plaintiff then moved to compel, and defendant failed to oppose. Noting that post-judgment discovery is governed by Fed. R. Civ. P. 69, which adopts the procedure of the state where the court is located, and allows a judgment creditor to conduct a broad inquiry to uncover hidden or concealed assets of the judgment debtor, the court found that the information subpoena was properly served, and that its content complied with CPLR 5224. Accordingly, the motion was granted, and defendant was directed to respond to the information subpoena within 30 days. Finally, the court awarded plaintiff damages in the amount of \$1,706.34, consisting of costs, a statutory penalty, and attorneys’ fees incurred in effecting compliance with the information subpoena.

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