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United States District Court, N.D. California.

Latrell F. SPREWELL, Plaintiff,

v.

GOLDEN STATE WARRIORS, a partnership, National Basketball Association and Parties X, Y and Z Defendants.

No. C–98–2053–VRW.
|
March 26, 1999.

Attorneys and Law Firms

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ORDER.

WALKER, District J.

***1** One of the most talented guards in the NBA, plaintiff Latrell Sprewell sprang unexpectedly out of the University of Alabama to become an NBA All–Star in his second professional season and the Golden State Warriors' scoring leader four years in a row. He was the NBA's fifth-leading scorer in 1996–97, at a career-high 24.2 points per game, but attained new found notoriety when he was suspended after 14 games of the 1997–98 season following a physical attack on Warriors head coach P.J. Carlesimo.

On December 1, 1997, during a Warriors team practice, plaintiff attacked Carlesimo after the coach repeated a request that plaintiff pass the ball with greater force. Plaintiff slammed the ball down and told Carlesimo to "get out of my face, get the fuck out of here and leave me the fuck alone." Carlesimo responded, "you're the fuck out of here." Plaintiff then either walked or lunged at Carlesimo, grasped his neck driving him backward and stated, "I will kill you." Carlesimo offered no resistance and the two were separated. As plaintiff left the practice floor he stated, "trade me, get me out of here, I will kill you," to which Carlesimo countered "I am here."

After showering and changing, plaintiff, apparently feeling the need to re-articulate his position, returned to the practice facility and stated to Carlesimo, "you better get my ass out of here, get me the fuck out of here." Despite the efforts of two assistant coaches to restrain him, plaintiff succeeded in approaching Carlesimo and throwing an overhand punch that grazed Carlesimo's right cheek. A second blow landed on Carlesimo's right shoulder but may have been inadvertently delivered by plaintiff in his attempt to break free from those who were trying to restrain him. As he left the facility, plaintiff again stated, "I will kill you."

That evening the Warriors suspended plaintiff for a minimum of ten games and expressly reserved their right to terminate plaintiff's contract. See Compl, Ex 3 at 1. On December 3, 1997, the Warriors terminated plaintiff's contract. See Compl, Ex 4. After conducting its own investigation, the NBA suspended plaintiff for one year. See Compl, Ex 5.

On December 4, 1997, with the assistance of the NBA players association ("NBPA"), plaintiff filed a grievance against defendants. Because Article XXXI, § 1 of the collective bargaining agreement ("CBA") mandates arbitration of "any dispute * * * involving the interpretation or application of this Agreement or the provisions of a Player Contract * * *," this matter was submitted to grievance arbitrator, John D. Feerick.

Feerick held nine days of hearings. He heard testimony from twenty-one witnesses and allowed the parties to make extended closing arguments and file voluminous post-hearing briefs. On March 4, 1998, Feerick issued an award which found, in part, that the punishments meted out by the NBA and the Warriors were permissible under the CBA but that: (1) the Warriors' termination of the plaintiff's contract was

not supported by just cause given that the residual interest of the team after December 1, 1997, had been absorbed by the NBA's investigation of the matter; and (2) the NBA's suspension should be limited to the remainder of the 1997–98 season. See Compl, Ex 6 at 90–105.

***2** On May 20, 1998, plaintiff filed the instant suit based on the following causes of action: (1) vacatur of the arbitrator's opinion pursuant to § 301 of the Labor Management Relations Act ("LMRA"); (2) intentional interference with freedom to make and enforce contracts pursuant to 42 USC § 1981; (3) conspiracy to violate plaintiff's freedom to make and enforce contracts pursuant to 42 USC § 1985(3); (4) monopolization in restraint of trade pursuant to 15 USC § 1 et seq; (5) interference with prospective economic advantage; (6) intentional interference with contractual relations; (7) breach of contract; (8) breach of fiduciary duty, duty of loyalty and duty of good faith and fair dealing; (9) civil conspiracy; (10) discrimination, boycotting, blacklisting, and refusing to buy from, sell to or trade with plaintiff on the basis of race pursuant to Cal Civil Code § 51.5; and (11) unfair business practice pursuant to Cal Bus and Prof Code §§ 17200 and 17500.

On July 30, 1998, after reviewing the parties briefs and hearing argument on the NBA's motion to dismiss, the court dismissed plaintiff's complaint without prejudice pursuant to FRCP 12(b)(6). See HT at 46. The court instructed plaintiff's counsel to sign any subsequently filed amended complaint in accordance with FRCP 11. Id.

On August 31, 1998, plaintiff filed his first amended complaint, signed by counsel. The amended complaint is substantially similar to the original. It drops the antitrust and breach of contract claims, restates the breach of fiduciary duty claim as a claim for "common law right to fair procedure" and introduces a new claim that defendants "conspired to interfere with the arbitral process by producing false evidence." Amend Compl at ¶ 65, 100–06. Defendants now move to dismiss plaintiff's first amended complaint pursuant to FRCP 12(b)(6) and for sanctions pursuant to FRCP 11.

I

An FRCP 12(b)(6) motion to dismiss tests the legal sufficiency of the claim(s) stated in the complaint. The complaint must be considered in the light most favorable to plaintiff. See *Russell v. Landrieu,* 621 F.2d 1037, 1039 (9th Cir1980). The court must accept as true all material allegations in the complaint, as well as all reasonable inferences to be drawn from these facts. See *NL Indus, Inc v. Kaplan,* 792 F.2d 896, 898 (9th Cir1986). Material allegations must be accepted as true no matter how improbable they may seem and without regard to any potential difficulties in proof. See *Allison v. California Adult Authority,* 419 F.2d 822, 823 (9th 1969). The court need not, however, accept as true allegations that contradict matters properly subject to judicial notice or by exhibit. See *Mullis v United States Bankruptcy Court,* 828 F.2d 1385, 1388 (9th Cir1987); *Durning v. First Boston Corp,* 815 F.2d 1265, 1267 (9th Cir1987). Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact or unreasonable inferences. See *Clegg v. Cult Awareness Network,* 18 F3d 752, 754–55 (9th Cir1994); *Western Mining Council v. Watt,* 643 F.2d 618, 624 (9th Cir1981), cert. denied, 454 U.S. 1031 (1981). Even so, the motion may not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45–46 (1957); *Moore v. City of Costa Mesa,* 886 F.2d 260, 262 (9th Cir1989), cert. denied, 496 U.S. 906 (1990).

II

***3** In count one, plaintiff seeks to vacate the arbitration award under § 301 of the LMRA based on (1) arbitrator Feerick's alleged failure to abide by the terms of the CBA in authorizing the "multiple" punishments; (2) the alleged presence of racial animus behind the arbitration award; and (3) the alleged intentional introduction of false evidence in the arbitration proceeding. Amend Compl at ¶ 53–67.

The scope of review of an arbitrator's decision in a labor dispute is extremely limited. See *Federated Dep't Stores v United Food & Commercial Workers Union Local 1442,* 901 F.2d 1494, 1496 (9th Cir1993). Arbitration awards must be upheld so long as they represent a "plausible interpretation of the contract." *Phoenix Newspapers, Inc v Phoenix Mailers Union Local 752,* 989 F.2d 1077, 1080 (9th Cir1993). Furthermore, arbitration awards are meant to be a final and binding form of dispute resolution. See *United Paperworkers Int'l v. Misco,* 484 U.S. 29, 36 (1987). The Ninth Circuit, however, has identified three exceptions to the general deference given to an arbitrator's award: (1) when the award does not "draw its essence from the collective bargaining agreement"; (2) when the arbitrator exceeds the

scope of the issues submitted; and (3) when the award runs counter to public policy. *Federated,* 901 F.2d at 1496.

Plaintiff's contention that the arbitration award does not draw its essence from the CBA is baseless. An award draws its essence from the CBA when it is founded on language in the CBA. See *Stead Motors v Automotive Machinists Lodge No 1173,* 886 F.2d 1200, 1205 (9th Cir1989) (*en banc*), cert. denied, 495 U.S. 946 (1990). Arbitrator Feerick concluded that the allegedly multiple punishments levied upon plaintiff were authorized by the CBA. Feerick determined that the CBA provision in Article XXXI, Section 14(c), "a player may be subjected to disciplinary action for just cause by his Team or by the Commissioner[,]" is not a substantive limitation of authority. And, Feerick ultimately concluded that the use of the word "or" cannot be reasonably understood to be disjunctive. See Compl, Ex 6 at 94–5. Thus, Feerick's interpretation is irrefutably based upon the text of the CBA.

Even if this court were to disagree with the arbitrator's conclusion, the award satisfies the "essence" test because it is a plausible interpretation of the contract. See *Pack Concrete, Inc v. Cunningham,* 866 F.2d 283, 285 (9th Cir1989). The arguments now advanced by plaintiff are the same arguments previously considered and rejected by Feerick. This court cannot and will not second guess Feerick's facially reasonable conclusions. See *United Paperworkers Int'l v. Misco,* 484 U.S. 29, 37–8 (1987); *Van Waters & Rogers, Inc v International Bhd of Teamsters,* 56 F3d 1132, 1135 (9th Cir1995). Plaintiff will not be allowed to re-litigate his position merely because he disagrees with the arbitrator's award.

***4** Plaintiff's allegation that the arbitration award should be set aside because it "violates public policy and notions of fundamental fairness and due process" is equally frivolous. In the Ninth Circuit, the public policy exception only applies if the arbitration award clearly offends "an explicit, well defined and dominant policy" and "the policy is one that specifically militates against the relief ordered by the arbitrator." *United Food & Commercial Workers Int'l Union Local 588 v Foster Poultry Farms,* 74 F3d 169, 174 (9th Cir1995) (citations omitted). There is no "explicit, well-defined and dominant public policy" against the suspension of an employee for strangling, punching and threatening the life of his supervisor.

Plaintiff, however, charges that the defendant's imposition of punishment was "tainted by racial animus violat[ing] the public policy of the United States and California." Amend Compl at ¶ 66. As set forth below, plaintiff fails to allege *any* facts sufficient to establish racial animus on the part of either defendant. Moreover, plaintiff's allegation of racial animus, even if well founded, simply does not articulate a public policy that specifically militates against suspension of an employee who violently attacks his employer.

Finally, plaintiff alleges that the award must be set aside for fraud. It is indeed correct that an arbitration award may be set aside because of fraud where the alleged wrongful conduct was: "(1) not discoverable upon the exercise of due diligence prior to the arbitration, (2) materially related to an issue in the arbitration, and (3) established by clear and convincing evidence." *A.G. Edwards & Sons, Inc v. McCollough,* 967 F.2d 1401, 1404 (9th Cir1992). Where, however, the fraud is not only discoverable, but was in fact discovered and brought to the attention of the arbitrator, "a disappointed party will not be given a second bite at the apple." Id.

Plaintiff's allegations of fraud are: (1) that the NBA's investigation was incomplete and inaccurate; (2) that some of the players' recollection of the events differed from the NBA report; (3) that the investigators destroyed handwritten notes of telephone interviews; and (4) that photographs detailing Carlesimo's injuries were doctored. Each of these allegations were brought to the attention of the arbitrator. See Compl, Ex 6 at 14, 27, 28, 30, 32, 65; Amend Compl at ¶ 35; Waltzer Decl Ex B at 2909). In accordance with *A.G. Edwards & Sons,* plaintiff will not be allowed a second bite at the apple. Count one of plaintiff's complaint is DISMISSED WITH PREJUDICE.

III

In count two, plaintiff seeks to state a claim for racial discrimination under 42 USC § 1981. Section 1981 provides in relevant part that "[a]ll persons * * * shall have the same right in every State and Territory to make and enforce contracts * * * as is enjoyed by white citizens." 42 USC § 1981. Proof of intent to discriminate is necessary to establish a violation of section 1981. *General Bldg Contractors Ass'n v Pennsylvania,* 458 U.S. 375, 390–91 (1982). Under section 1981, plaintiff must allege facts that would support an inference that defendants intentionally and purposefully discriminated against him. See *Patterson v. McLean Credit Union,* 491 U.S. 164, 186–87 (1989); *Imagineering, Inc v. Kiewit Pac Co,* 976 F.2d 1303, 1313 (9th Cir1992). Plaintiff, however, has failed to allege facts demonstrating or allowing

an inference that the Warriors punish African–American players more frequently or more harshly than Caucasian players.

***5** Plaintiff attempts to raise an inference of discrimination based on the same three conclusory allegations contained in the original complaint: (1) "[a] majority of team owners, management and lead positions in Defendant NBA and Defendant Warriors are filled by Whites and Caucasians" (Amend Compl at ¶ 14); (2) "Black and African–American players like Sprewell, are punished more frequently and receive harsher punishment than White and Caucasian players, because of their race" (Id at ¶ 72); and (3) "some White and Caucasian players with a history of serious personal conduct violation entered into Player Contracts where Defendant Warriors * * * eliminated and/or reduced [its] right to terminate the contracts." (Id at ¶ 73).

Whatever evidentiary value a predominantly white management afford of an intent to discriminate in hiring or promotion, plaintiff's allegations are directed toward wrongful termination and excessive employee discipline. In this context, the mere allegation that management is predominantly Caucasian and plaintiff is African–American does not support an inference that defendants intentionally discriminated against him in his capacity as a player.

In addition, plaintiff's allegation that defendant Warriors, during contract negotiations with plaintiff, "were not only adamant about reserving their right to terminate" plaintiff's contract but also wanted to expand their termination rights under paragraph 16(a)(I) does not allow an inference of discrimination or otherwise create a claim under section 1981. Plaintiff does not allege that he or his agent ever requested that section 16(a)(I) be amended or eliminated from his contract. And, he has not alleged any facts establishing that such a request, if made, would have been futile.

Moreover, the mere assertion that "some" white players obtained favorable termination provisions fails to provide a ground for inferring racial animus against plaintiff. Such facts are equally consistent with non-discriminatory treatment. Finally, it is unclear how plaintiff has been harmed by a failure to obtain better termination rights given the arbitrator's rescission of the Warrior's contract termination.

In regard to defendant NBA, plaintiff asserts that the failure of the NBA to discipline Phoenix Suns player Tom Chambers, a Caucasian, for allegedly striking a weight training coach is sufficient to infer racial animus behind the NBA's decision to suspend plaintiff. The facts alleged by plaintiff, however, fatally undermine this assertion.

First, plaintiff himself alleges a non-discriminatory basis for the NBA's punishment. Last season, team owners voted to renegotiate the CBA and locked out the players. Plaintiff claims defendant NBA punished him more harshly in an attempt "to make an example of Mr. Sprewell" and bring about a "chilling effect on CBA negotiations." See Amend Compl at ¶ 42.

Second, after hearing extensive evidence concerning the Chambers incident, the arbitrator found that it, as well as other incidents cited by plaintiff, were not analogous to plaintiff's attack and held that the NBA's suspension was "justified by virtue of the singularity of [plaintiff's] misconduct." Compl Ex 6 at 104. If a complaint is accompanied by attached documents, the court is not limited by the allegations contained in the complaint. See *Durning,* 815 F.2d at 1267 (citation omitted). "These documents are part of the complaint and may be considered in determining whether the plaintiff can prove any set of facts in support of the claim." Id. Arbitrator Feerick's award includes a factual description of how the Chambers incident differs from the case at bar and details the extensive non-race based facts justifying the NBA's disciplinary response.

***6** Third, exhibit seven of plaintiff's complaint indicates that the NBA has punished other African–American players more leniently than plaintiff for lesser acts of violence. See Compl, Ex 7 (detailing punishment for Alvin Robertson, Jeff McInnis, Nick Van Exel, Vernon Maxwell and Dennis Rodman). Such evidence supports an inference that the seriousness of the offense, not the race of the player, determines the severity of a player's punishment by the NBA.

Because plaintiff fails to allege facts that would support an inference that defendants intentionally and purposefully discriminated against him, count two of his complaint is DISMISSED WITH PREJUDICE.

IV

Plaintiff fails to state a claim for racial discrimination under section 1985(3) in count three of his amended complaint. Under section 1985(3), plaintiff must allege that: (1) defendants conspired; (2) defendants' purpose was to

deprive, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the law; (3) defendants' actions were in furtherance of the object of the conspiracy; and (4) that plaintiff was either injured in his person or property or deprived of having and exercising any right or privilege of a citizen of the United States. See *Vietnamese Fisherman's Assn v. Knights of Ku Klux Klan,* 518 F Supp 993, 1006 (SD Texas 1981). A plaintiff must plead a § 1985(3) conspiracy claim with factual specificity. See *Karim–Panahi v. Los Angeles Police Dept,* 839 F.2d 621, 626 (9th Cir1988).

Moreover, section "1985(3) provides no substantive rights itself; it merely provides a remedy for violation of the rights it designates." *Great American Fed S & L Ass'n v Novotny,* 442 U.S. 366, 372, (1979). Thus, plaintiff must demonstrate that defendants violated some independent legal right during the alleged conspiracy under § 1985(3). See *Vietnamese Fisherman's Assn,* 518 F Supp at 1006; *Great American Fed S & L Ass'n v Novotny,* 442 U.S. at 372.

Plaintiff has failed to demonstrate an independent violation of his legal rights. As shown above, he cannot demonstrate a section 1981 claim. Additionally, plaintiff cannot assert a Fourteenth Amendment cause of action against defendants because they are not state actors. See *Terry Properties, Inc. v. Standard Oil Co.,* 799 F.2d 1523, 1533–34 (11th Cir1986). Furthermore, while violations of the Thirteenth Amendment can be asserted against private actors, a necessary element of such a violation is compulsion to continue employment. See *United States v. Kozminski,* 487 U.S. 931, 948 (1988). There is no allegation of compulsion here. Plaintiff's baseless assertion that "Defendants have perpetuated the badges and incidents of slavery whereby white owners can deprive blacks of their most basic rights" belittles the tragic history of slavery and racism in the United States. Count three of plaintiff's complaint is DISMISSED WITH PREJUDICE.

V

***7** Defendants argue that plaintiff's state law claims for: (1) intentional interference with contract and interference with business relations (counts four and five); (2) common law right to fair procedure (count six); (3) civil conspiracy (count seven); and (4) unfair business practices (count nine), are preempted by § 301 of the LMRA. Plaintiff argues that his claims are independent of the CBA and therefore not subject to preemption.

The United States Supreme Court has long recognized the central role of collective bargaining agreements in our "system of industrial self-government." *United Steelworkers of America v American Manufacturing Co.,* 363 U.S. 564, 570 (1959). Within this framework, the Supreme Court has consistently construed § 301 as a "congressional mandate to the federal courts to fashion a body of federal law to be used to address disputes arising out of labor contracts." *Allis–Chalmers Corp v. Lueck,* 471 U.S. 202, 209 (1984). Accordingly, the Supreme Court has held that federal law exclusively governs suits for breach of a collective bargaining agreement, while concomitantly preempting state law claims predicated on a collective bargaining agreement. See id at 210; *Milne Employees Ass'n v. Sun Carriers,* 960 F.2d 1401, 1407 (9th Cir1991); *Young v Anthony's Fish Grottos, Inc.,* 830 F.2d 993, 997 (9th Cir1987).

The operative test when determining whether a state law claim is preempted is whether "evaluation of the tort claim is inextricably intertwined with consideration of the terms of the labor contract." *Allis–Chalmers Corp,* 471 U.S. at 213. The court must identify and review the elements of the state law claim. See *Lingle v Norge Division of Magic Chef, Inc,* 486 U.S. 399, 407 (1987). If, in the course of assessing the state law claim, the court must refer to the collective bargaining agreement in order to evaluate it, then that claim is preempted under § 301. See id.

Although the express language of § 301 is limited to suits for violations of contracts, it has been construed broadly to cover most state-law actions that require interpretation of labor agreements. See *Allis–Chalmers Corp,* 471 U.S. at 220; See also *Associated Builders & Contractors, Inc v Local 302 International Brotherhood of Electrical Workers,* 109 F3d 1353, 1356 (9th Cir1997). A claim is not necessarily preempted if the court "simply looks at" any language of the collective bargaining agreement during evaluation of a claim. See id at 1357. Rather, the state law claim is preempted when the meaning of contract terms is in dispute, thereby forcing the court to interpret those disputed terms through analysis of the collective bargaining agreement. See *Lingle,* 486 U.S. at 405–6.

The Ninth Circuit has generally found claims for interference with contract and business relations preempted by § 301. See *Milne,* 960 F.2d at 1411–12. Claims for interference with contract and business relations depend in part upon establishing wrongful acts or conduct. See id. Because the

CBA outlines the rights and duties of the parties with respect to the alleged conduct, the court must look to it to determine whether breach or disruption has occurred.

***8** Plaintiff's interference claims are predicated upon the alleged impropriety of his suspension and contract termination and defendants' alleged conduct in connection therewith. These subjects are within the scope of the CBA's grievance and arbitration provisions. In order to adjudicate these claims, the court would be required to determine what types of media communications are authorized in connection with the prosecution of an arbitration and the administration of player discipline. Defendants' statements with respect to plaintiff's discipline are central rather than tangential to the rights and procedures provided under the collective bargaining agreement. See *Scott v Machinists Automotive Trades Dist Lodge No 190,* 827 F.2d 589, 594 (9th Cir1987); *Green v. Hughes Aircraft Co,* 630 F Supp 423, 426–27 (SD Cal 1985). Plaintiff's claims for interference with contract and business relations (counts four and five) are therefore preempted and are DISMISSED WITH PREJUDICE.

Plaintiff's claim that the NBA breached his common law right to fair procedure is likewise preempted. Plaintiff's employment relationship is governed by the CBA. Thus, whether plaintiff's suspension and arbitration hearing comported with standards of fair procedure can only be determined with reference to the procedures required and imposed by the CBA. Count six is therefore preempted. The court further notes that there is serious doubt whether the fair procedure doctrine applies where, as here, the employment relationship is governed by a collective bargaining agreement. Moreover, even if the doctrine applies, the extensive procedure followed pursuant to the CBA unquestionably exceeds the duty imposed by the fair procedure doctrine. See *Health v. Redbud Hosp District,* 620 F.2d 207, 212 (9th Cir1980). Count six is DISMISSED WITH PREJUDICE.

Plaintiff's unfair business practices claims are likewise preempted because each allegation requires this court to determine whether defendants' actions were permitted under the disciplinary provisions of the CBA. See *Bloom,* 734 F Supp 1560–61. These claims are based on the same conduct as plaintiff's Section 301 claim. Plaintiff cannot escape the preemptive effect of Section 301 "by re-formulating [his] contract claims as fraudulent business practice claim" under the California Business and Professions Code. Id. Plaintiff's unfair business claim (count nine) is therefore DISMISSED WITH PREJUDICE.

VI

Plaintiff's claim for civil conspiracy must be predicated on a violation of substantive law. See *Applied Equipment Corp v. Litton Saudi Arabia Ltd,* 869 P.2d 454 (1994); *Williams v. Pacific Maritime Ass'n,* 421 F.2d 1287, 1288–89 (9th Cir1970). Because the court has dismissed all of plaintiff's substantive claims the court must also DISMISS WITH PREJUDICE plaintiff's civil conspiracy claim (count seven).

VII

Plaintiff's claim under the Unruh Act must be dismissed simply because this statute does not apply to employment discrimination. See *Rojo v. Kliger,* 52 Cal 3d 65, 77 (Cal 1990) ("[T]he Unruh Act has no application to employment discrimination."). In the instant case there can be no doubt that plaintiff's claims under the Unruh Act exist only because plaintiff was employed by defendants. Any allegation that defendants' disciplinary responses were discriminatory must rely on the employment relationship. Defendants' decision to suspend plaintiff, terminate his contract and limit his participation in NBA events was clearly an employment decision not subject to the Unruh Act. Plaintiff's Unruh Act claim (count eight) is therefore DISMISSED WITH PREJUDICE.

VIII

***9** Pursuant to the foregoing, defendants' motions to dismiss (Doc 27 and Doc 30) plaintiff's amended complaint with prejudice (Doc 25) are GRANTED.

IX

Plaintiff's amended complaint consists of the same baseless claims previously dismissed by the court at the July 30, 1998, hearing. Moreover, the modifications introduced in the amended complaint are, as discussed above, without foundation. In a case such as this, where it is patently clear that a claim has no chance of success under the existing precedents, where no reasonable argument can be advanced to extend, modify, or reverse the law as it stands, and the plaintiff nonetheless refiles his complaint after dismissal by the court,

FRCP 11 has been violated. See *Golden Eagle Distributing Corp v Burroughs Corp,* 801 F.2d 1531, 1538 (9th Cir1986).

Plaintiff's counsel, in signing the amended complaint, have represented to the court that its contents are well grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Fed R Civ P 11(b)(2). Under FRCP 11, if a complaint is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the persons who signed it, a represented party, or both, an appropriate sanction. This sanction may include an order to pay the other parties' reasonable expenses incurred in connection with the filing of the complaint, including a reasonable attorney fee.

Despite the court's efforts at the July 30, 1998, hearing to direct plaintiff toward either stating a cognizable claim or withdrawing his complaint, he has continued to press onward. Plaintiff's second baseless complaint forced unnecessary expenditures by defendants and a wasteful diversion of this court's resources. Moreover, the court's prior dismissal put counsel on notice regarding the court's serious concern about plaintiff's good faith in bringing this action. Nonetheless, plaintiff's counsel chose to disregard the duties imposed upon them by FRCP 11 and filed a second meritless complaint. Such conduct cannot go without sanction.

Defendants' motion for sanctions is GRANTED. Defendants shall submit, on or before April 9, 1999, affidavits detailing the costs and attorney fees incurred as a result of plaintiff's violation; i.e ., the costs and attorney fees incurred in preparing, filing and arguing the motion to dismiss the amended complaint. Plaintiff may file a response on or before April 16, 1999.

IT IS SO ORDERED.

All Citations

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