

26 January 2017

**via Fax (914-390-4179) and ECF**

Honorable Nelson Stephen Román

United States District Judge

Re: *Yvette Brown v. Dr. Benjamin Kur, DDS, et. al.*, 7:16-cv-09118

Reply Letter for Proposed Rule 11 Motion

Dear Judge Román:

This Firm represents the Defendants, Dr. Benjamin Kur, DDS and Westchester Oral & Maxillofacial Associates, PLLC (collectively the “Defendants”), in the above referenced action. We respectfully submit this letter requesting the Court’s permission to file and for the Court to consider the below brief response to Plaintiff, Yvette Brown’s (“Ms. Brown”), response letter to the Court (the “Letter”), dated January 25, 2017 [ECF Doc.#23], regarding the Defendants request for a Pre-Motion Conference for a Rule 11 Motion [ECF Doc.#18]. The need for this response is to advise the Court of errors in the Letter and to respond to new issues raised in such.

Ms. Brown and her counsel, Lambda Legal’s (“Lambda Legal”), letter to the court further display the frivolous nature of the pending claims against the Defendants, including the evident lack of due diligence and failure to reasonably research matters prior to the filing of the instant action. The Letter simply states that despite the deficiencies in her pleadings, discovery is necessary and proper to flush out the discrepancies. Such tactic is the exact conduct that Federal Rule of Civil Procedure Rule 11 is meant to deter when a party is placed on notice that their claims or legal arguments are meritless. To the contrary, the language of the Rule stresses the need for pre-filing inquiries into both the facts and the law to satisfy the affirmative duty imposed by the Rule. A plaintiff is not entitled to file a factual deficient or misguided complaint with the sole purpose of supplementing it through discovery. Further, the proposed Rule 11 Motion and safe harbor letter were sent to detail why Ms. Brown’s claims are not meritorious, and are frivolous. Mr. Saenz explanation that he desires to conduct discovery to flush out the issues is the exact reason why Rule 11 exists, to prevent a party from abusing the system and forcing others to litigate known meritless and frivolous claims.

The arguments advanced in the Letter further support the Defendants claim that little to no due diligence or research was conducted prior to the filing of the Complaint. The Letter references documents that Plaintiff and Lambda Legal would not have known and/or had possession of prior to the commencement of the instant action. To the contrary, Plaintiff only became aware of such documents through the service of Defendants’ Safe Harbor letter and proposed Rule 11

Motion. Such documents include the Defendants list of accepted insurance carriers, an email sent by Dr. Kur to the Westchester County Board of Health, and affidavits refuting Ms. Brown's claims. However, Ms. Brown and her counsel are now on notice (and should have been prior to the commencement of the action) of such, and therefore should have withdrawn such claims that these materials relate to.

Further, in the Letter, Plaintiff and her counsel neglect to mention several fundamental facts. First, while Plaintiff is quick to attack this Firm for refusing to accept service of the pleadings on behalf of the Defendants, Mr. Saenz neglects to mention that this Firm advised him that it was not authorized by the Defendants to do so. Regardless, and most importantly, while Plaintiff and her counsel made a YouTube video and developed a webpage on Lambda Legal's website (as well as made comments to various media outlets through such) that went live on the day the case was filed, as of almost a month later, Lambda Legal had made no effort to have either of the Defendants served. Neither this Firm, nor the Defendants were obligated to waive the formalities of service. The only explanation is that Ms. Brown and her counsel desired to publicize these frivolous claims (under the expected guise of the litigation privilege) for the sole purpose of furthering their agendas at the cost of an innocent man's reputation.

Mr. Saenz brought to this Court's attention the defamation action that Dr. Kur initiated against Lambda Legal and Ms. Brown. Such is true, Dr. Kur did initiate such action because in the video and webpage created by Ms. Brown and Lambda Legal, they defamed Dr. Kur by alleging that he discriminated against Ms. Brown based on her race and gender, two allegations that are not existing in the Complaint in this action. As stated above, the desire to publicize this case and such additional grounds of discrimination were more important to Lambda Legal and Ms. Brown than serving the Defendants, but has no bearing on the claims in this case or the request to file a Rule 11 Motion seeking sanctions against Ms. Brown and her counsel.

Finally, Mr. Saenz admits certain shortcomings in the Complaint, which he became aware of by the proposed Rule 11 Motion. However, at no point in time did Mr. Saenz contact this Firm to discuss such, nor has there been a request to cure such defects. Rather, in a veil attempt to defend such frivolous actions, Mr. Saenz claims Ms. Brown needs discovery to prove or disprove such allegations, and he is prepared to amend the Complaint. Unfortunately for Ms. Brown, such efforts should have been done during the 21 day safe harbor period, which provides time for a party to correct the wrongs alleged in the proposed motion. Ms. Brown and her counsel failed to do so, and therefore sanctions should be imposed. The Defendants should not be burdened with defending a frivolous action without Ms. Brown and her counsel being held responsible for their conduct (the consequences of a Rule 11 Motion). Thus, if Ms. Brown and Mr. Saenz desire to proceed with the frivolous claims even after being noticed pursuant to Rule 11, than this Court should permit the Defendants to proceed in filing their motion and this Court should decide it at the conclusion of the matter, with the consequences hanging over Ms. Brown and her counsel's heads.

The Defendants and undersigned counsel thank this Court for its time and consideration of this matter and will be prepared to further discuss such at the Conference tomorrow.

Respectfully submitted,  
*/JMD/*  
Jonathan Marc Davidoff, Esq.

cc: All parties of record via ECF