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19 UNITED STATES DISTRICT COURT
20 DISTRICT OF ARIZONA

21 Grady Hillis, et al.,

22 Plaintiffs,

23 vs.

24 National Association of REALTORS®,
25 et al.,

26 Defendants.
27

Case No. 3:21-cv-08194-SPL

**DEFENDANT NATIONAL
ASSOCIATION OF REALTORS'®
MOTION FOR RULE 11 SANCTIONS**

(Assigned to The Hon. Steven P. Logan)

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INTRODUCTION

1
2 Plaintiffs Grady Hillis, Grady Hillis Realty, and GLH Property Investments and their
3 counsel violated Rule 11 of the Federal Rules of Civil Procedure by filing a 1,295-page
4 Amended Complaint (ECF 11) against the National Association of REALTORS® (“NAR”),
5 which is premised on (1) false statements of fact—concerning alleged contracts between
6 NAR and Plaintiff that do not exist and alleged services that NAR does not provide; and (2)
7 frivolous legal theories. NAR respectfully asks the Court to sanction Plaintiffs and their
8 counsel for their violations of Rule 11 and to order them to reimburse NAR for the
9 reasonable fees and costs it incurred responding to Plaintiffs’ Amended Complaint and
10 bringing this Motion.

FACTS

11
12 NAR is a trade association for real estate professionals. Gansho Decl. ¶ 2. Among
13 other things, it publishes model rules for multiple listing services operated by local
14 associations of REALTORS®. *Id.* ¶ 3. NAR’s rules for multiple listing services reflect best
15 practices that are designed to promote high-quality service and efficiency. *Id.* ¶ 4. NAR
16 does not, however, operate its own multiple listing service or provide any services to its
17 members that are available through multiple listing services. *Id.* ¶ 5.

18 NAR’s rules only apply to persons who voluntarily join an MLS, that is owned or
19 operated by a local association of REALTORS®, which has adopted NAR’s rules. *Id.* ¶ 6.
20 NAR’s rules for multiple listing services can be mandatory, optional, recommended, or
21 informational, *Id.* ¶ 7, and NAR’s mandatory rules expressly recognize that individual state
22 laws trump NAR’s rules wherever there is a potential conflict between state law and NAR
23 rules, *Id.* ¶ 8. NAR’s rules for multiple listing services are publicly available on its website.
24 *Id.* ¶ 9.

25 NAR does not own local associations of REALTORS®. *Id.* ¶ 5. Moreover, local
26 associations of REALTORS® are free to adopt their own, additional rules for multiple listing
27 services, provided that locally adopted rules do not conflict with NAR’s mandatory model
28 rules. *Id.* ¶ 10. Defendant White Mountain Association of REALTORS® is a local

1 association of REALTORS® in Arizona, and Defendant Arizona Association of
2 REALTORS® is a state association of REALTORS®. *Id.* ¶¶ 11-12.

3 **COMPLIANCE WITH SAFE HARBOR**

4 “A motion for sanctions must be made separately from any other motion and must
5 describe the specific conduct that allegedly violates Rule 11(b).” Fed. R. Civ. P. 11(c)(2).
6 “The motion must be served under Rule 5, but it must not be filed or be presented to the
7 court if the challenged paper, claim, defense, contention, or denial is withdrawn or
8 appropriately corrected within 21 days after service or within another time the court sets.”
9 *Id.*

10 NAR complied with this safe-harbor provision by serving Plaintiffs’ counsel with a
11 copy of this Motion, in draft form, on March 23, 2022.

12 **ARGUMENT**

13 “Rule 11 imposes a duty on attorneys to certify that they have conducted a reasonable
14 inquiry and have determined that any papers filed with the court are well grounded in fact,
15 legally tenable, and not interposed for any improper purpose.” *Cooter & Gell v. Hartmarx*
16 *Corp.*, 496 U.S. 384, 393 (1990) (internal quotation omitted). “Where, as here, the
17 complaint is the primary focus of Rule 11 proceedings, a district court must conduct a two-
18 prong inquiry to determine (1) whether the complaint is legally or factually baseless from
19 an objective perspective, and (2) if the attorney has conducted a reasonable and competent
20 inquiry before signing and filing it.” *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir.
21 2002) (internal quotation marks and citation omitted). Many parts of the Amended
22 Complaint do not pass muster under this standard.

23 **I. The Amended Complaint Contains Numerous False Statements**

24 The Amended Complaint contains false statements of fact concerning NAR and its
25 relationship with Plaintiffs that would have been discovered by a reasonable, pre-complaint
26 inquiry by Plaintiffs’ counsel. *See Bus. Guides, Inc. v. Chromatic Commc’ns Enterprises,*
27 *Inc.*, 892 F.2d 802, 811 (9th Cir. 1989) (“[R]epresented parties should be held to an objective
28 standard of ‘reasonable inquiry’ into the facts.”).

1 **A. The Alleged Contracts Between NAR and Plaintiffs Do Not Exist**

2 The Amended Complaint asserts over 300 separate breach of contract “counts”
3 against NAR, purportedly related to agreements “to provide advertising through an MLS
4 service” and “access to homes through lockboxes.” *See, e.g.*, ECF 11 ¶¶ 42, 47, 55, 67. But
5 no such agreements exist. NAR does not provide MLS services. Gansho Decl. ¶ 5. NAR
6 does not provide access to homes through lockboxes. *Id.* NAR never contracted with
7 Plaintiffs (or anyone else) to provide those services. *Id.* ¶ 13.

8 **B. NAR Did Not Take Any of the Alleged Actions Underpinning Plaintiffs’**
9 **Antitrust and Tortious Interference Claims**

10 The Amended Complaint asserts over 80 separate antitrust “counts” and over 120
11 separate “tortious interference” claims against NAR.

12 In support of these claims, Plaintiffs allege, repeatedly, that Defendants “restricted
13 commerce and excluded competition by unlawfully and systematically redacting and
14 excluding and interfering with information in the Plaintiff’s advertisements,” specifically
15 Plaintiffs’ contact information when placed in the “Public Remarks” field on White
16 Mountain MLS. *See, e.g.*, ECF 11 ¶¶ 17 n.5, 289. Plaintiffs’ complaints appear to be related
17 to Section 2.22 of the MLS Rules adopted by the White Mountain Association of
18 REALTORS®, *see id.* ¶ 17 n.5, which prohibits publication of “information about the listing
19 agent or brokerage, including, but not limited to: names, phone numbers, websites, social
20 media accounts, or any other means of directing a prospective buyer to the listing agent or
21 office” in the publicly available MLS field containing a narrative description of the property,
22 *see* ECF 11-2, Ex. 6, § 2.22. Plaintiffs further claim that NAR violated the antitrust laws
23 and committed tortious interference by “limiting access to Plaintiff’s lockboxes
24 on . . . homes and requiring [a] particular lockbox on the home Plaintiffs had for sale.” *See,*
25 *e.g.*, ECF 11 ¶ 209.

26 NAR, however, does not have a rule that prohibits the publication of such
27 information, or require a particular lockbox. *See* 2022 Handbook on Multiple Listing Policy,
28 *available at* <https://cdn.nar.realtor/sites/default/files/documents/mls-handbook-2022-02->

1 11.pdf. NAR also did not take any action to “redact” information or prevent publication of
2 Plaintiffs’ information in the Public Remarks field. NAR’s Handbook on Multiple Listing
3 Policy in fact does not contain any rules prohibiting the publication of a listing broker’s
4 contact information. *See id.*

5 **II. The Amended Complaint Asserts Frivolous First Amendment Claims**

6 “A filing is frivolous under Rule 11 if it is unreasonable when viewed from the
7 perspective of a competent attorney admitted to practice before the district court.” *Pioneer*
8 *Lumber Treating, Inc. v. Cox*, 5 F.3d 539 (9th Cir. 1993) (unpublished table decision); *see*
9 *also G.C. & K.B. Invs., Inc. v. Wilson*, 326 F.3d 1096, 1109 (9th Cir. 2003). Here, in addition
10 to the false statements discussed above, the Amended Complaint contains “First
11 Amendment” claims that are objectively meritless and would not have been filed by a
12 competent attorney admitted to practice before this Court.

13 The Amended Complaint asserts over 90 “First Amendment” counts against NAR,
14 purportedly on the basis that NAR infringed Plaintiffs’ First Amendment rights. But “the
15 Free Speech Clause prohibits only *governmental* abridgment of speech. The Free Speech
16 Clause does not prohibit *private* abridgment of speech.” *Manhattan Cmty. Access Corp. v.*
17 *Halleck*, 139 S. Ct. 1921, 1928 (2019). NAR is not a government actor or agency. It is a
18 private trade association. There are only limited circumstances in which a private entity can
19 be deemed a state actor subject to the First Amendment’s constraints. They are: (1) “when
20 the private entity performs a traditional, exclusive public function”; (2) “when the
21 government compels the private entity to take a particular action”; or (3) “when the
22 government acts jointly with the private entity.” *Manhattan Cmty. Access*, 139 S. Ct. at
23 1928 (citations omitted). None of these elements can be reasonably deemed to apply in this
24 case.

25 While they do not address any of these categories directly, Plaintiffs appear to suggest
26 that NAR is performing a “traditional, exclusive public function,” *see* ECF 11 ¶ 35, when
27 adopting MLS rules. But for that standard to be met, the plaintiff must show “the exercise
28 by a private entity of powers traditionally exclusively reserved to the State.” *Jackson v.*

1 *Metro. Edison Co.*, 419 U.S. 345, 352 (1974). But that standard has not been satisfied here.
2 NAR’s rules apply only to those who voluntarily join an MLS, that is owned or operated by
3 a local association of REALTORS®, which has elected to adopt NAR’s rules. Moreover,
4 NAR’s MLS policy expressly notes that state law supersedes NAR’s rules and policies
5 wherever there is a conflict. *See* 2022 Handbook on Multiple Listing Policy at 18 (“The
6 multiple listing policy of the National Association shall in no instance be interpreted as
7 requiring any constituent member association or association member to adopt or follow any
8 policy which would contravene law applicable to such member association or association
9 member.”); *id.* at 5 (“Except where state law provides otherwise, the following terms shall
10 be defined as follows”); *id.* at 6 (“These definitions are provided to facilitate
11 categorization of listings in MLS compilations. In any area of conflict or inconsistency,
12 state law or regulation takes precedence.”); *id.* at 24 (“All electronic display of IDX
13 information conducted pursuant to this policy must comply with state law and
14 regulations”). NAR has not displaced a function traditionally served by state or local
15 government, and therefore Plaintiffs have no objectively reasonable basis to claim NAR, as
16 a private actor, violated their First Amendment rights.

17 Plaintiffs’ purported First Amendment claims against NAR therefore violate Rule 11.
18 *See Cramer v. City of Detroit*, 267 F. App’x 425, 428 (6th Cir. 2008) (affirming Rule 11
19 sanctions based on a baseless attempt to assert First Amendment claims against a private
20 actor); *Weinraub v. Glen Rauch Sec., Inc.*, 419 F. Supp. 2d 507, 517 (S.D.N.Y. 2005)
21 (holding that the Court had “no choice but to impose Rule 11 sanctions” against a plaintiff
22 who asserted a “section 1983 claim [despite a] lack of state action”); *Levi v. Safeway*, No.
23 94-946, 1994 WL 706341, at *1, *7 (N.D. Cal. Dec. 12, 1994) (granting Rule 11 sanctions
24 against a plaintiff who “alleg[ed] violations of his first amendment right to free expression
25 and fourteenth amendment right to equal protection” against a private actor); *see also Dubuc*
26 *v. Green Oak Twp.*, 482 F. App’x 128, 132-33 (6th Cir. 2012) (affirming sanctions issued
27 through the Court’s inherent authority when plaintiff “fail[ed] to prove, or even to provide
28 plausible evidence for, any of the exceptions to the general rule that a private party is not

1 liable under § 1983”).

2 **III. An Award of Attorneys’ Fees Is an Appropriate Sanction**

3 When Rule 11 has been violated, sanctions “must be limited to what suffices to deter
4 repetition of the conduct or comparable conduct by others similarly situated.” Fed. R. Civ.
5 P. 11 (c)(4). “The sanction may include nonmonetary directives; an order to pay a penalty
6 into court; or, if imposed on motion and warranted for effective deterrence, an order
7 directing payment to the movant of part or all of the reasonable attorney’s fees and other
8 expenses directly resulting from the violation.” *Id.* Consistent with these considerations
9 and subject to Plaintiffs’ ability to pay, NAR respectfully asks that the Court order Plaintiffs
10 and their counsel to reimburse NAR for the reasonable attorneys’ fees reasonably incurred
11 in responding to Plaintiffs’ Amended Complaint and bringing this Motion. *See Gaskell v.*
12 *Weir*, 10 F.3d 626, 629 (9th Cir. 1993) (“In a case like this, where the original complaint is
13 the improper pleading, all attorney fees reasonably incurred in defending against the claims
14 asserted in the complaint form the proper basis for sanctions.”); *Hernandez v. Brewer*, No.
15 11-1945, 2018 WL 2765757, at *3 (D. Ariz. June 8, 2018) (ordering, as a Rule 11 sanction,
16 that “Plaintiff pay the Pinal County Defendants’ reasonable attorneys’ fees for responding
17 to his frivolous filings” (internal quotation marks omitted)).

18 **CONCLUSION**

19 NAR respectfully requests that this Motion for sanctions be granted and that, pursuant
20 to Rule 11, Plaintiffs and their attorneys be ordered to pay the reasonable attorneys’ fees
21 NAR reasonably incurred in responding to Plaintiffs’ Amended Complaint and bringing this
22 Motion.

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1 DATED: April 26, 2022
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3 s/ Douglas C. Northup

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27 *Attorneys for Defendant National*
28 *Association of REALTORS®*

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2022, a copy of the foregoing was filed electronically using the Clerk of Court’s CM/ECF system, which will provide notice to all counsel of record.

Additionally, I certify that a copy of the foregoing motion was served on below counsel of record on March 23, 2022, by e-mail and certified mail, more than twenty-one days prior to the date this motion was filed with the Court:

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Grady Hillis, et al.,

Plaintiffs,

vs.

National Association of REALTORS®, et
al.,

Defendants.

Case No. 3:21-cv-08194-SPL

**DECLARATION OF RODNEY
GANSHO IN SUPPORT OF
DEFENDANT NATIONAL
ASSOCIATION OF REALTORS'®
MOTION FOR RULE 11 SANCTIONS**

(Assigned to The Hon. Steven P. Logan)

DECLARATION OF RODNEY GANSO

I, Rodney Gansho, declare as follows under 28 U.S.C. § 1746:

1. I am the Director of Engagement for the National Association of REALTORS® (“NAR”). I have personal knowledge of the facts contained herein, and if called as a witness, I could and would testify competently thereto.

2. NAR is a trade association for real estate professionals.

3. Among other services it provides, NAR publishes model rules for multiple listing services operated by local associations of REALTORS®.

4. NAR’s rules for multiple listing services reflect best practices that are designed to promote optimum service and efficiency.

5. NAR does not own local associations of REALTORS® or operate its own multiple listing service or provide any of the services to its members that are available through multiple listing services. NAR does not provide access to homes through lockboxes.

6. NAR’s rules only apply to persons who voluntarily join an MLS that is owned or operated by a local association of REALTORS®, that has adopted NAR’s rules.

7. NAR’s rules for multiple listing services can be mandatory, optional, recommended, or informational.

8. NAR’s mandatory rules expressly recognize that individual state laws trump NAR’s rules wherever there is a potential conflict between state law and NAR rules.

9. All of NAR’s rules for multiple listing services are publicly available on its website.

10. Local associations of REALTORS® are free to adopt their own, additional rules, provided that locally adopted rules do not conflict with NAR’s mandatory model rules.

11. White Mountain Association of REALTORS® is a local association of REALTORS® in Arizona.

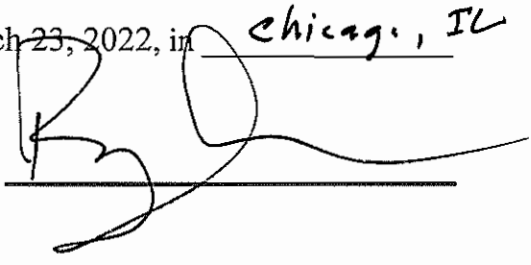
12. Arizona Association of REALTORS® is a state association of REALTORS®.

1 13. NAR never contracted with Plaintiffs to provide MLS services or lockbox
2 access.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

This declaration was executed on March 23, 2022, in Chicago, IL

A handwritten signature in black ink, appearing to be "R. O.", is written over a horizontal line. The signature is stylized and cursive.

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Grady Hillis, et al.,

Plaintiffs,

vs.

National Association of REALTORS®,
et al.,

Defendants.

Case No. 3:21-cv-08194-SPL

ORDER

(Assigned to The Hon. Steven P. Logan)

Upon consideration of Defendant National Association of REALTORS®’s (“NAR”) motion for Rule 11 sanctions (the “Motion”), any opposition thereto, any reply in support, and the entirety of the record herein, it is hereby:

ORDERED that the Motion is GRANTED; and it is further

ORDERED that within 21 days of the entry of this order, NAR shall file its request for an award of its expenses, including attorneys’ fees reasonably incurred, in responding to Plaintiffs’ Amended Complaint (ECF 11) and in bringing this Motion.