

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[OPPOSED] MOTION FOR RULE 11 SANCTIONS

Pursuant to Rule 11 of the Federal Rules of Civil Procedure, plaintiffs request that the Court impose a monetary sanction on defendants for the filing of its pending motion to dismiss, ECF No. 227. Grounds for this motion are set out in the attached, which was served on April 7, 2026, and inadvertently omitted from ECF No. 237.

The parties have agreed to a briefing schedule: Defendants to respond within 14 days and plaintiffs to reply seven days thereafter.

Respectfully submitted,

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
Joel A. Flaxman
200 S Michigan Ave
Chicago, IL 60604
(312) 427-3200
knf@kenlaw.com
an attorney for plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PLAINTIFF'S MOTION FOR RULE 11 SANCTIONS

Pursuant to Rule 11 of the Federal Rules of Civil Procedure, plaintiffs request that the Court impose a monetary sanction on defendants for the filing of its pending motion to dismiss, ECF No. 227. As explained below, the motion is not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.

1. The Seventh Circuit squarely rejected defendants' jurisdictional argument and remanded this case with instructions to rule on whether the proposed class is sufficiently numerous and whether the putative class will be adequately represented. *Scott v. Dart*, 99 F.4th 1076 (7th Cir. 2024).

2. Defendants ask the court to reject the mandate of the Seventh Circuit based on their view that the Appellate Court's holding "is invalid as a matter of law." (ECF No. 227 at 3.) Defendants argue that the mandate of

the Seventh Circuit is “in direct violation of the Rules Enabling Act.” (*Id.* at 6.) To justify flouting the mandate of the Court of Appeals, defendants argue that “[t]he Seventh Circuit conspicuously failed to address either of [two] jurisdiction problems in its opinion,” leaving this Court “free to address the jurisdictional defects identified here.” (*Id.* at 7, 8.)

3. Defendants’ motion is frivolous. “In a hierarchical system, decisions of a superior court are authoritative on inferior courts.” *Reiser v. Residential Funding Corp.*, 380 F.3d 1027, 1029 (7th Cir. 2004). This Court is therefore “required to comply with the express or implied rulings of the appellate court.” *Sullivan v. Flora, Inc.*, 63 F.4th 1130, 1137 (7th Cir. 2023).

4. The mandate rule extends to “any issue conclusively decided by [the Court of Appeals] on the first appeal.” *United States v. Husband*, 312 F.3d 247, 251 (7th Cir. 2002). This is true even when the Court of Appeals does not explain the basis for its decision on a particular issue: “An order is an order regardless whether it contains an explanation.” *In re A.F. Moore & Assocs., Inc.*, 974 F.3d 836, 840–41 (7th Cir. 2020).

5. In this case, the Seventh Circuit rejected defendants’ jurisdictional argument, devoting Section II of its opinion to a lengthy and careful discussion of whether “we have Article III jurisdiction over this matter.” *Scott v. Dart*, 99 F.4th 1076, 1082 (7th Cir. 2024). The Court should reject

defendants' dismissive description of the Seventh Circuit's careful ruling on this issue as a "drive-by jurisdictional ruling." (ECF No. 227 at 7.)

6. The Seventh Circuit rejected both of the jurisdictional arguments defendants seek to raise. *Scott v. Dart*, 99 F.4th 1076, 1082-88 (7th Cir. 2024). Even if the Court were to determine that defendants are raising new arguments, there is no dispute that defendants' arguments concern the same issue (Article III jurisdiction) decided on appeal. The Seventh Circuit made plain in *Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228 (7th Cir. 1988) that "same issue, new arguments" is not an exception to the mandate rule. *Id.* at 234. This Court therefore lacks the power to revisit this issue.

7. Defendants base their request that the Court depart from the mandate of the Seventh Circuit on the separate statement of Judge Easterbrook on denial of the petition for rehearing, 108 F.4th 931 (7th Cir. 2024). (ECF No. 277 at 2.) Judge Easterbrook observed that "[t]he Supreme Court must sooner or later resolve this conflict." *Id.* at 933. The Supreme Court chose to not review this case when it denied defendants' petition for writ of certiorari on February 24, 2025, Supreme Court Case No. 24-464. Defendants now ask this Court to sit as a super-Supreme Court, overrule the decision of the Seventh Circuit, and resolve what they contend is a conflict

among the circuits. This argument is truly frivolous and warrants the imposition of a monetary sanction.

8. Plaintiff's counsel served a copy of this motion on all counsel for defendants on April 7, 2025, pursuant to Federal Rule of Civil Procedure 11(c)(2).

Respectfully submitted,

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
Joel A. Flaxman
200 S Michigan Ave
Chicago, IL 60604
(312) 427-3200
knf@kenlaw.com
an attorney for plaintiffs