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

QUINTIN SCOTT, individually and for a class,	)	
Plaintiffs,	)	
	)	Case No. 17-cv-7135
v.	)	
	)	Hon. Martha M. Pacold
SHERIFF OF COOK COUNTY and COOK COUNTY, ILLINOIS	)	Magistrate Hon. David Weisman
Defendants.	)	

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR RULE 11 SANCTIONS

Defendants, SHERIFF OF COOK COUNTY, and COOK COUNTY, ILLINOIS, by their attorney EILEEN O'NEILL BURKE, State's Attorney of Cook County, through her Special Assistant State's Attorneys, JOHNSON & BELL, LTD., submit the following response to Plaintiff's motion for sanctions:

INTRODUCTION

Plaintiff's motion for sanctions is groundless, which is itself sanctionable conduct. *See Hunt v. DaVita, Inc.*, 680 F.3d 775, 781 (7th Cir. 2012); *see also Local 106, Serv. Emps. Int'l Union v. Homewood Mem'l Gardens, Inc.*, 838 F.2d 958, 961 (7th Cir. 1988) (affirming district court's decision to *sua sponte* sanction a party who filed a frivolous motion for sanctions). Plaintiff's motion does not identify a single frivolous argument by Defendants. Instead, Plaintiff's motion misrepresents Defendants' arguments in an attempt to avoid a conclusion regarding the as-applied invalidity of Fed. R. Civ. P. 23(e) that he does not—indeed, cannot—dispute is compelled by Supreme Court precedent and the Rules Enabling Act.

Plaintiff's motion must be denied. He has failed to meet the high threshold required to justify sanctions under Rule 11. Defendants' motion to dismiss is grounded in a good-faith interpretation of the law and raises important questions regarding the unaddressed, follow-on effects of the Seventh Circuit's opinion. The panel majority's interpretation of Rule 23 raises new legal issues, which this Court is not precluded from addressing in subsequent proceedings, particularly since they go directly to this Court's jurisdiction. Indeed, this Court is *required* to address them in the first instance, as the Seventh Circuit is not a court of first view.

As set forth in Defendants' motion to dismiss, the panel majority's interpretation of Rule 23(e) places it in conflict with the Rules Enabling Act. The Seventh Circuit has not addressed this conflict, nor was it part of the Seventh Circuit's mandate. This Court thus has an obligation to scrutinize the Act's applicability to this case. This does not amount to ignoring or violating the mandate. Instead, it constitutes a reasonable effort to resolve legal uncertainties in the case.

Plaintiff's request for sanctions should be denied because Defendants' motion is not frivolous, is supported by a reasonable legal basis, and does not violate the mandate rule.

LEGAL STANDARD

"Federal Rule of Civil Procedure 11(b) requires attorneys presenting a pleading or other paper to the court to certify, among other requirements: (1) the pleading or other paper is not being provided to unnecessarily delay or needlessly increase the cost of litigation; (2) the claims are supported by existing law or a nonfrivolous argument for modifying the law; and (3) the factual contentions have evidentiary support." *Mazurek v. Metalcraft of Mayville, Inc.*, 110 F.4th 938, 942 (7th Cir. 2024) (citing Fed. R. Civ. P. 11(b)).

Rule 11 sanctions "are designed to deter baseless filings, like those presented for an improper purpose." *Id.* "But because sanctions can harm the reputation of attorneys and chill the

creativity of counsel, care must be taken in their issuance." *Id.* A court will not grant a motion for sanctions if it finds that party did not bring the motion "in bad faith." *Briscoe v. Village of Vernon Hills*, No. 15 C 10761, 2017 U.S. Dist. LEXIS 46262, at *12 (N.D. Ill. Mar. 29, 2017).

ARGUMENT

I. Rule 11 Sanctions Should Not Be Used to Punish Zealous Advocacy.

The purpose of Rule 11 is to deter *baseless* filings, *see Eberhardt v. Walsh*, 122 F.4th 681, 686 (7th Cir. 2024), not to punish attorneys for making good-faith arguments for the extension or modification of existing law. *Mazurek*, 110 F.4th at 946. Rule 11 is "not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories." *Transco Lines, Inc. v. CarrierDirect, LLC*, No. 19 CV 4307, 2020 U.S. Dist. LEXIS 55342, at *12 (N.D. Ill. Mar. 30, 2020) (quoting *Kraemer v. Grant County*, 892 F.2d 686, 690 (7th Cir. 1990)).

The Seventh Circuit has cautioned that Rule 11 sanctions "are to be imposed sparingly, as they can 'have significant impact beyond the merits of the individual case' and can affect the reputation and creativity of counsel." *Hartmarx Corp. v. Abboud*, 326 F.3d 862, 867 (7th Cir. 2003) (quoting *Pacific Dunlop Holdings, Inc. v. Barosh*, 22 F.3d 113, 118 (7th Cir. 1994)) (reversing grant of sanctions because the district court did not take into account changes in the law when it considered the sanctioned party's arguments). "Rule 11 is not a toy. A lawyer who transgresses the rule abuses the special role our legal system has entrusted to him." *Draper & Kramer, Inc. v. Baskin-Robbins, Inc.*, 690 F. Supp. 728, 732 (N.D. Ill. 1988).

While Plaintiff may prefer that Defendants ignore tough legal questions implicating this Court's jurisdiction, it is not appropriate for him to move for sanctions on this basis. He cannot use Rule 11 to "undermine zealous advocacy." *Nichols v. Ill. DOT*, No. 12-cv-01789, 2022 U.S. Dist. LEXIS 30628, at *4 (N.D. Ill. Feb. 22, 2022) (declining to impose sanctions where there was "no

indication that [the plaintiff's] new attorneys acted in bad faith" and where the "case does not present the sort of egregious conduct that calls for sanctions").

Plaintiff's motion should be denied because it is brought for the improper purpose of stifling Defendants' zealous advocacy. Defendants' motion to dismiss reflects a good-faith effort to address complex legal issues and is not intended to harass or delay the litigation. Imposing sanctions in this case would have a chilling effect on legitimate advocacy and would undermine the purpose of Rule 11.

II. Plaintiff Fails to Meet the High Burden Required to Justify Rule 11 Sanctions.

A party moving for sanctions has a "high burden of showing that Rule 11 sanctions are warranted." *In re Dairy Farmers of Am., Inc., Cheese Antitrust Litig.*, 80 F. Supp. 3d 838, 860 (N.D. Ill. 2015). Sanctions are not warranted unless a party presents "arguments 'that are frivolous, legally unreasonable, without factual foundation, or asserted for an improper purpose.'" *Indep. Lift Truck Builders Union v. NACCO Materials Handling Grp., Inc.*, 202 F.3d 965, 968–69 (7th Cir. 2000) (quoting *Fries v. Helsper*, 146 F.3d 452, 458 (7th Cir. 1998)).

Plaintiff argues that monetary sanctions are warranted because Defendants are "flouting the mandate of the Court of Appeals." (Pl.'s Mot. ¶¶ 2, 7, ECF No. 238.) Plaintiff misrepresents Defendants' arguments in an attempt to sway this Court into thinking that Defendants want this Court to ignore the Seventh Circuit's mandate, which is plainly not true.

For example, Plaintiff argues that 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.'" (*Id.* ¶ 2.) Plaintiff misquotes and misrepresents Defendants' motion. The full quotation is as follows: "As a result, Rule 23(e) as interpreted by the Seventh Circuit is invalid as a matter of law, and it cannot afford this Court any power to grant Scott an incentive award." (Defs' Mot. to Dismiss

at 3, ECF No. 227.) As can plainly be seen from the full quotation, Defendants' argument is that *Rule 23(e)*, as applied to this case, is now invalid as a matter of law. Defendants did not argue that the Seventh Circuit's *holding* was invalid as a matter of law. The holding is in fact the basis for Defendants' argument.

Plaintiff also states that "Defendants argue that the mandate of the Seventh Circuit is 'in direct violation of the Rules Enabling Act.'" (Pl.'s Mot. ¶ 2.) Again, Plaintiff misquotes Defendants' motion to reach a desired effect. Here is the full quotation: "Because Rule 23(e), as now interpreted by the Seventh Circuit, has the substantive effect of creating a new remedy that did not previously exist in statute, equity, or at common law, in direct violation of the Rules Enabling Act, Rule 23(e) is thus invalid as a matter of law as applied to this case because Rule 23(e) cannot have a substantive effect." (Defs' Mot. to Dismiss at 6.) As this quotation shows, Defendants' argument is that *Rule 23(e)*, not the Seventh Circuit's mandate, is invalid as a matter of law, as applied to this case, based on the Seventh Circuit's recent interpretation of the rule.

Plaintiff misrepresents Defendants' argument as stating that the Seventh Circuit's holding and mandate are invalid so that he can say Defendants are asking this Court to overrule the Seventh Circuit. Defendants are not asking the Court to overrule the Seventh Circuit or disregard the Seventh Circuit's holding or mandate. Defendants are asking this Court to take the Seventh Circuit's decision at face value. If the source of incentive awards flows from Rule 23(e), then what implications does that have on this case?

Based on the Seventh Circuit's opinion as applied herein, the question becomes: Is *Rule 23(e)* now invalid as a matter of law when applied to this case because it violates the Rules Enabling Act? Plaintiff does not dispute that the answer is yes, and his response brief is silent on this point. (Pl.'s Resp., ECF No. 233.)

Defendants are not challenging the Seventh Circuit's mandate. Rather, Defendants are addressing the complicated, unresolved legal issues that follow from the mandate, which have significant jurisdictional implications that this Court must resolve in the first instance. *See United States v. Dingwall*, 6 F.4th 744, 762 (7th Cir. 2021) (stating that the Seventh Circuit is "a court of review, not first view").

Defendants' argument is far from frivolous. As set forth in Defendants' briefing on their motion to dismiss, Rule 23(e), as applied to this case, violates the Rules Enabling Act because it provides substantive relief to Plaintiff. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010); *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 845 (1999). Defendants' position reflects a good-faith effort to address this significant, unresolved legal question and does not warrant sanctions under Rule 11. *See Craig v. Ont. Corp.*, 543 F.3d 872, 875 (7th Cir. 2008) (stating that "[s]ubject-matter jurisdiction is so central to the district court's power to issue any orders whatsoever that it may be inquired into at any time, with or without a motion, by any party or by the court itself").

In fact, Defendants are required to raise the Rule 23(e) issue on remand or risk having the issue deemed waived on appellate review. As the Seventh Circuit has warned, even if a party believes that making an argument in the district court "would be futile," the party is "still required to present a non-frivolous argument for changing the law to the district court rather than raising it for the first time on appeal." *Foreman v. Wadsworth*, 844 F.3d 620, 627 (7th Cir. 2016) (citing Fed. R. Civ. P. 11(b)(2); *Hess v. Bresney*, 784 F.3d 1154, 1161 (7th Cir. 2015) ("It is well settled that arguments not developed before the district court are deemed waived on appeal.")); *see also Brunt v. Seiu*, 284 F.3d 715, 721 (7th Cir. 2002) (affirming district court's denial of Rule 11 sanctions where although the appellants' claims "were barred by existing Supreme Court and Seventh Circuit

case law, it [did] not follow that sanctions must be imposed" because appellants "attempt[ed] to distinguish their case" from the existing case law).

III. Defendants' Reliance on Judge Easterbrook's Statement Is Not Frivolous.

Plaintiff argues that Defendants' position is frivolous because it is based on the "separate statement of Judge Easterbrook on denial of the petition for rehearing" observing that "[t]he Supreme Court must sooner or later resolve this conflict." (Pl.'s Mot. ¶ 7.) This does not make Defendants' motion frivolous. Rather, Judge Easterbrook's observation that the Supreme Court must eventually resolve the conflict underscores the complexity and significance of the legal issues at stake. Defendants' reliance on this statement is not an attempt to overrule the Seventh Circuit but rather a reflection of their good-faith belief that the issues raised merit further consideration.

Judge Easterbrook's statement addressing the new Rule 23(e) issue that arose from the mandate is not a disposition on the merits and does not create law of the case or a new mandate. *See United States v. Griffin*, No. 92-2550, 1993 U.S. App. LEXIS 20466, *4 n.2 (7th Cir. Aug. 11, 1993) (explaining that a "denial of petition for rehearing en banc, even where dissenting opinion was issued, does not constitute disposition on the merits such as would establish law of the case" (citation omitted)); *see also Moore v. Anderson*, 222 F.3d 280, 284 (7th Cir. 2000) (pointing out that a summary denial of a petition for rehearing is "insufficient to confer any implication or inference regarding a court's opinion relative to the merits of a case," and therefore it does "not create law of the case" and does not "expand the compass of [the Seventh Circuit's] original mandate").

Plaintiff also argues that because the Supreme Court denied Defendants' petition for writ of certiorari, Defendants "now ask this Court to sit as a super-Supreme Court." (Pl.'s Mot ¶ 7.) Plaintiff's argument assumes, incorrectly, that the Supreme Court's denial of the petition

constitutes a decision on the merits or law of the case. It does not. A "denial of certiorari does not signify that the Court necessarily agrees with the decision (much less the opinion) below." *Kennedy v. Bremerton Sch. Dist.*, 586 U.S. 1130, 1130 (2019) (Alito, J., statement respecting denial of certiorari). The Supreme Court's denial of the petition did not create law of the case or a mandate. *See id.*

The Seventh Circuit has not yet addressed the follow-on impact of the panel majority's reliance on Rule 23 as a source of substantive relief. The Seventh Circuit's mandate did not include a decision on whether Rule 23 violates the Rules Enabling Act as applied to this case. This Court must decide the issue in the first instance. *See Atkinson v. Garland*, 70 F.4th 1018, 1023 (7th Cir. 2023); *Rexing Quality Eggs v. Rembrandt Enters.*, 996 F.3d 354, 369 n.63 (7th Cir. 2021); *Savory v. Cannon*, 947 F.3d 409, 416 n.4 (7th Cir. 2020).

To illustrate why Plaintiff's motion for sanctions is groundless, consider if Defendants *had not* asked this Court to consider the application of the Rules Enabling Act to this case. In any subsequent appeal, Plaintiff would certainly argue Defendants waived the issue, preventing Seventh Circuit review. Despite Judge Easterbrook's dissent on the petition for rehearing, which is not a decision on the merits, *see Griffin*, 1993 U.S. App. LEXIS 20466, *4 n.2; *Moore*, 222 F.3d at 284, the Seventh Circuit has not resolved the issue of the Act's application to this case. Thus, even if this Court concludes that the mandate forecloses dismissal, it is unquestionable that Defendants have a good faith basis for their motion because the issue *must* be presented here to ensure its preservation for appeal. *See Domka v. Portage County*, 523 F.3d 776, 783 (7th Cir. 2008) (stating that "it is axiomatic that an issue not first presented to the district court may not be raised before the appellate court as a ground for reversal" (citation omitted)). As such, Defendants' motion to dismiss is not frivolous and does not warrant sanctions under Rule 11.

IV. The Case Law Cited by Plaintiff Does Not Support His Position.

Plaintiff cites *Parts & Electric Motors, Inc. v. Sterling Electric, Inc.*, 866 F.2d 228, 234 (7th Cir. 1988), for the proposition that "same issue, new arguments" is not an exception to the mandate rule. (Pl.'s Mot. ¶ 6.) Plaintiff, however, omits a key passage from that case:

> It is, of course, critical to determine what issues were actually decided on the prior appeal in order to define the law of the case. As a general rule, the doctrine *does not extend to issues not presented or decided on the prior appeal* and does not include questions present in a case and which might have been decided but were not.

Parts & Elec. Motors, 866 F.2d at 231 (emphasis added).

The parties did not brief the issue of the effect of the Rules Enabling Act on Rule 23(e) before the Seventh Circuit issued its mandate. This is because the issue did not arise until *after* the panel majority declared that Rule 23(e) provided the source of substantive relief to Plaintiff in the form of an incentive award. Nowhere in the panel majority's opinion is the Rules Enabling Act discussed. This issue was "not presented or decided" on appeal, *see id.*, and therefore, the validity of Rule 23(e) under the Rules Enabling Act falls outside the scope of the mandate rule and the law of the case doctrine, as it was neither expressly nor impliedly decided by the Seventh Circuit.

Plaintiff's reliance on *Parts & Electric Motors* is inapposite because the issue raised in Defendants' motion to dismiss is a new issue, not the "same issue" as Plaintiff claims. Defendants' arguments are reasonable and supported by law. As such, Defendants' motion to dismiss is not frivolous and does not warrant sanctions under Rule 11.

As to the merits of Defendants' motion to dismiss, Plaintiff had every opportunity to argue why this Court should reject the argument that Rule 23(e) is invalid as applied, but he chose not to do so. Plaintiff's sole response to Defendants' motion is that it should not have been brought in the first instance because the Seventh Circuit already decided the issue. (Pl.'s Resp., ECF No. 233.)

But, as discussed above and in Defendants' motion to dismiss, Plaintiff is incorrect. The Seventh Circuit did not consider or decide whether Rule 23(e) is now invalid under the Rules Enabling Act based on the panel majority's interpretation, which gives the Rule substantive effect. By choosing not to respond to the substance of Defendants' argument, Plaintiff has waived any objection, and Defendants' motion to dismiss should be granted. *See Boogaard*, 891 F.3d at 295–96 (affirming dismissal where the plaintiff failed to respond to the substance of the defendant's motion to dismiss); *Lee v. Ne. Ill. Reg'l Commuter R.R. Corp.*, 912 F.3d 1049, 1053–54 (7th Cir. 2019) (same).

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiff's motion for Rule 11 sanctions.

Respectfully submitted,

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Dated: May 15, 2025

/s/ *Samuel D. Branum*
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