No.

IN THE

Supreme Court of the United States

PATRICIA RODRIGUEZ,

Petitioner,

v.

LPP MORTGAGE LTD., LP,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In the instant case, attorney Patricia Rodriguez, and Rodriguez Law Group, Inc. were improperly sanctioned under Rule 11. The firm zealously represented Defendant and Counterclaimant David W. Gates (Gates) and made credible arguments by analogy to existing law in the counter claim. However, the end result lead to an award of attorney fees in the amount of $17,474.50, jointly and severally, as a sanction Gates and his attorney. Attorney for Gates, believes that the counter claim filed by Gates was not frivolous and the order for sanctions under rule 11 should be reversed in its entirety.

1. Whether rule 11 sanctions against attorney Patricia Rodriguez and her law firm should be reversed, as it conflicted with her duty to represent her client zealously with credible arguments.

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PETITION FOR WRIT OF CERTIORARI

Patricia Rodriguez, counsel for appellant in the District Court and Ninth Circuit matter, respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Opinions of the lower courts have not been published. The upholding of the District Court's decision by the Ninth Circuit is attached at Appendix ("App.") at 1-3.

JURISDICTION

The Ninth Circuit upheld the District Court's decision on October 29, 2018. Ms. Rodriguez invokes this Court's jurisdiction under 28 U.S.C. § 1254(1), having timely filed this petition for a writ of certiorari within ninety days of the Ninth Circuit Court's judgment. After having timely filed the notice of appeal on March 17, 2017 within 30 days of the district court's order entered on February 17, 2017.

STATUTORY PROVISIONS

The Statutory Provisions directly involved in this matter are F.R.C.P. Rule 11 as Ms. Rodriguez and Defendant/Appellant were ordered to pay sanctions. See Statutory Language:

(a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of

record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) Motion for Sanctions. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) On the Court's Initiative. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) Nature of a Sanction. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence,

an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) Limitations on Monetary Sanctions. The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) Requirements for an Order. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) Inapplicability to Discovery. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

The Statutory Provision that is indirectly involved is 15. U.S.C. §1635, as a Recession cause of action was brought under this statute which ultimately lead to the award of sanctions against Ms. Rodriguez. Federal Rule15 U.S.C. Section 1635 reads:

(a) Disclosure of obligor's right to rescind

Except as otherwise provided in this section, in the case of any consumer credit transaction (including opening or increasing the credit limit for an open end

credit plan) in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures required under this subchapter, whichever is later, by notifying the creditor, in accordance with regulations of the Bureau, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Bureau, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Bureau, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

(b) Return of money or property following rescission

When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance

of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

(c) Rebuttable presumption of delivery of required disclosures

Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this subchapter by a person to whom information, forms, and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(d) Modification and waiver of rights

The Bureau may, if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

(e) Exempted transactions; reapplication of provisions
This section does not apply to—

(1) a residential mortgage transaction as defined in section 1602(w) [1] of this title;

(2) a transaction which constitutes a refinancing or consolidation (with no new advances) of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property;

(3) a transaction in which an agency of a State is the creditor; or

(4) advances under a preexisting open end credit plan if a security interest has already been retained or acquired and such advances are in accordance with a previously established credit limit for such plan.

(f) Time limit for exercise of right

An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this part have not been delivered to the obligor, except that if (1) any agency empowered to enforce the provisions of this subchapter institutes a proceeding to enforce the provisions of this section within three years after the date of consummation of the transaction, (2) such agency finds a violation of this section, and (3) the obligor's right to rescind is based in whole or in part on any matter involved in such proceeding, then the obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the earlier sale of

the property, or upon the expiration of one year following the conclusion of the proceeding, or any judicial review or period for judicial review thereof, whichever is later.

(g) Additional relief

In any action in which it is determined that a creditor has violated this section, in addition to rescission the court may award relief under section 1640 of this title for violations of this subchapter not relating to the right to rescind.

(h) Limitation on rescission

An obligor shall have no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Bureau, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor, and otherwise complied with all other requirements of this section regarding notice.

(i) Rescission rights in foreclosure

(1) In general Notwithstanding section 1649 of this title, and subject to the time period provided in subsection (f), in addition to any other right of rescission available under this section for a transaction, after the initiation of any judicial or nonjudicial foreclosure process on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if—

(A) a mortgage broker fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

(B) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the Bureau or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice.

(2) Tolerance for disclosures

Notwithstanding section 1605(f) of this title, and subject to the time period provided in subsection (f), for the purposes of exercising any rescission rights after the initiation of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than $35 or is greater than the amount required to be disclosed under this subchapter.

(3) Right of recoupment under State law

Nothing in this subsection affects a consumer's right of rescission in recoupment under State law.

(4) Applicability

This subsection shall apply to all consumer credit transactions in existence or consummated on or after September 30, 1995.

STATEMENT OF THE CASE

In the instant case, attorney Patricia Rodriguez, and Rodriguez Law Group, Inc. were improperly sanctioned under F.R.C.P. Rule 11 due to bringing a "counterclaim for an improper purpose." Ms. Rodriguez zealously represented Defendant/Appellant and Counterclaimant David W. Gates (Gates) in the District Court and made credible arguments by analogy to existing law in the counterclaim. In the Counterclaim, Ms. Rodriguez, counsel for Gates brought a recession claim under 15 U.S.C §1635 against the Plaintiff/Respondent.

The Recession claim was brought under the Truth in Lending Act of 1968 (TILA) 15 U.S.C §1635, which "protects a consumer from fraud, deception, and abuse by requiring the creditor to disclose to the consumer certain information about the subject financing. (15 U.S.C. § 1601; see, e.g., 12 C.F.R. §§ 1026.17-1026.23 (2016).) It generally entitles a consumer who has secured a credit transaction with a lien on the consumer's principal dwelling . . . to rescind a loan transaction within three business days. ([15 U.S.C.] § 1635(a).) Moreover, the rescission period is extended to 'three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first,' if the TILA disclosures (including notice of the right to rescind) are not provided. ([15 U.S.C.] § 1635(f); see 12 C.F.R. § 1026.23(a)(3)(i) (2016).)" (*U.S. Bank National Assn. v. Naifeh* (2016) 1 Cal.App.5th 767, 779-780.)

"This right of rescission is further explained in Section 226.23(a)(3) of Regulation Z of the Federal Reserve Board: [¶] The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice [of the right to rescind], or delivery of all material disclosures, whichever occurs last. *If the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation.*" (*Jackson v. Grant* (9th Cir. 1989) 890 F.2d 118, 120 (*Jackson*)).

The conditional right to rescind is found in section 1635(f). The pertinent portion of section 1635(f) reads as follows: "An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this chapter [15 USCS §§ 1631 et seq.] have not been delivered to the obligor . . ."

Here, Gates' loan was a qualifying transaction, and he sought both remedies. It's undisputed that Gates has never received material disclosures, including his right to rescind, allowing him to give notice of rescission within three years of the consummation of the loan on September 29, 2005. Gates argued that Washington Mutual Bank, FA, did not agree to extend credit to Gates as of the date of the loan on September 29, 2005, but only acted as a broker to find a lender, therefore, the identity of the true lender was unknown and no loan transaction was "consummated." On or about October 17, 2011, Gates exercised his right to rescind under 15 U.S.C. §1635.

As the district court found, however, Gates sought the recession remedy too late. Ms. Rodriguez holds that the Counterclaim arguments were not frivolous or sanctionable and were relied by analogy on the following legal authority found in the section below.

REASONS FOR GRANTING THE PETITION

A. Counsel for Appellant, Ms. Rodriguez Should Not be Held Responsible For Sanctions Under Rule 11 As The Counterclaim Was Not Brought For an Improper Purpose

It is well-established that lack of existing authority does not render a claim frivolous. Remarkably, a claim is not untenable even if the existing authority is directly adverse, provided there is a tenable basis to argue for an extension, modification, or reversal of existing law. (See, e.g., Rest.3d Law Governing Lawyers, § 110(1), p. 171; Model Rules, rule 3.1.)

Instructively, this Court in *Operating Engineers Pension Trust v. A–C Co.* (1988) 859 F.2d 1336, held that "[r]ule 11 must not be construed so as to conflict with the primary duty of an attorney to represent his or her client zealously. Forceful representation often requires that an attorney attempt to read a case or an agreement in an innovative though sensible way. Our law is constantly evolving, and effective representation sometimes compels attorneys to take the lead in that evolution. Rule 11 must not be turned into a bar to legal progress." (*Id.* at p. 1344.) *Hunter v. Earthgrains Co. Bakery* (4th Cir.2002) 281 F.3d 144 (*Hunter*) is a case that notoriously illustrates the wisdom of these principles. In *Hunter*, a federal district

court in the Fourth Circuit entered summary judgment against the plaintiffs in an employment discrimination case on the ground that the plaintiffs were required to arbitrate their claims. (*Id.* at p. 148.) The district court went on to suspend the plaintiff's lawyer for five years as a sanction under Rule 11 on the ground that "first and foremost," the lawyer had asserted a legal position on the arbitration issue that was directly contrary to existing Fourth Circuit precedent. (*Id.* at p. 150.) The district court judge characterized the attorney's argument as "'utter nonsense'" and "'paradigmatic of a frivolous legal contention.'" (*Id.* at p. 153.)

Nonetheless, the Fourth Circuit Court of Appeals *reversed the sanction order*. Although the appellate court agreed that the argument advanced by the lawyer was directly contrary to existing Fourth Circuit authority, yet, the appellate court noted other decisions that had rejected that position. (*Hunter, supra,* 281 F.3d at pp. 154.) Also, as of the time the district court issued its sanction order, the United States Supreme Court had, in a different case, adopted the legal position advocated by the plaintiffs' lawyer. (*Id.* at pp. 155.) *Hunter* court observed, "[I]f it were forbidden to argue a position contrary to precedent, 'the parties and counsel who in the early 1950s brought the case of *Brown v. Board of Ed.*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), might have been thought by some district court to have engaged in sanctionable conduct for pursuing their claims in the face of the contrary precedent of *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896). The civil rights movement might have died aborning.' [Citation.]" (*Hunter, supra,* 281 F.3d at p. 156, quoting *Blue v. United States Dept. of Army* (4th Cir.1990) 914 F.2d 525, 534; see also *Cochran*, Rule 11: The Road to

Amendment (1991) 61 Miss. L.J. 5, 9 & fns. 16, 19; Stein, Rule 11 in the Real World: How the Dynamics of Litigation Defeat the Purpose of Imposing Attorney Fee Sanctions for the Assertion of Frivolous Legal Arguments (1990) 132 Fed. Rules Dec. 309, 318.)

As relevant to the parties in this case, these principles have been equally applied to California Code of Civil Procedure section 128.7 that authorizes sanctions in frivolous filings. In California, the trial court may impose sanctions under Code of Civil Procedure section 128.7. The reviewing court applies an objective standard for determining frivolity for purposes of section 128.7. (*Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 167 (*Guillemin*).) "[T]here are basically three types of submitted papers that warrant sanctions: factually frivolous (not well grounded in fact); legally frivolous (not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law); and papers interposed for an improper purpose. [Citations.]" (*Ibid.*)

It has been held that naturally, the sanction rule "must not be construed so as to conflict with the primary duty of an attorney to represent his or her client zealously. Forceful representation often requires that an attorney attempt to read a case or an agreement in an innovative though sensible way. Our law is constantly evolving, and effective representation sometimes compels attorneys to take the lead in that evolution." (*Guillemin* at pp. 167–168.) Thus, a notion that an advocate may zealously protect his or her client's interests must not be sanctionable. "'Lawyers in an adversarial system are free to inflict hard blows on their opponents as part of their responsibility to

zealously guard the interests of their clients....' (*Caro v. Smith* (1997) 59 Cal.App.4th 725, 739, 69 Cal.Rptr.2d 306.) As one authority has observed, 'One of the most serious threats to zealous advocacy is the imposition of sanctions against lawyers who file pleadings or make arguments that are deemed to be "frivolous."' (Freedman & Smith, Understanding Lawyer's Ethics (2d ed. 2002) § 4.07, p. 93.) Attorneys fearful of a retaliatory lawsuit 'might temper the zealousness of their advocacy to avoid increasing the incentive for the adversary to pursue' such a suit. (*Kracht v. Perrin, Gartland & Doyle* (1990) 219 Cal.App.3d 1019, 1028, 268 Cal.Rptr. 637 [discussing assignment of malpractice claims to former adversaries]; see *Crystal, supra*, 32 Wake Forest L.Rev. at pp. 687–688.) Moreover, 'overuse of the charge of frivolousness would chill not only the zeal but the creativity of lawyers who operate on the leading edge of legal development. Even "settled" legal questions must be open to challenge at some point, or else the law would stultify.' (2 Hazard & Hodes, The Law of Lawyering (3d ed. 2010) § 27.12, p. 27–26, italics added (Hazard & Hodes); see also 1 Mallen & Smith, supra, § 6:17, pp. 804–805.) 'The law ... is not immutable.

Most recently, the Third District California Court of Appeal reversed the sanctions order under section 128.7 in *Ponce v. Wells Fargo Bank* (March 13, 2018 Cal.Rptr.3d ----2018 WL 1281681) holding that: (1) nonfrivolous novel argument could be made that original beneficiary was not covered by release between trustors and purchaser of property at trustee's sale, and thus sanctions were not warranted based on frivolity; (2) fact that complaint was fourth successive complaint against original beneficiary did not warrant sanctions based on it being presented for purpose of harassment; and (3) as an issue of apparent first

impression, nonfrivolous complaint could not be presented for improper purpose, and thus sanctions on that ground were not warranted. (*Ibid.*)

As mentioned above, TILA authorizes a borrower to rescind the loan agreement and receive damages and attorney fees. Section 1635 describes the consumer credit transactions to which a right of rescission may apply. Section 1640 addresses damages. The conditional right to rescind is found in section 1635(f). The pertinent portion of section 1635(f) reads as follows: "An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this chapter [15 USCS §§ 1631 et seq.] have not been delivered to the obligor . . ."

Here, the counterclaimant's loan was a qualifying transaction, and he sought both remedies. Its undisputed that Defendant/Appellant has never received material disclosures, including his right to rescind, allowing him to give notice of rescission within three years of the consummation of the loan on September 29, 2005. Gates argued that Washington Mutual Bank, FA, did not agree to extend credit to Gates as of the date of the loan on September 29, 2005, but only acted as a broker to find a lender, therefore, the identity of the true lender was unknown and no loan transaction was "consummated." (FACC ¶7.) On or about October 17, 2011, Gates exercised his right to rescind under 15 U.S.C. §1635.

In support of Ms. Rodriguez's counterclaim arguement is the United States Supreme Court's decision in *Jesinoski v. Countrywide Home Loans, Inc.* (2015) ---U.S. ----, 135 S.Ct. 790, 190 L.Ed.2d 650 (*Jesinoski*). There, the borrowers had sent a rescission letter three years after refinancing their home, and the lender's successor did not acknowledge its validity. (*Jesinoski, supra*, 135 S.Ct. at p. 791.) Thereafter, about a year later— in total four years after the transaction originating the loan—the borrowers filed a lawsuit seeking to enforce the rescission. (*Ibid.*) The federal district court and the Eighth Circuit Court of Appeals concluded there had been no rescission because the borrowers had not filed a lawsuit within three years of the date of the loan's consummation. (*Ibid.*)

The Supreme Court later reversed this decision, holding that the borrower need only send the notice of rescission, not file a lawsuit, within the three-year period. The court explained that section 1635(a) sets forth unequivocally how the right to rescind is to be exercised: "It provides that a borrower 'shall have the right to rescind ... by notifying the creditor, in accordance with regulations of the Board, of his intention to do so' (emphasis added). The language leaves no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind. It follows that, so long as the borrower notifies within three years after the transaction is consummated, his rescission is timely. The statute does not also require him to sue within three years." (*Jesinoski, supra*, 135 S.Ct. at p. 792.)

Per *In re Ramsey* (Bankr. 9th Cir. 1994) 176 B.R. 183, 187, loan "consummated" on the date borrower signed the promissory note and deed of trust and agreed to borrow

money from an identifiable lender, notwithstanding later modification to amount financed. In *Jackson v. Grant* (9th Cir. 1989) 890 F.2d 118, 119, in which no lender was identified, the three years statute was tolled.

Based on the above-noted legal authority by analogy, Gates argued in his counterclaim that because Washington Mutual Bank, FA, did not agree to extend credit to Gates as of the date of the loan on September 29, 2005, but only acted as a broker to find a lender, the identity of the true lender was unknown and no loan transaction was "consummated." (FACC ¶7; *In re Ramsey*, *supra*, 176 B.R. at p. 187; *Jackson v. Grant*, *supra*, at pp. 120-121.) Gates further argued that the three-year to sue deadline was tolled for this reason as to Washington Mutual and all its later assignees. Even if not persuasive in the district court's view, the argument was reasonable by analogy to *Ramsey* and *Jackson* and was certainly not frivolous. For the same reason, it was also not improper. Where there is no legal or factual basis for a claim, improper purpose may be deduced. (See *Huettig & Schromm, Inc. v. Landscape Contractors*, 790 F.2d 1421, 1427 (9th Cir.1986).)

Gates further explained his delay in filing the notice of rescission. It was due to change of law following the 2015 decision in *Jesinoski.*, *supra*, 135 S. Ct. 790, when he learned that he did not have to file the lawsuit, but only the notice within three years of consummation of the loan. The *Jesinoski* decision made it clear that a obligor must file notice within three years of the transaction as opposed to filing the lawsuit as held previously in *Beach v. Ocwen.*

Therefore, attorney Patricia Rodriguez, and Rodriguez Law Group, Inc. were improperly sanctioned

under Rule 11. The firm zealously represented Gates and made credible arguments by analogy to existing law in the counterclaim. Therefore, the counterclaim filed by Gates was not frivolous and the order for sanctions under rule 11 should be reversed in its entirety.

CONCLUSION

For the foregoing reasons, Mr. Rodriguez respectfully requests that the petition for a writ of certiorari be granted.

Dated: August 26, 2019

Respectfully submitted,

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