21-1331

COVER PAGE & CAPTION

Rule-34.1

IN THE SUPREME COURT OF THE UNITED STATES

Marcus A. Murphy, *Plaintiff – Appellant,*

v.

Amanda Cameron Dalton, also known as Mandy Moore;

Blattner-Energy, *Defendant – Appellees.*

On Petition for Writ of Certiorari to the United States

Court of Appeals for the Fifth Circuit

Plaintiff – Appellant "Murphy's Primary-Brief and

Petition for Writ of Certiorari

Marcus A. Murphy, *Plaintiff – Appellant,*

5795 Southmoor Dr Lot 53, Fountain, CO 80817;

(720) 256-0991; MarcusMurphy1975@hotmail.com

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Rule-14.1(a)

QUESTIONS PRESENTED FOR REVIEW

Rule-14.1(a)

Appeal of Order granting *Defendant – Appellees'* Motions to Dismiss & for Sanctions, and Judgment dismissing all claims on May 6, 2021 (5-6-21), by the United States District Court for the Northern District of Texas-Amarillo Division (ND-TX); and Appeal of the Affirmation of the district-court's finding on Oct. 27, 2021 (10-27-21) by the United States Court of Appeals for the Fifth Circuit (5th-Cir.), based on improper factual-findings on behalf of the sophomoric district-court. **Required Showing (Issues & Standards presented for Review)** – The main-issue is the liability of *Defendant – Appellees* for the violent-attack & subsequent malicious-prosecution of Correctional-Officer Murphy at his secondary-residence in his drive-way while in T.D.C.J.

uniform after a 12-hour shift at the Maximum-Security Prison, which was allegedly perpetrated by *Defendant – Appellee*-"Moore", while utilizing the company-truck & uniform of *Defendant – Appellee*-"Blattner-Energy", as an employee, who was storing a loaded-handgun in the glovebox & brandishing it at her mother's house. In addition, the secondary-issue is the *novel* legal-issue in general of whether the district-court abuses its discretion when it arbitrarily & capriciously assesses over $20K in Sanctions-Fines, *pre*-Answer without *any* findings of fact whatsoever in its Judgment against a *Pro-Se* Victim for even daring to come into the *King's* Court for Justice, in order to deter supposedly frivolous-lawsuits against multi-State, multi-million-dollar energy-companies that commit torts in Texas with their ex-con employees. Beyond that, the legal-issue & standard of review is whether the district-court committed reversible-error by

making findings of fact that are Clearly-Erroneous, and/or by Abuse of Discretion interpreting relevant case-law; specifically, whether the district-court erred by ordering a Dismissal with Prejudice on May 6, 2021 (5-6-21), and/or by ordering Sanctions against *Pro-Se* Plaintiff/Victim-"Murphy" on May 6, 2021 (5-6-21). Clearly, the district-court abused its discretion when it arbitrarily & capriciously assessed over $20K in Sanctions-Fines, *pre-*Answer without *any* findings of fact whatsoever in its Judgment against a *Pro-Se* Victim for even daring to come into the *King's* Court for Justice, in order to deter supposedly frivolous-lawsuits against multi-State, multi-, million-dollar energy-companies that commit torts in Texas with their ex-con employees. Obviously, the district-court made findings of clearly-erroneous facts when it *implicitly* found that *Plaintiff – Appellant-* "Murphy's lawsuit was Frivolous, but also when it

explicitly failed to make *any* correct factual-findings in its Judgment! The district-court abused its discretion by allowing *Defendant – Appellees* to not Answer for almost a year now & counting, by granting *Defendant – Appellees'* frivolous Rule-12(b) dismissal-motions, and by allowing *Defendant – Appellees* to stall *Plaintiff – Appellant*-"Murphy's initiative with frivolous Rule-12(b) dismissal-motions, *pre*-Answer. This diversity-jurisdiction (28 USC § 1332) Civil-Complaint (ECF-3/ROA. 3) alleges Trespassing, Malicious-Prosecution, and Intentional-Infliction of Emotional-Distress (I.I.E.D.), as well as Present & Future Monetary-Damages suffered by *Plaintiff – Appellant*-"Murphy" and caused by *Defendant – Appellees*, under Texas-State Common-Law and Case-Law.

PARTIES TO PROCEEDING AND RELATED CASES

Rule-14.1(b)(i)

Marcus A. Murphy v. Amanda Cameron Moore, Blattner Energy, No. 2:20-cv-00190-Z-BR, U.S. District Court for the Northern District of Texas (Amarillo). Judgment entered May 6, 2021 (5-6-21) by Judge Matthew J. Kacsmaryk.

Marcus A. Murphy v. Amanda Cameron Dalton, also known as Mandy Moore; Blattner-Energy, No. 21-10589, U.S. Court of Appeals for the Fifth Circuit. Judgment entered Oct. 27, 2021 (10-27-21) by Judges Costa, Ho, and Duncan.

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Rule-14.1(c)

I. (¶ 1.) Introduction – If it pleases the Court, comes now, Marcus Allen Murphy, *Plaintiff – Appellant*, who offers this Appeal and Petition for Writ of Certiorari. In accordance with Supreme Court Rules 10, 11, & 20 (2017), *Plaintiff – Appellant* "Murphy" appeals based on 28 U.S.C. §§ 1254, 1651, & 2101, which provide for an appeal of a final order by the United States Court of Appeals for the Fifth Circuit. Specifically, 28 U.S.C. § 1254(1) – Courts of Appeals; certiorari; certified questions provides that: "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; ..." Furthermore, 28 U.S.C. § 2101(c) – Supreme Court; time for appeal or certiorari; docketing; stay provides that: "Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days." Finally, 28 U.S.C. § 1651(a) – Writs provides that: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law...."

A. (¶ 2.) Complaint-Background (Argument) – Assertion of Final-Judgment: *Plaintiff – Appellant*-"Murphy" asserts that the district-court's Order granting *Defendant – Appellees'* Motions to Dismiss & for Sanctions, and Judgment dismissing all claims on May 6, 2021 (5-6-21), and the appellate-court's Affirmation of the district-court's Dismissal on Oct. 27, 2021 (10-27-21), based on clearly-erroneous incorrect factual-findings by the district-court, was a Final-Judgment. *Plaintiff – Appellant*-"Murphy" waives Oral-Argument. Filing Dates: *Plaintiff – Appellant*-"Murphy" suffered a wrongful, unauthorized Temporary-Trespass by *Defendant – Appellee*-"Blattner-Energy's off-duty employee, *Defendant – Appellee*-"Moore", on the evening of Mon., Aug. 13, 2018 (8-13-18) at *Plaintiff – Appellant*-"Murphy's secondary-residence, 307 Garrett St, Borger, TX 79007; Subsequently, *Defendant – Appellee*-"Moore" falsely-testified that *Plaintiff – Appellant*-"Murphy" verbally-threatened her, for which *Plaintiff – Appellant*-"Murphy" was acquitted by a jury of his peers in the Borger (TX) Municipal-court on Wed., Dec. 5, 2018 (12-5-18); *Plaintiff – Appellant*-"Murphy" filed this Complaint on Aug. 12, 2020 (8-12-20) (ECF-3, ROA.3); The Summons was Issued by the district-court on 9-4-20 (ECF-6/ROA. 6); *Plaintiff – Appellant*-"Murphy" performed formal-service of *Defendant – Appellee*-"Moore" on Oct. 9, 2020 (10-9-20); *Defendant – Appellee*-"Moore" filed a Motion to Dismiss for Failure to state a Claim on Oct. 30, 2020 (10-30-20) (ECF-7, ROA. 7); *Plaintiff – Appellant*-"Murphy"

performed formal-service of *Defendant – Appellee*-"Blattner-Energy" on Nov. 5, 2020 (11-5-20) (*Defendant – Appellee*-"Blattner-Energy's Registered-Agent in the Amarillo (TX)-office refused to accept service, despite being obligated to do so by Texas State-law. Therefore, *Defendant – Appellee*-"Blattner-Energy" was formally-served on 11-5-20, five-days before the 90-day service-deadline of 11-10-20.); Both Affidavits of Service were then filed on Nov. 19, 2020 (11-19-20) (ECF-8&9, ROA. 8&9); *Plaintiff – Appellant*-"Murphy" filed a Response on Nov. 19, 2020 (11-19-20) (ECF-11, ROA. 11); *Defendant – Appellee*-"Blattner-Energy" filed a Motion to Dismiss for Defective-Service & Failure to state a Claim on Nov. 25, 2020 (11-25-20) (ECF-12&13, ROA. 12&13); Both Affidavits of Service were then re-filed on Dec. 15, 2020 (12-15-20) (ECF-15&16, ROA. 15&16); *Plaintiff – Appellant*-"Murphy" filed a Response on Dec. 16, 2020 (12-16-20) (ECF-17, ROA. 17); *Defendant – Appellee*-"Blattner-Energy" filed a Reply on Dec. 29, 2020 (12-29-20) (ECF-18, ROA. 18); the district-court issued an Order setting Deadlines on Jan. 11, 2021 (1-11-21) (ECF-19, ROA. 19); *Defendant – Appellee*-"Blattner-Energy" simultaneously-filed a Motion for Sanctions on Jan. 19, 2021 (1-19-21) (ECF-21&22, ROA. 21&22); *Defendant – Appellee*-"Moore" simultaneously-filed a Motion for Sanctions on Jan. 19, 2021 (1-19-21) (ECF-23, ROA. 23); *Defendant – Appellee*-"Moore" simultaneously-filed a delinquent-Reply on Jan. 19, 2021 (1-19-21) (ECF-24, ROA. 24); The district-court issued another-Order

setting sooner-Deadlines, under the pretext "to expedite the disposition of this case", on Jan. 20, 2021 (1-20-21) (ECF-25, ROA. 25); *Plaintiff – Appellant*-"Murphy" filed both-Responses on Jan. 27, 2021 (1-27-21) (ECF-26&27, ROA. 26&27); *Defendant – Appellee*-"Blattner-Energy" simultaneously-filed a Reply on Jan. 28, 2021 (1-28-21) (ECF-28, ROA. 28); *Defendant – Appellee*-"Moore" simultaneously-filed a Reply on Jan. 28, 2021 (1-28-21) (ECF-29, ROA. 29); the district-court issued an Order granting *Defendant – Appellees'* Motions to Dismiss & for Sanctions, and Judgment dismissing all claims on May 6, 2021 (5-6-21) (ECF-30, ROA. 30); *Defendant – Appellee*-"Moore" filed a duplicative-Motion for Attorney Fees on May 13, 2021 (5-13-21) (ECF-31, ROA. 31); *Defendant – Appellee*-"Blattner-Energy" filed a repetitive-Motion for Attorney Fees on May 14, 2021 (5-14-21) (ECF-32, ROA. 32); and *Plaintiff – Appellant*-"Murphy" filed a Notice of Appeal on June 4, 2021 (6-4-21) (ECF-33/ROA. 33). The Fifth-Circuit (5th-Cir.) appellate-court Affirmed the district-court's Order granting *Defendant – Appellees'* Motions to Dismiss & for Sanctions, and Judgment dismissing all claims on Oct. 27, 2021 (10-27-21), based on clearly-erroneous incorrect factual-findings by the district-court. **Argument**: *Plaintiff – Appellant*-"Murphy" offers the following in-depth analysis of Rule 11 – Attorney-Fees. Rule-11(c) regulates who may be sanctioned for violations of Rule 11(b), as well as how the sanction process may be initiated. Rule-11(c) also governs the extent and

limitations of the court's sanctioning-power. If a sanction includes payment of an opposing party's attorney's fees or associated-costs, courts generally use a "lodestar" method of calculating the appropriate-amount. "The lodestar is determined by multiplying the number of hours reasonably expended by the reasonable hourly-rate." *View Engineering, Inc. v. Robotic Vision Systems, Inc.*, 208 F.3d 981, 987 (Fed. Cir. 2000). *Skidmore Energy, Inc. v. KPMG*, 455 F.3d 564, 568 (5th Cir. 2006), cert. denied, 127 S. Ct. 524, 166 L. Ed. 2d 371 (U.S. 2006) (upheld lodestar-analysis which multiplied the reasonable number of hours expended in defending the suit by the reasonable hourly-rates; reasonableness of the hours expended was supported by the complexity of the litigation, the number of individual and foreign defendants, and the number of claims asserted). It should be noted, however, that the amount of fees recoverable from the offending-party is limited to fees "incurred as a direct-result of the [violation]." *Divane v. Krull Elec. Co., Inc.*, 200 F.3d 1020, 1030 (7th Cir. 1999) (error to impose all fees incurred in litigation where at least some of such expenses are unrelated to violations of Rule-11); *Cf. B & H Medical, L.L.C. v. ABP Admin., Inc.*, ___ F.3d ___ (6th Cir. 2008) (awarded $10,000 in attorneys-fees for baselessly opposing summary-judgment rather than $152,846 requested; district-court opined "Plaintiff's claims suffered from fundamental and rather glaring evidentiary-defects ... it should not have been an especially onerous or time-consuming task to prepare a summary-

judgment motion that pointed out these deficiencies"). Fees for government-attorneys are calculated on the same-basis as prevailing-rates in the private-sector. *See, e.g., Napier v. Thirty or More Un-identified Federal Agents, Employees or Officers*, 855 F.2d 1080, 1092-93 (3d Cir. 1988) (assistant United-States attorney should be billed at appropriate market-rate in private-sector, even in the absence of a regular billing-rate for government-lawyers). The court may *not* award attorney's fees under Rule-11 when sanctions are imposed *sua-sponte*, but may award attorney's fees under its inherent-powers *if* the person being sanctioned has acted in bad-faith. *MHC Inv. Co. v. Racom Corp.*, 323 F.3d 620, 627 (8th Cir. 2003). *See, e.g., Willhite v. Collins*, 459 F.3d 866, 869-870 (8th Cir. 2006) (upheld sanction of one-half of plaintiff's attorney's fees, amounting to $66,698.30, when district-court had said sanctions were under both Rule-11 and its inherent authority but did not state authority for each-sanction imposed). Therefore, it is respectfully submitted, in *Plaintiff – Appellant*-"Murphy's humble, professional legal-opinion as an out-of-State lawyer but not licensed in the State of Texas as a licensed-Attorney & not a member of the bar of the district-court, that: [1.] In accordance with Rule-11(b)(1&2)&(c)(3), *Plaintiff – Appellant*-"Murphy's Pleadings, Motions, and Other Papers & Representations to the Court were [11(b)(1)] 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 were warranted by existing-law or by a nonfrivolous-argument for extending, modifying, or reversing existing-law or for establishing new-law; but *Plaintiff – Appellant*-"Murphy nonetheless showed cause therein that he had not violated Rule-11(b). [2.] *Plaintiff – Appellant*-"Murphy" is a *pro-se* litigant whose behavior was reasonable. A party's *pro-se* status is a factor that is weighed in determining whether the party's behavior was reasonable under the standard of Rule-11. *See, e.g., Kennedy v. National Juvenile Detention Ass'n*, 187 F.3d 690, 696 (7th Cir. 1999), cert. denied, 528 U.S. 1159, 120 S. Ct. 1169, 145 L. Ed. 2d 1079 (2000) (affirming conclusion that claim was not frivolous, "especially considering the plaintiff's lack of legal-representation"); *Moore v. Time, Inc.*, 180 F.3d 463, 463 (2d Cir. 1999), cert. denied, 528 U.S. 932, 120 S. Ct. 331, 145 L. Ed. 2d 258 (1999) (affirming district-court's denial of Rule-11 sanctions on attorney who appeared *pro-se* where district-court had reasoned that attorney was "not sophisticated"; however, also imposing sanctions under Federal Rule of Appellate Procedure 38 for frivolous-appeal; attorney had received "clear-warning" from district-court and had previously brought other frivolous-appeals to appellate-court). APPLICATIONS – Unsuccessful Pleadings and Motions: Under the previous-version of Rule-11 (*i.e.*, before 2009), a violation occurred only when a client or attorney engaged in improper-behavior or failed to demonstrate due-care. Thus,

mere failure to prevail on a particular pleading or motion does not, of itself, establish a violation of Rule-11. *Altran Corp. v. Ford Motor Co.*, 502 U.S. 939, 112 S. Ct. 373, 116 L. Ed. 2d 324 (1991) (if party's position is reasonable, a loss on the merits does not trigger Rule-11 sanctions). *See, e.g., Morris v. Wachovia Securities, Inc.*, 448 F.3d 268, 278 (4th Cir. 2006) (Rule-11(b) violation triggers sanctions only when violation renders the entire-complaint a "substantial-failure."); *Obert v. Republic Western Ins. Co.*, 398 F.3d 138, 146 (1st Cir. 2005) (objectively-hopeless motion, filed in good-faith, need not invariably be basis for sanctions; to impose sanctions in such cases on a routine-basis "would tie courts and counsel in knots"); *Hartmarx Corp. v. Abboud*, 326 F.3d 862, 868 (7th Cir. 2003) (reasonable-position on close-question under new-rule is not sanctionable even if other position is superior). *But cf., Holgate v. Baldwin*, 425 F.3d 671, 677 (9th Cir. 2005) (presence of one non-frivolous claim does not immunize entire-complaint from Rule-11). This standard will presumably carry over into the current-version of Rule-11 (*i.e.*, as of 2009). Improper Rule-11 Motions: Attorneys are cautioned that because Rule-11 violations may be raised by motions, such motions themselves are subject to review under Rule-11, and can be the subject of additional-allegations of violations of Rule-11. *But see, Blue v. U.S. Dept. of Army*, 914 F.2d 525, 548 (4th Cir. 1990), cert. denied, 499 U.S. 959, 111 S. Ct. 1582, 113 L. Ed. 2d 646 (1991) and cert. denied, 499 U.S. 959, 111 S. Ct. 1580, 113 L.

Ed. 2d 645 (1991) ("Litigants should be able to defend themselves from the imposition of sanctions without incurring further-sanctions."). [3.] In accordance with the requirement for Reasonable-Inquiry, *Plaintiff – Appellant* "Murphy" certified to the district-court that the document or advocacy was based upon his best knowledge, information or belief, which was in turn based upon an inquiry that was reasonable in the circumstances of this particular case. *Plaintiff – Appellant* "Murphy" is entitled to the opportunity to conduct *post*-litigation discovery to fill any alleged-deficiencies in information. *See, e.g., Roger Edwards, LLC v. Fiddes & Son Ltd.*, 437 F.3d 140, 142 (1st Cir. 2006) ("To support a finding of frivolousness, some degree of fault is required, but the fault need not be a wicked or subjectively reckless state of mind; rather an individual 'must, at the very least, be culpably-careless to commit a violation.' "); *Fabriko Acquisition Corporation v. Prokos*, ___ F.3d ___ (7th Cir. 2008) (suit for damages caused by alleged-disclosure of facts material to transaction that never took place sanctionable under Rule-11); *U.S. Bank Nat. Ass'n, N.D. v. Sullivan-Moore*, 406 F.3d 465, 470 (7th Cir. 2005) (empty-head but pure-heart is no excuse); *Belleville Catering Co. v. Champaign Market Place, L.L.C.*, 350 F.3d 691, 692-93 (7th Cir. 2003) (reliance on lease-agreement's erroneous-description of corporation as Missouri-corporation does not meet requirement of reasonable-inquiry; "counsel must secure jurisdictional-details from original-sources"); *Antonious v.*

Spalding & Evenflo Companies, Inc., 275 F.3d 1066, 1072 (Fed. Cir. 2002) ("Rule-11 requires that the attorney not rely solely on the client's claim-interpretation, but instead perform an independent claim-analysis."); *View Engineering, Inc. v. Robotic Vision Systems, Inc.*, 208 F.3d 981, 984-86 (Fed. Cir. 2000) (upholding sanctions for patent-infringement suit filed on basis of no facts; only-basis for filing was belief of key-person, which was in turn based on knowledge of company's own patents, opponent's advertising, and opponent's statements to customers; financial-inability to purchase opponent's machine for inspection prior to lawsuit does not provide defense to sanctions; opponent's refusal to permit pre-litigation examination of its machine also irrelevant because opponent has no duty to permit such pre-litigation discovery); *Hernandez v. Joliet Police Dept.*, 197 F.3d 256, 264 (7th Cir. 1999) (failure to perform basic legal-research to learn that suit against state's attorney's office was barred by 11th-Amendment to federal-constitution). *But see Commercial Cleaning Services, L.L.C. v. Colin Service Systems, Inc.*, 271 F.3d 374, 386 (2d Cir. 2001) (error for district-court not to provide sanctioned-plaintiff with opportunity to conduct discovery to fill deficiencies in information; Rule-11(b) does not require plaintiff "to know at the time of pleading all facts necessary to establish the claim"); *Dubois v. U.S. Dept. of Agriculture*, 270 F.3d 77, 82 (1st Cir. 2001) (duty to investigate need not be pursued until absolute-certainty is achieved); *Garr v. U.S. Healthcare, Inc.*, 22

F.3d 1274, 1278 (3d Cir. 1994) (the "obligation personally to comply with the requirements of Rule 11 clearly does not preclude the signer from any reliance on information from other persons"). *See also Health Net, Inc. v. Wooley*, ___ F.3d ___ (5th Cir. 2008) (vacating district court sanctions imposed on plaintiff based on district court's erroneous conclusion that it did not have jurisdiction); *Circuit City Stores, Inc. v. Najd*, 294 F.3d 1104 (9th Cir. 2002) (abuse of discretion to impose sanctions on party who would have prevailed, but for Supreme Court's intervening contrary decision in unrelated case while instant appeal was pending). This is a change in language from the previous Rule 11 standard (*i.e.*, before 2009), and is intended to lower the burden on the proponent of a document. *Hadges v. Yonkers Racing Corp.*, 48 F.3d 1320, 1329 30 (2d Cir. 1995) (amended Rule 11 permits attorney to rely on objectively reasonable representation of client; thus, duty of attorney to make inquiry is relaxed). However, an attorney operates under a "continuous obligation to make inquiries." *Battles v. City of Ft. Myers*, 127 F.3d 1298, 1300 (11th Cir. 1997) (failure to do so may be sanctionable if attorney advocates position that has become untenable). Moreover, although the matter is still uncertain, the unwillingness of a party's opponent to cooperate in a pre litigation examination of facts might not justify a party's failure to undertake a reasonable inquiry. *Compare View Engineering, Inc. v. Robotic Vision Systems, Inc.*, 208 F.3d 981, 986 (Fed. Cir. 2000) (an

opponent "is not required to allow pre-litigation discovery" and lack of such an opportunity is not a defense to sanctions for failure to make reasonable-inquiry), *with Hoffman-La Roche Inc. v. Invamed Inc.*, 213 F.3d 1359 (Fed. Cir. 2000) (reasonable-inquiry met where claimants sought information from opponent prior to litigation, but were rejected; opponent was bound by confidentiality-agreement with third-party, but had not sought any sort of release; opponent released samples of drug at issue, but claimants were unable to reverse-engineer samples to determine if patent-infringement had occurred). [4.] In accordance with Rule-11(b)(1) prohibiting Bad-Faith, *Plaintiff – Appellant*-"Murphy" certified that his documents, & his arguments on behalf of those documents, had no improper-purpose, such as harassment or undue delay or expense. *See, e.g., F.D.I.C. v. Maxxam, Inc.*, 523 F.3d 566, 584 (5th Cir. 2008) (legitimate-tactics, not independently-improper, considered-collectively, caused harassment and delay and therefore violated Rule-11); *Kountze ex rel. Hitchcock Foundation v. Gaines*, ___ F.3d ___ (8th Cir. 2008) (sanctions affirmed when virtually-identical claims had previously been dismissed with prejudice and therefore second-suit filed for improper-purpose); *Whitehead v. Food Max of Mississippi, Inc.*, 332 F.3d 796 (5th Cir. 2003), cert. denied, 540 U.S. 1047, 124 S. Ct. 807, 157 L. Ed. 2d 694 (2003) (*en banc*) (even a nonfrivolous-submission to court may be sanctionable when document was submitted for improper-

purpose; noting that excessive-motions can constitute harassment, and even legitimate-documents that also "use abusive-language toward opposing-counsel" can trigger sanction). *But see Building and Const. Trades Council of Buffalo, New York and Vicinity v. Downtown Development, Inc.*, 448 F.3d 138 (2d Cir. 2006) (Rule-11(b) not triggered simply because otherwise proper-lawsuit was motivated in substantial-part by "interests unrelated to the subject-matter of the action"). This language carries over from the previous-version of Rule-11 (*i.e.*, before 2009), and is intended to regulate bad-faith filings. *See, e.g., Cuna Mut. Ins. Soc. v. Office and Professional Employees Intern. Union, Local 39*, 443 F.3d 556, 561 (7th Cir. 2006) (in Seventh-Circuit, meritless-challenges to arbitration-awards are particularly-vulnerable to Rule-11 sanctions); *American Intern. Adjustment Co. v. Galvin*, 86 F.3d 1455 (7th Cir. 1996) ("[A] pleader may assert contradictory-statements of fact only when legitimately in doubt about the facts in question;" citing Rule-11). *But cf., In re Pennie & Edmonds LLP*, 323 F.3d 86, 87 (2d Cir. 2003) (where court decides to impose sanctions *sua-sponte*, law-firm did not have benefit of "safe-harbor" provision; thus sanctions were only appropriate for subjective bad-faith, not for unreasonable but genuine subjective good-faith). It should already be clear, of course, that while bad-faith may indeed trigger sanctions under Rule-11, conduct that does not involve bad-faith may also be sanctionable. *See, e.g., Young v. City of*

Providence ex rel. Napolitano, 404 F.3d 33 (1st Cir. 2005) (no bad-faith requirement for sanctions under Rule-11); *Anjelino v. New York Times Co.*, 200 F.3d 73, 100 (3d Cir. 1999) (Rule-11 does not require finding of bad-faith). *Cf. PAE Government Services, Inc. v. MPRI, Inc.*, 514 F.3d 856, 859-60 (9th Cir. 2007) (holding that nothing in the Rules prevents a party from filing inconsistent and contradictory pleadings unless there is a showing of bad-faith; reversing district-court's order "striking" inconsistent-pleadings as not authorized under current Rule-11 (*i.e.*, as of 2009); in addition, court had not followed procedural-requirements of Rule-11). [5.] In accordance with Rule-11(b)(3) requiring a Foundation for Factual-Allegations, *Plaintiff – Appellant*-"Murphy" certified that his alleged-facts have "evidentiary-support", and certified that he believes he can develop evidentiary-support through further-investigation: in the form of *Plaintiff – Appellant*-"Murphy's Affidavit, Witness-Affidavits, and *Defendant – Appellee*-"Moore's criminal-history & sworn-cause, which will be introduced in Discovery. *Plaintiff – Appellant*-"Murphy" has Probable-Cause & knowledge of amount in controversy, because he was an eye-witness himself, and is the victim. Rule-11(b)(3) thus establishes a lesser-standard than the former-requirement that allegations be "well-grounded" in fact (*i.e.*, before 2009). *Rotella v. Wood*, 528 U.S. 549, 120 S. Ct. 1075, 145 L. Ed. 2d 1047 (2000) (Rule-11(b)(3) provides flexibility by "allowing pleadings based on evidence reasonably-anticipated

after further investigation or discovery"). *See, e.g., Tennessee Valley Authority v. Whitman*, 336 F.3d 1236 (11th Cir. 2003), cert. denied, 541 U.S. 1030, 124 S. Ct. 2096, 158 L. Ed. 2d 711 (2004) (when E.P.A. files suit, it need not possess evidence sufficient for victory at trial; instead, it need only meet equivalent of "probable-cause" standard of criminal-law, and not even "more-rigorous 'substantial-evidence' " standard of administrative-law); *O'Brien v. Alexander*, 101 F.3d 1479, 1489 (2d Cir. 1996) ("[S]anctions may not be imposed unless a particular allegation is utterly lacking in support."). *But cf., Morris v. Wachovia Securities, Inc.*, 448 F.3d 268, 277 (4th Cir. 2006) ("Factual-allegations fail to satisfy Rule-11(b)(3) when they are 'unsupported by any information obtained prior to filing.' "); *Macken ex rel. Macken v. Jensen*, 333 F.3d 797 (7th Cir. 2003) (Rule-11(b)(3) requires plaintiff "to establish evidentiary-support [of amount in controversy], or at least a likelihood of obtaining that support, before filing suit in federal-court."). First & foremost, *Defendant – Appellee*-"Moore" is not the Prevailing-Party, because neither *Defendant – Appellees* has even provided an Answer to the Complaint (ECF-3/ROA. 3). Also, Discovery has not even been conducted, let alone the requested Jury-Trial. Awarding of Attorneys-Fess of Opposing-party's counsel is only appropriate in cases of Frivolous, Groundless, or Bad-Faith filings. In this instant present case at bar in hand, there is *no* Evidence of Bad-Faith by *Plaintiff – Appellant*-"Murphy", who

was in fact the Victim! Furthermore, Attorney's Fees are generally-disfavored in American-courts as Partisan & Punitive in nature, because Parties are free to hire whomever they can afford, or represent themselves, like *Plaintiff – Appellant* "Murphy". "In the United States, the *prevailing*-litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser." *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 247 (1975). This is known as the "American-rule" (as opposed to the English-rule, which routinely permits fee-shifting) and derives from court-made law. Rule-68 of the Federal Rules of Civil Procedure, 28 U.S.C. App. Rule 68, creates an exception to the general-rule in federal-courts that a prevailing-party *is* entitled to collect its *court-costs* from the losing-party. "The plain-purpose of Rule-68 is to encourage settlement and avoid litigation." *Marek v. Chesny*, 473 U.S. 1, 5 (1985). Presently, the so-called "American-rule", which applies in Texas and most other States, provides that each party to a lawsuit must pay *his own* attorney's fees, unless otherwise provided by contract between the parties involved or some special-statute. This *new*-Tactic of punishing *Pro-Se* Litigants with Opposing-Party's Attorneys' Fees for even daring to bring a Complaint (ECF-3/ROA. 3) in the *King's* Court, is only espoused by the most Conservative, Neophyte Judges! Furthermore, this *nove*l-Tactic of punishing *Pro-Se* Litigants with Opposing-Party's Attorneys' Fees for even daring to bring a Complaint (ECF-3/ROA. 3) in the

King's Court, is a mutant-Hybrid of the Republican-movement to outlaw Medical-Malpractice lawsuits as Frivolous! Apparently, after an initial-review of relevant case-law: there are *no* rulings or statutes supporting the district-court's current-position! According to "Awards of Attorneys' Fees by Federal Courts and Federal Agencies" by the Congressional Research Service (10-22-09), the awarding of attorneys' fees against a *Pro-Se* Plaintiff pursuant to a pre-textual Rule 12(b)-Dismissal-Motion is facially un-Constitutional, and a clear violation of *Plaintiff – Appellant*-"Murphy's Fifth-Amendment Right to Due-Process of Law ... not to mention the fact that it is obviously Punitive & Partisan, as well as CHILLING! *Defendant – Appellee*-"Moore's counsel commits a fatal logic-error in its Rule-11 Attorneys-Fees Sanctions-Motion (ECF-23, ROA. 23). *Defendant – Appellee*-"Moore's counsel illogically-argues that all of its arguments are correct; and therefore, all of *Plaintiff – Appellant*-"Murphy's arguments must be wrong, but not only that, frivolous as well: ignoring the requisite-skills of a licensed-lawyer in another-State, assuming that it carries any weight in the *foreign* district-court! The glaring illogical-problem with a sophisticated Dallas law-firm catapulting a Rule-11 attorneys-fees motion against an out-of-State *Pro-Bono* lawyer, as some sort of excuse for overzealous due-diligence on behalf of an allegedly-violent Tortfeasor ... is that *Defendant – Appellee*-"Moore" is still the Aggressor! Finally, in the very Complaint (ECF-3/ROA. 3) itself, *Plaintiff* –

Appellant-"Murphy" issued a compliance-statement with Rule-11. Breaking down the elements of Rule-11: (1) the Complaint (ECF-3/ROA. 3) was not presented for an improper-purpose, such as to harass, cause un-necessary delay, or needlessly-increase the cost of litigation, because *Plaintiff – Appellant*-"Murphy" himself was the alleged-Victim; (2) the Complaint (ECF-3/ROA. 3) is supported by existing-law or by a non-frivolous argument for extending or modifying existing-law, because *Plaintiff – Appellant*-"Murphy" presented an entire Table of Cases, Statutes, and other Authorities; and (3) the factual-contentions in the Complaint (ECF-3/ROA. 3) have evidentiary-support or, if specifically so identified, will likely have evidentiary-support after a reasonable-opportunity for further investigation or discovery, because *Plaintiff – Appellant*-"Murphy" presented an entire-paragraph titled [Factual-]"Allegations"!

B. (¶ 3.) Required Showing (Issues & Standards presented for Review) – The main-issue is the liability of *Defendant – Appellees* for the violent-attack & subsequent malicious-prosecution of Correctional-Officer Murphy at his secondary-residence in his drive-way while in T.D.C.J. uniform after a 12-hour shift at the Maximum-Security Prison, which was allegedly perpetrated by *Defendant – Appellee*-"Moore", while utilizing the company-truck & uniform of *Defendant – Appellee*-"Blattner-Energy", as an employee, who was storing a loaded-handgun in the glovebox & brandishing it at her mother's house. In addition,

the secondary-issue is the *novel* legal-issue in general of whether the district-court abuses its discretion when it arbitrarily & capriciously assesses over $20K in Sanctions-Fines, *pre*-Answer without *any* findings of fact whatsoever in its Judgment against a *Pro-Se* Victim for even daring to come into the *King's* Court for Justice, in order to deter supposedly frivolous-lawsuits against multi-State, multi-million-dollar energy-companies that commit torts in Texas with their ex-con employees. Beyond that, the legal-issue & standard of review is whether the district-court committed reversible-error by making findings of fact that are Clearly-Erroneous, and/or by Abuse of Discretion interpreting relevant case-law; specifically, whether the district-court erred by ordering a Dismissal with Prejudice on May 6, 2021 (5-6-21), and/or by ordering Sanctions against *Pro-Se* Plaintiff/Victim-"Murphy" on May 6, 2021 (5-6-21). Clearly, the district-court abused its discretion when it arbitrarily & capriciously assessed over $20K in Sanctions-Fines, *pre*-Answer without *any* findings of fact whatsoever in its Judgment against a *Pro-Se* Victim for even daring to come into the *King's* Court for Justice, in order to deter supposedly frivolous-lawsuits against multi-State, multi-million-dollar energy-companies that commit torts in Texas with their ex-con employees. Obviously, the district-court made findings of clearly-erroneous facts when it *implicitly* found that *Plaintiff – Appellant*-"Murphy's lawsuit was Frivolous, but also when it *explicitly* failed to make any correct factual-findings in

its Judgment! The district-court abused its discretion by allowing *Defendant – Appellees* to not Answer for almost a year now & counting, by granting *Defendant – Appellees'* frivolous Rule-12(b) dismissal-motions, and by allowing *Defendant – Appellees* to stall *Plaintiff – Appellant*-"Murphy's initiative with frivolous Rule-12(b) dismissal-motions, *pre*-Answer. This diversity-jurisdiction (28 USC § 1332) Civil-Complaint (ECF-3/ROA. 3) alleges Trespassing, Malicious-Prosecution, and Intentional-Infliction of Emotional-Distress (I.I.E.D.), as well as Present & Future Monetary-Damages suffered by *Plaintiff – Appellant*-"Murphy" and caused by *Defendant – Appellees*, under Texas-State Common-Law and Case-Law.

C. (¶ 4.) **Jurisdictional-Statement** – *Plaintiff – Appellant*-"Murphy" offers the following statement on this appellate-court's jurisdiction: *Plaintiff – Appellant*-"Murphy" claims federal Diversity-Jurisdiction under 28 U.S.C. § 1332. The district-court (ND-TX) is in the Fifth-Circuit and has federal diversity-jurisdiction pursuant to 28 U.S.C. § 1332, because *Plaintiff – Appellant*-"Murphy" is a resident/citizen of Colorado, and *Defendant – Appellee*-"Moore" is a resident/citizen of Texas, & *Defendant – Appellee*-"Blattner-Energy" is a corporate resident/citizen of Minnesota. Federal diversity-jurisdiction is also appropriate, because this action is brought pursuant to 28 U.S.C. § 1332, alleging at least $75,000 in monetary-damages suffered, as the amount in controversy. The district-court is

authorized to issue the requested monetary-relief pursuant to Texas-State Common-Law and Case-Law. Subject-Matter Jurisdiction is established by the district-court over the *Defendant – Appellees*, because the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between citizens of *different* States. See 28 U.S.C. § 1332 (a)(1). Personal-Jurisdiction is established by the district-court over the *Defendant – Appellees*, because *Defendant – Appellee*-"Moore" resides in the Northern District of Texas-Amarillo Division. Borger is a city in Hutchinson-county, and Hutchinson-county is located in the Northern District of Texas-Amarillo Division. In addition, all of the events that give rise to *Plaintiff – Appellant*-"Murphy's claims occurred within the Northern District of Texas-Amarillo Division. Furthermore, *Defendant – Appellee*-"Blattner-Energy" has sufficient minimum-contacts with the forum-State of Texas so as to comply with the "traditional-conception of fair-play and substantial-justice." *See International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945). It is unfair for a court to assert jurisdiction over a party unless that party's contacts with the State in which that court sits are such that the party "reasonably-expect[s] to be haled into court" in that State. This jurisdiction must "not offend traditional-notions of fair-play and substantial-justice." A non-resident defendant may have minimum-contacts with the forum-State if they 1) have direct-contact with the State; 2) have a contract with a resident of the

State; 3) have placed their product into the stream of commerce such that it reaches the forum-State; 4) seek to serve residents of the forum-State; 5) have satisfied the *Calder* effects-test; or 6) have a non-passive website viewed within the forum-State. *See also McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957); *World-Wide Volkswagen Corp. v. Woodson*, 222 U.S. 286 (1980); and *Calder v. Jones*, 465 U.S. 783 (1984). Therefore. *Defendant – Appellee*-"Blattner-Energy" has 1) direct-contact with the State of Texas, 2) has a contract with a resident of the State of Texas, 3) has placed its product into the stream of commerce such that it reaches the forum-State of Texas, 4) seeks to serve residents of the forum-State of Texas, 5) has satisfied the *Calder* Effects-Test by causing harm within the State of Texas, and/or 6) has a non-passive website viewed with the forum State of Texas. Venue is proper in the district-court, because *Defendant – Appellee*-"Moore" resides in the Northern District of Texas-Amarillo Division. Borger is a city in Hutchinson-county, and Hutchinson-county is located in the Northern District of Texas-Amarillo Division. In addition, all of the events that give rise to *Plaintiff – Appellant*-"Murphy's claims occurred within the Northern District of Texas-Amarillo Division. *See* 28 U.S.C. § 1391 (b)(2). 28 U.S.C. § 1391(a), (b)(2), & (c) – Venue generally, provides that: "(a) Applicability of Section. – Except as otherwise provided by law – (1) this section shall govern the venue of all civil-actions brought in district-courts of the United States; and

(2) the proper-venue for a civil-action shall be determined without regard to whether the action is local or transitory in nature. (b) Venue in General. – A civil-action may be brought in – (1) a judicial-district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial-district in which a substantial part of the events or omissions giving rise to the claim occurred, ... (c) Residency. – For all venue purposes- (1) a natural-person, ..., shall be deemed to reside in the judicial-district in which that person is domiciled; ...." *See* 28 U.S.C. § 1391(b)(1). 28 U.S.C. § 2107 – "Time for appeal to court of appeals" provides that: "(a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil-nature before a court of appeals for review unless notice of appeal is filed, within thirty-days after the entry of such judgment, order or decree." Rule-4. Appeal as of Right-When Taken (F.R.A.P.) provides that: "(a) Appeal in a Civil-Case. (1) Time for Filing a Notice of Appeal. (A) In a civil-case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district-clerk within 30-days after entry of the judgment or order appealed from." 28 U.S.C. § 1291 – "Final decisions of district courts" provides that: "The courts of appeals (other than the United-States Court of Appeals for the Federal-Circuit) shall have jurisdiction of appeals from all final-decisions of the district-courts of the United States, the United-

States District-Court for the District of the Canal Zone, the District-Court of Guam, and the District-Court of the Virgin Islands, except where a direct-review may be had in the Supreme-Court. The jurisdiction of the United-States Court of Appeals for the Federal-Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title (June 25, 1948, ch. 646, 62 Stat. 929; Oct. 31, 1951, ch. 655, § 48, 65 Stat. 726; Pub. L. 85–508, § 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 97–164, title I, § 124, Apr. 2, 1982, 96 Stat. 36.).

D. (¶ 5.) Emergency 48-Hour Rulings – On Sept. 13, 2021 (9-13-21), *Plaintiff – Appellant*-"Murphy" filed a Motion for Stay of Sanctions pending Appeal with the Fifth-Circuit appellate-court, which denied it on Oct. 27, 2021 (10-27-21). As a result, approximately $21K in delinquent federal court-fees now appear on *Plaintiff – Appellant*-"Murphy's personal credit-report, which prevents him from obtaining *any* gainful-employment, even blue-collar jobs!

E. (¶ 6.) the All Writs Act & Writs of Mandamus-Conditions for Use: Application of the All Writs Act requires the fulfillment of four conditions: The absence of alternative remedies (the act is only applicable when other judicial-tools are not available), An independent basis for jurisdiction (the act authorizes writs in aid of jurisdiction, but does not in itself create any federal subject-matter jurisdiction), Necessary or appropriate in aid of jurisdiction (the writ must be necessary or appropriate to

the particular case), and Usages and principles of law (the statute requires courts to issue writs "agreeable to the usages and principles of law"). In *FTC v. Dean Foods Co.*, 384 US 597 (1966), the Court ruled that a court of appeals to which an appeal could be taken against an FTC-order banning a merger *could* properly issue a preliminary-injunction under the All Writs Act while the FTC determined the merger's legality, if the need for injunctive relief was "compelling". In *United States v. New York Telephone Co.*, 434 US 159 (1977), the Court ruled that the act *provided authority* for a U.S. District Court to order a telephone company to assist law-enforcement officials in installing a device on a rotary-phone in order to track the phone-numbers dialed on that phone, which was reasonably believed to be used in furtherance of criminal-activity. In *Barnes v. E-Systems, Inc. Group Hospital Medical & Surgical Ins. Plan*, 501 U.S. 1301, 1305 (1991), the Court ruled that: Under 28 U.S.C. § 2101(f), as under the All Writs Act and the prior common law, a stay issues not of right, but pursuant to sound equitable discretion; "it requires," as Chief Justice Taft said, "a clear case and a decided balance of convenience." *Magnum Import Co. v. Coty*, 262 U. S. 159, 164 (1923). The practice of the Justices has settled upon three conditions that must be met before issuance of a §2101(f)-stay is appropriate. There must be a reasonable-probability that certiorari will be granted (or probable jurisdiction noted), a significant-possibility that the judgment below will be reversed,

and a likelihood of irreparable-harm (assuming the correctness of the applicant's position) if the judgment is not stayed. *Times-Picayune Publishing Corp. v. Schulingkamp*, 419 U. S. 1301, 419 U. S. 1305 (1974). Therefore, it is respectfully submitted that the enabling-statutes for CDC *already* authorize emergency Public-Health measures; and inherent Art.-II Presidential-Authority, as the Unitary-Executive, to enforce the Laws provides for the enforcement of the public-health federal-agency's *recommendations*.

F. (¶ 7.) the Constitutionality of Sanctions against *Pro-Se* Victim/Plaintiffs – The arbitrary & capricious assessment of Attorney-Fee Rule-11 Sanctions against *Pro-Se* Victim-Plaintiffs is unconstitutional! Several constitutional-rights are violated when *Pro-Se* Victim/Plaintiffs are sanctioned with attorney-fees: the right to petition the government for redress of grievances, the right to due-process & equal-protection, and the right to jury-trial in matters of $20 or more. Tort-reform against medical-malpractice lawsuits has now metastasized into penalizing & punishing *Pro-Se* Victim/Plaintiffs a second time. The chilling-effect of attorney-fee sanctions against *Pro-Se* Victim/Plaintiffs is to limit citizens' access to the courts.

G. (¶ 8.) Equal Protection – Under the constitutional-principles of Due-Process & Equal-Protection, *Plaintiff – Appellant* "Murphy" respectfully submits that if Sanctions against *Pro-Se* Victim/Plaintiffs are reversed & denied by this

Court for *Plaintiff – Appellant*-"Murphy", then they should be reversed & denied for *all*.

II. (¶ 9.) **Conclusion** – For the foregoing reasons (*supra*), *Plaintiff – Appellant*-"Murphy" respectfully requests that this Court consider this his Primary-Brief. Finally, *Defendant – Appellee*-"Moore" now, almost three-years after inflicting alleged-Damages on *Plaintiff – Appellant*-"Murphy", merely responded with a frivolous Rule-12(b)(6) (F.R.C.P.) Dismissal-Motion (10-30-20, ECF-7, ROA. 7), which was clearly & obviously dis-spelled via the prophylactic-language of the initial-Complaint (ECF-3/ROA. 3). Now, almost three-years later after inflicting alleged-Damages on *Plaintiff – Appellant*-"Murphy", *Defendant – Appellee*-"Moore" merely uttered a frivolous 12(b)(6)-motion as simply an afterthought, having already caused Harm to *Plaintiff – Appellant*-"Murphy". *Defendant – Appellee*-"Moore" attempted a sleight of hand by not actually Answering yet, not conceding to Service, and not precluding other 12(b)-motions, while at the same time trying to pre-argue the case with boiler-plate language: that the Complaint (ECF-3/ROA. 3) does not state any facts demonstrating.... Indeed, *Defendant – Appellee*-"Moore's counsel could not resist pre-arguing the merits of the case even before Answering, in a *procedural*-motion controlled by *federal*-law, as opposed to a *substantive*-motion based on applicable Texas *State*-law. Instead of providing an Answer, *Defendant – Appellee*-"Moore's counsel camouflaged its denial of *Plaintiff* –

Appellant-"Murphy's factual-allegations by mis-interpreting the Complaint (ECF-3/ROA. 3) as not stating any facts, without actually being in Discovery. Once again, *Defendant – Appellee*-"Moore" created a logic-error by intentionally presenting a false Catch-22/circular-paradigm to the district-court: that *Plaintiff – Appellant*-"Murphy supposedly lacks the minimum pleading-standards in the initial-Complaint (ECF-3/ROA. 3), because sufficient-facts were supposedly not asserted; therefore, Discovery is not necessary to ascertain the veracity of *Plaintiff – Appellant*-"Murphy's alleged-facts, because *Defendant – Appellee*-"Moore" has already provided the district-court with everything it needs to know. Although it is *Defendant – Appellee*-"Moore's legal-position that she never entered on to the real-property, *Defendant – Appellee*-"Moore's counsel offered the district-court nothing else, either in the form of Admissions or Denials, in order to illuminate the district-court about the Whole-Truth of the events on Aug. 13, 2018 (8-13-18), let alone Dec. 5, 2018 (12-5-18)! Most importantly, *Defendant – Appellee*-"Moore's counsel conceded absolutely-nothing about their mysterious-client named Amanda Cameron Moore, such as her Birth-Certificate, Date of Birth (DOB), Social-Security Number (SS#), Driver's-License Number (DL#), Maiden-Name, Former-Employers, Previous-Addresses/Aliases, or any Knowledge of either the location at 307 Garret St., Borger, TX 79007, or the events on 8-13-18. Hopefully, it is understandable that *Plaintiff –*

Appellant-"Murphy" is extremely-reluctant to engage with *Defendant – Appellee*-"Moore's counsel now on this hill as a mere, frivolous 12(b)-motion, by arguing the merits of the case before even being in Discovery, let alone pre-trial summary-judgment arguments, or a trial, if necessary. *Plaintiff – Appellant*-"Murphy" could not submit a premature-Affidavit (*i.e.*, Extrinsic-Material) at that time, because doing so would have re-cast the Motion as a request for Summary-Judgment under Rule-56 (F.R.C.P.). Indeed, *Defendant – Appellee*-"Moore's counsel betrayed their true-motives: to pre-argue the case with substantive *State*-law, while *Plaintiff – Appellant*-"Murphy" relies on a *federal*, case-law line of reasoning (*i.e., stare decisis*) for the *procedural*, not *substantive*-law, issue of a frivolous 12(b)-motion, *per* the *Erie*-doctrine. In conclusion, in its zeal to put the Rule-11 (F.R.C.P.) Sanctions-Motion (1-19-21, ECF-23, ROA. 23) icing on a half-baked cake of a frivolous Rule-12(b)(6) Dismissal-Motion (10-30-20, ECF-7, ROA. 7), *Defendant – Appellee*-"Moore's counsel apparently gave *Plaintiff – Appellant*-"Murphy a second-bite at the apple to merely address all pending-issues, by replying to the ***delinquent***-Reply (1-19-21, ECF-24, ROA. 24), which was due 14-days (12-3-20) from the Response-Date (11-19-20, ECF-11, ROA. 11), in violation of LR-7.1(f) (ND-TX). Indeed, by tag-teaming against a *Pro-Se* Plaintiff, *Defendant – Appellees'* counsel seems to have stepped on each other's toes. Seemingly, *Defendant – Appellees'* counsel sought to obtain a *Pre*-Answer

Judgment with Prejudice *before* Discovery, and more importantly, before a new U.S. Attorney for the Biden-Administration would have the opportunity to review the filings for possible criminal-charges against *Defendant – Appellee*-"Moore"! Like *Defendant – Appellee*-"Moore" herself, *Defendant – Appellee*-"Moore's counsel is thus far able to manipulate the *naïve*-government, first *State* and now *federal*, into placing *Plaintiff – Appellant*-"Murphy" on the *defensive* with false-charges, while ignoring Damages inflicted on *Plaintiff – Appellant*-"Murphy". In fact, *Defendant – Appellee*-"Moore's counsel violated Rule-11(b)(1&2) (F.R.C.P.) by causing (1) unnecessary-delay and making (2) frivolous-arguments by and through first a Rule-12(b)(6) Dismissal-Motion (10-30-20, ECF-7, ROA. 7) and then Rule-11 Sanctions-Motion (1-19-21, ECF-23, ROA. 23), with a ***delinquent***-Reply (1-19-21, ECF-24, ROA. 24) for good-measure, before even answering *Plaintiff – Appellant*-"Murphy's Complaint (ECF-3, ROA. 3) with an Answer! Therefore, the district-court, on its own initiative, should have ordered *Defendant – Appellee*-"Moore's counsel to show cause under Rule-11(c)(3) for violating Rule-11(b)(4), by repeatedly denying good-faith factual-contentions of *Plaintiff – Appellant*-"Murphy". As a result, *Defendant – Appellee*-"Moore's counsel violated Local-Rule 7.1(f), which requires a Reply if any within 14-days from the Response-Date. *Plaintiff – Appellant*-"Murphy" was not aware of any notice of possible-sanctions on Dec. 23, 2020

(12-23-20), as the barrage of frivolous-motions by *Defendant – Appellees'* counsel (ECF 21-24, ROA. 21-24) was coordinated on Jan. 19, 2021 (1-19-21), with little-hope for *Plaintiff – Appellant*-"Murphy" to adequately-respond to six (6) separate-filings from two (2) different law-firms totaling forty-eight pages (48 pgs.) against a solo *Pro-Se* Plaintiff, before Jan. 27, 2021 (1-27-21), within a paltry & pathetic seven-days (7-dys.), just three-weeks (3-wks.) after an ***UNSUCCESSFUL*** constitutional-coup at the Nation's Capitol by murderous Trump Neo-Nazis, with the added-prohibition of *Plaintiff – Appellant*-"Murphy" filing his own Sanctions-Motions. In its ***delinquent***-Reply, *Defendant – Appellee*-"Moore's counsel merely regurgitated the subjective-language of the *Twombly*-standard case-law, without conceding any facts of course. Plausibility will be proved in Discovery, or a Jury-Trial if necessary. *Defendant – Appellee*-"Moore's counsel next attempted to confuse the district-court by gas-lighting the obvious-fact that *Defendant – Appellee*-"Moore" *started* in her mother's front-yard, but then denying the asserted-fact in *Plaintiff – Appellant*-"Murphy's Complaint (ECF-3/ROA. 3) that Defendant – Appellee-"Moore" *ended-up* in *Plaintiff – Appellant*-"Murphy's drive-way with a loaded company-gun & embroidered company-clothing, and a decorated company-truck in tow, which was not only subsequently-parked in front of *Plaintiff – Appellant*-"Murphy's house, not once but twice, for two separate-incidents, but also in front of the Borger (TX) municipal-court the

day of the show-trial, before a now-disgraced & since-resigned non-lawyer cop-judge. *Defendant – Appellee*-"Moore's counsel next attempted to confuse the district-court by gas-lighting the obvious-fact that new criminal-charges are pending by *Defendant – Appellee*-"Moore's mother for separate subsequent-dates, but then denying the asserted-fact in *Plaintiff – Appellant*-"Murphy's Complaint (ECF-3/ROA. 3) that the malicious-prosecution of *Plaintiff – Appellant*-"Murphy" for the events of Aug. 13, 2018 (8-13-18) was terminated with an Acquittal on Dec. 5, 2018 (12-5-18). The issue of tolling for purposes of the Texas statute of limitations was not directly-addressed by *Defendant – Appellee*-"Moore's counsel. *Defendant – Appellee*-"Moore's counsel finally attempted to confuse the district-court by gas-lighting the obvious-fact that *Defendant – Appellee*-"Moore" had a loaded-gun in her company-truck, but then denying the asserted-fact in *Plaintiff – Appellant*-"Murphy's Complaint (ECF-3/ROA. 3) that *Defendant – Appellee*-"Moore" removed said-gun from the truck and carried it on her hip to *Plaintiff – Appellant*-"Murphy's drive-way, where *Defendant – Appellee*-"Moore" orally-threatened *Plaintiff – Appellant*-"Murphy", and then staked-out his house for the rest of the night, while he slept for his next-shift at the *ungrateful* Texas-State prison. It is the entire incident that makes it extreme & outrageous, not particular-facts in isolation. *Defendant – Appellee*-"Moore's counsel attempted to mislead the district-court with pure-hearsay of what *Defendant – Appellee*-

"Moore's mother might testify to in either Discovery or Jury-Trial, if necessary. *Defendant – Appellee*-"Moore's *mens-rea*, guilty state of mind, is based on her reckless-actions & intentional-perjury. *Defendant – Appellee*-"Moore's counsel concluded by blatantly-lying to the district-court that the criminal-case was thrown-out, when in fact it went all the way to Jury-Verdict, which was a resounding-Acquittal of *Plaintiff – Appellant*-"Murphy" for such spiteful-allegations. *Defendant – Appellee*-"Moore's counsel further concluded by blatantly-lying to the district-court that *Plaintiff – Appellant*-"Murphy" is trying to conceal his identity, when in fact *Defendant – Appellee*-"Moore" is the party who is denying to the district-court *both* her real-name, *and* her employment-history with *Defendant – Appellee*-"Blattner-Energy". It has been said for centuries that Ignorance of the Law is no excuse, but now *Defendant – Appellee*-"Moore's counsel attempted to mislead the district-court into believing that Knowledge of the Law is somehow a handicap or disqualification, by pretending to be incensed that *Plaintiff – Appellant*-"Murphy" has a professional legal-opinion, as a member of the bar of a *different* federal-court (D-CO) in *another*-State (CO-LL# 48442). It is precisely because *Plaintiff – Appellant*-"Murphy" is not a licensed-Attorney in Texas that he cannot claim such-status in the district-court. If *Plaintiff – Appellant*-"Murphy" were a layman, then he would say, "In His Humble-Opinion (*i.e.*, I.M.H.O.)", but of course, *Plaintiff – Appellant*-"Murphy" is not a

layman, any more than he is an unsuccessful State-legislature candidate, *Plaintiff – Appellant*-"Murphy" is a successful Congressional-Candidate (*i.e.*, CO-5), who recently-obtained 3,701-votes (*i.e.*, 0.9%) and started his own, on-ballot political-party (*i.e.*, the No-Labels Party). Of course, the argument by *Defendant – Appellee*-"Moore's counsel is a circular-paradigm, Catch-22 logic-error, since there is no underlying-allegation of *Plaintiff – Appellant*-"Murphy" breaking any of the district-court's attorney-rules. *A fortiori*, *Plaintiff – Appellant*-"Murphy" has repeatedly-told all-concerned, beginning in his original-Complaint (ECF-3/ROA. 3), that he has a professional legal-opinion, presumably in some other jurisdiction, assuming that it carries any-weight in the district-court. *Plaintiff – Appellant*-"Murphy" intends to obtain the statutorily-obtainable Texas law-license in his *home*-State, once the new, pending, false criminal-charges for the catch-all Disorderly-Conduct are resolved, and only then become a member of the bar of the district-court. *Plaintiff – Appellant*-"Murphy" has never and will never conceal his identity as a *pro-bono* civil-rights Lawyer, and deeply resents any implication otherwise. Stated another-way: Because *Plaintiff – Appellant*-"Murphy" is not a licensed-Attorney in the State of Texas, he cannot represent a client before the district-court, but can obviously sue on *his own* behalf as a *Pro-Se* Plaintiff, without being required to obtain *Pro-Hac-Vice* Status, only after somehow obtaining a Texas-lawyer sponsor. *Defendant – Appellee*-"Moore's

counsel knows good & well, according to Texas-State republican-law (*i.e.*, the Republic of Texas), that it is a Felony for any-person, including an out-of-State lawyer, to present himself in public in Texas as an Attorney, if he is not a current, active licensed-Lawyer in the State of Texas by the Texas-State Supreme-Court. *Defendant – Appellee*-"Moore's counsel is as dangerous as their client, with their false-charges, in order to dupe *the Man* into doing *Defendant – Appellee*-"Moore's dirty-work of attempted-assassination, both literally & figuratively, in the form of *physical*-assassination on Aug. 13, 2018 (8-13-18) & *character*-assassination on Dec. 5, 2018 (12-5-18). *Defendant – Appellee*-"Moore's counsel is the true-culprit of bad-faith conduct. In its duplicative Sanctions-Motion (1-19-21, ECF-23, ROA. 23), *Defendant – Appellee*-"Moore's counsel next questioned *Plaintiff – Appellant*-"Murphy's good-faith basis for suing an allegedly immune-Defendant, with colorful-terms like "groundlessly", "baselessly", and "harassingly". *Plaintiff – Appellant*-"Murphy's good-faith basis for pursuing *non-violent* litigation is that he narrowly avoided his own murder at his secondary-residence in his childhood-neighborhood; and was then forced to silently-endure a tactically & strategically expensive show-trial in a kangaroo-court, which resulted in *Plaintiff – Appellant*-"Murphy's Acquittal. Predictably, *Defendant – Appellee*-"Moore's counsel next repeated the same-lies to the district-court: that *Plaintiff – Appellant*-"Murphy" is confused about the address of

where he grew-up for twenty-years (20 yrs.), that *Plaintiff – Appellant*-"Murphy" is confused about the false-charges of what happened on 8-13-18, that *Plaintiff – Appellant*-"Murphy" is confused about the identity of who attacked him (*i.e.*, *Defendant – Appellee*-"Moore"), that *Plaintiff – Appellant*-"Murphy" is confused about the time of when he was maliciously-prosecuted (*i.e.*, 12-5-18), that *Plaintiff – Appellant*-"Murphy" is confused about the motive of why he was intentionally & recklessly attacked (*i.e.*, estranged-neighbor of *Defendant – Appellee*-"Moore's mother), that *Plaintiff – Appellant*-"Murphy" is confused about the size of significance (*i.e.*, so what?) of the veiled-threats by *Defendant – Appellee*-"Moore's counsel (*e.g.*, drop the lawsuit on 1-14-21 ... or else), and that *Plaintiff – Appellant*-"Murphy" is confused about how high the stakes are (*e.g.*, threatened with loss of life, loss of freedom, & now loss of life-savings and/or Colorado law-license, as well as the effective-exile from *all*-courts). It is respectfully-submitted, in *Plaintiff – Appellant*-"Murphy's humble-opinion, that *Plaintiff – Appellant*-"Murphy" is ***not*** confused. *Defendant – Appellee*-"Moore's counsel next attempted to confuse the district-court about the difference between a concluded malicious-prosecution (12-5-18), and its tolling through *novel*, pending criminal-charges by the same-witnesses, by the same-cops, & by the same-prosecutor, in then same-court. *Defendant – Appellee*-"Moore's counsel concluded by moving the goal-posts for the elements of I.I.E.D. beyond the seminal-case, by

adding proximate-causation & lack of alternative-remedies, which are at best *factual*-issues for the jury to determine, and at worst *legal*-issues for the district-court to decide, in Discovery or at Trial, but not as an explicit-prerequisite for the initial-Complaint (ECF-3/ROA. 3)! The But-for Causation was that: neither the Trespassing on *Plaintiff – Appellant*-"Murphy's property nor the Malicious-Prosecution of *Plaintiff – Appellant*-"Murphy would have ever occurred, but-for the intentional, reckless, extreme, & outrageous conduct and actions of *Defendant – Appellee*-"Moore", possibly leaving I.I.E.D. as the only remaining legal-remedy. The purpose of providing *Defendant – Appellee*-"Moore's criminal-history was to provide the required Defendant-Information *per* the JS-44 Civil Cover-Sheet, provide the district-court with the explanation for different first & last names, and to provide the district-court with evidence of extreme & outrageous-conduct, both in the *present* as evidence of negligence by the employer in hiring the employee, and in the *past* as evidence of prior bad-acts. The factual-allegation of *Defendant – Appellee*-"Moore's perjury at trial serves to prove Malicious-Prosecution, otherwise the jury would have convicted *Plaintiff – Appellant*-"Murphy". The public-records of *Defendant – Appellee*-"Moore's criminal-history, which will be provided in Discovery, list several different-aliases for *Defendant – Appellee*-"Moore", and form the basis for the factual-allegation that *Defendant – Appellee*-"Moore" is attempting to escape liability in

the district-court, as in Tom Green County (TX) Court at Law, by pretending not to be that woman who performed the alleged-actions. On Aug. 14, 2018 (8-14-18), *Defendant – Appellee*-"Moore" filed a false police-report, and then under color of Texas State-law, swore-out her own criminal-cause No. 18-01574 in the Borger (TX) Municipal-Court (*i.e.*, not a court of record because judge was not a lawyer), by pretending to write about a third-person (*i.e.*, herself), as if she were a police-officer; therefore, *Defendant – Appellee*-"Moore" is responsible for the initial, false criminal-charge and subsequent, ***UNSUCCESSFUL*** malicious-prosecution! Rather than repeat the entire Allegations-section of *Plaintiff – Appellant*-"Murphy's Complaint (ECF-3/ROA. 3), suffice to say that *Plaintiff – Appellant*-"Murphy's drive-way is on *Plaintiff – Appellant*-"Murphy's property, which is located at 307 Garrett St., Borger, TX 79007. Instead of bringing this civil-case to harass & retaliate, *Plaintiff – Appellant*-"Murphy actually brought this civil-case to obtain compensatory-relief for Damages suffered, and to deter similar future-conduct, *per* applicable Texas State-law civil-causes of action. *Defendant – Appellee*-"Moore's counsel finally-finished its diatribe with the all-too familiar circular-paradigm, Catch-22 logic-error that *Plaintiff – Appellant*-"Murphy" cannot possibly *ever* prove his factual-allegations, because he should *never* have the opportunity to do so in Discovery or at Trial. *Defendant – Appellee*-"Moore's counsel also concluded by implying to the district-court that out-

of-State lawyers, in specificity, have no right to sue; and that victim-plaintiffs, in general, should be punished for daring to bring suit against a Texas-citizen/resident. *Defendant – Appellee*-"Moore's counsel finally concluded by once again pre-arguing the case before even providing an Answer, with *substantive State*-law, rather than *procedural federal*-law, *per* the *Erie*-doctrine. *Plaintiff – Appellant*-"Murphy" passes on the childish-criticism of his writing-style, whilst the substance of his legal-argument is ignored; as well as the phony-confusion that is feigned: such as *Plaintiff – Appellant*-"Murphy" being acquitted & then re-charged for new misdemeanor-nonsense, and federal case-law controlling Rule-11&12 procedural-issues *per* the *Erie*-doctrine, not State-law, which is the base for all diversity-cases, *except* for procedural-issues (*see* F.R.C.P.). *Plaintiff – Appellant*-"Murphy" alleges impropriety, because the district-court & the appellate-court have engaged in pre-discovery fact-finding from both Dallas, TX & Baton Rouge, LA (*i.e.*, 789-miles away), as if they have any clue what happened on the evening of Mon., Aug. 13, 2018 (8-13-18) at *Plaintiff – Appellant*-"Murphy's secondary-residence, 307 Garrett St, Borger, TX 79007; considering the fact that *Plaintiff – Appellant*-"Murphy" is the ***only*** soul who has thus far offered a signed-Affidavit! It is respectfully submitted, that in *Plaintiff – Appellant*-"Murphy's professional legal-opinion: the district-court & the appellate-court have merely parroted, without analyzing, the talking-points of the Dallas (TX) law-

firms! Stated differently, the conservative appellate-court apparently rubber-stamped the talking-points that were handed to the neo-conservative district-court, which should have conducted Discovery and/or a Jury-Trial, instead of this new hybrid, *pre*-Answer law-firm intrigue! The conservative appellate-court smells like, and the neo-conservative district-court tastes like: Neo-Nazi Fascism, by blaming the Victim, a uniformed correctional-officer at home! Since the sophomoric district-court did not have the opportunity to somehow personally defend its patron in the Amarillo-Division fiefdom after Jan. 6, 2021 (1-6-21), it resorted to using *Plaintiff – Appellant* "Murphy" as a punching-bag during that time-period. The disreputable-tactic by *Defendant-Appellees*' counsel of utilizing the discouraged British-style of seeking *pre*-Answer attorneys' fees against a *Pro-Se* Plaintiff/Victim is a poor-substitute for a camouflaged-counterclaim ... that result cannot possibly be Justice, that result must *never* be the substitute for Justice.

Executed and respectfully submitted, this the 25th day of January, 2022.

Marcus A. Murphy, *Plaintiff – Appellant,*
5795 Southmoor Dr Lot 53, Fountain, CO 80817;
(720) 256-0991; MarcusMurphy1975@hotmail.com

STATEMENT OF THE CASE

Statement of Facts – *Plaintiff – Appellant*-"Murphy" was a uniformed Texas Correctional-Officer (TDCJ-COIII), who was violently attacked at his secondary-residence in his childhood-neighborhood in his hometown at his sister's old-house, after work, in his drive-way, while exiting his vehicle. According to the Complaint (ECF-3/ROA. 3): On the evening of Mon., Aug. 13, 2018 (8-13-18) at *Plaintiff – Appellant*-"Murphy's secondary-residence, 307 Garrett St, Borger, TX 79007; *Plaintiff – Appellant*-"Murphy" suffered a wrongful, unauthorized Temporary-Trespass by *Defendant – Appellee*-"Blattner-Energy's off-duty employee, *Defendant – Appellee*-"Moore", who (1) entered (2) the property of *Plaintiff – Appellant*-"Murphy" (3) without *Plaintiff – Appellant*-"Murphy's (*i.e.*, property-owner) consent or authorization. *Plaintiff – Appellant*-"Murphy" saw *Defendant – Appellee*-"Moore" entering and exiting a white Blattner-Energy pickup-truck, with either License-Plate #: AYW-956 or AYX-589, on the evening of Mon., Aug. 13, 2018 (8-13-18) at the house located at 305 Garrett St, Borger, TX 79007, next to *Plaintiff – Appellant*-"Murphy's secondary-residence. *Plaintiff – Appellant*-"Murphy had previously seen *Defendant – Appellee*-"Moore" driving a white Blattner-Energy pickup-truck, with either License-Plate #: AYW-956 or AYX-589. Subsequently, *Defendant – Appellee*-"Moore" falsely-testified

that *Plaintiff – Appellant*-"Murphy" verbally-threatened her, for which *Plaintiff – Appellant*-"Murphy" was acquitted by a jury of his peers in the Borger (TX) Municipal-court on Wed., Dec. 5, 2018 (12-5-18). At that trial, *Defendant – Appellee*-"Moore" admitted under oath while testifying that she had a loaded-handgun in her company-vehicle, and that she sat in her company-vehicle in front of *Plaintiff – Appellant*-"Murphy's residence that night until 2:00 a.m., while he was sleeping. *Plaintiff – Appellant*-"Murphy's five main-points & factual-assertions have consistently been that: 1. *Defendant – Appellee*-"Moore" does not live at 305 Garrett St, Borger, TX 79007, & was the outsider, 2. *Defendant – Appellee*-"Moore" had a loaded-weapon & *Plaintiff – Appellant*-"Murphy" was *unarmed*, 3. *Defendant – Appellee*-"Moore" was trespassing on *Plaintiff – Appellant*-"Murphy's driveway, 4. *Defendant – Appellee*-"Moore" started the argument, and 5. *Defendant – Appellee*-"Moore" has a Misdemeanor criminal-record. Although *Plaintiff – Appellant*-"Murphy" was a Texas Correctional-Officer (TDCJ-COIII), who was in uniform at home; *Defendant – Appellee*-"Moore" was *not* a uniformed security-officer for *Defendant – Appellee*-"Blattner-Energy". As *Defendant – Appellee*-"Blattner-Energy's apparent armed-agent acting, under color of authority, with *Defendant – Appellee*-"Blattner-Energy's company-truck & clothing, *Defendant – Appellee*-"Blattner-Energy" is vicariously-liable, *per* the legal-doctrine of *Respondeat-Superior*, for Trespassing.

Therefore, *Defendant – Appellees* made Wrongful-Entry, as a Temporary-Nuisance, onto *Plaintiff – Appellant*"Murphy's Property without Consent or Authorization. Furthermore, *Plaintiff – Appellant*"Murphy was the sole-owner of the Property at the time, and asserted his personal-right to complain.

REASONS FOR GRANTING THE WRIT

Request for Appeal (Precise Relief Sought) –

Plaintiff – Appellant-"Murphy" requests that this appellate-court reverse & remand the district-court's Order granting *Defendant – Appellees'* Motions to Dismiss & for Sanctions, and Judgment dismissing all claims on May 6, 2021 (5-6-21), and either order the *Defendant – Appellees* to finally Answer, in order to procced to Discovery, or Trial if necessary, or order the district-court to order the same, so that the Truth may finally be Known. Furthermore, upon a second-reading of the relevant-passage about the requirement for a separate-notice of appeal for sanctions, it is *not* applicable to *Pro-Se* Litigants, because they inherently possess & retain standing to appeal the sanctions. Therefore, *Plaintiff – Appellant*-"Murphy" requests a refund of the second, redundant Appeal-Fee paid to the district-court, which decided *not* to issue a second appellate case-number anyway.