No. 22-_____

IN THE
Supreme Court of the United States

MARK BARINHOLTZ,
Petitioner,
v.

HOMEADVISOR, INC., ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

MARK BARINHOLTZ
Counsel of Record
MARK BARINHOLTZ, P.C.
55 W. Monroe St., Ste. 3600
Chicago, IL 60603
(312) 977-0121
mark@mhbpc.com

Attorney–Petitioner *Pro Se*

QUESTIONS PRESENTED

This controversy reaches the Court against a backdrop of the convergence of three strains of federal appellate timeliness doctrine, all working on a sliding scale, and at the same time. As this Court has unanimously sought to clarify in *Hamer v. Neighborhood Housing Services of Chicago*, 583 U.S. 154, internal pp. 9-10 (2017), the outmoded formulation of temporal limitations on timely appellate review as cast in terms of "mandatory and jurisdictional," … "is erroneous and confounding terminology," and was a "less than meticulous" formulation which has led to the type of inconsistency this Court highlighted and sought to remedy in *Hamer*.

The questions presented are:

Should the federal courts, in an effort to serve the purposes of the public's interest in gaining access to justice, be following timeliness rules applicable to appellate review that are most strictly construed, versus allowing the flexibility to exercise rights of review in an orderly, and reasonably calculated duration from commencement of an action through finality?

And if so, *i.e.*, that a stricter interpretation applies, does that level of strictness of construction constitute misapplication of principles of jurisdiction which will lead to burdensome review which, in turn, negatively impacts the proper, broadly consistent application of Fed. R. App. P. 3 and 4, and Fed. R. Civ. P. 59, and 60?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner MARK BARINHOLTZ is an Illinois attorney. He is an individual practitioner who represented Plaintiff Ray Alan Bovinett in his claims against Respondents (Defendants) throughout the underlying litigation in the District Court to and including the close of fact discovery. Respondent withdrew from the representation as of July 17, 2019 (Dist. Dkt. 137). Also see, Appellant's Brief, information pertaining to Petitioner's background and reputation (CA7 Cir. Dkt. 28, internal pages 17-19).

Respondent ANGI Homeservices n/k/a ANGI, Inc. ("ANGI") is a billion dollar publicly traded, internet company focusing on home improvement services.
(https://en.wikipedia.org/wiki/ANGI_Homeservices; last visited October 16, 2022).

Respondent HOMEADVISOR ("HomeAdvisor") is owned and operated as a component of ANGI. On October 2, 2017, HomeAdvisor acquired Angie's List and renamed itself ANGI Homeservices (NASDAQ: ANGI),[6] "the world's largest digital marketplace for home services."
(https://en.wikipedia.org/wiki/HomeAdvisor ; last visited October 16, 2022).

Respondent HAWTHORNE DIRECT ("Hawthorne") is a sole member Iowa limited liability company headquartered in Los Angeles, California. At all times relevant, Hawthorne Direct served as the advertising, marketing and media force behind the creation, production and marketing of the television Commercials involved in this action. (See, Dist. Dkt.

54, Am. Compl., Exhs. "L" and "M".) Hawthorne was at all times relevant the indemnitee of both ANGI and HomeAdvisor (Dist. Dkt. 170, Rothstein Decl. ¶ 7). The Law firm of Arnold & Porter represents all three Defendants in the District Court and in the Seventh Circuit.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner Mark Barinholtz is an attorney proceeding as an individual *Pro Se*. He practices law via his Illinois professional corporation, wholly owned by him. There is no parent or publicly held company owning 10% or more, or any percentage, of the corporation's stock.

RELATED PROCEEDINGS

The proceedings directly related to this case are: (i) *Bovinett v. HomeAdvisor, Inc., et al.,* No. 17-6229, as referenced in Appendices B, C and D hereto; and (ii) *Bovinett v. HomeAdvisor, Inc., appeal of Mark Barinholtz*, No. 20-3221, as referenced in Appendices A, and E hereto; and (iii) the controversy is proceeding in the District Court with respect to the Court of Appeals' affirmance of the District Court's sanctions and costs reimbursement orders. All participants in the lower courts have, to the best of Petitioner's knowledge, been notified of this Petition for Writ of *Certiorari.*

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- Nonprecedential disposition and Order, April 8, 2022 (CA7 Cir. Dkts. 52, 53) – (1) "Order" (designated "Nonprecedential Disposition, To be cited only in accordance with Fed. R. App. P. 32.1" (CA7 Cir. Dkt. 52, p. 1); (App. 1-11), affirming the district court's award of certain costs-of-defense in favor of the HomeAdvisor defendants, and an order pertaining to an ill-defined, unprecedented CLE attendance as a sanction; and (2) "Final Judgment" in accordance with the Court's affirmance (CA7 Cir. Dkt. 53.) The April 8th Order somehow appears on Westlaw, but the Order's designation as "Nonperecedential Disposition," *i.e.*, not for publication in the official reporter system is missing (2022 WL 1056086, N.D.Ill. Apr. 8, 2022).
- May 31, 2022 "Order" denying Petition for Rehearing and Petition for Rehearing *en banc.* (CA7 Cir. Dkt. 59) (App. 45-46)

JURISDICTION

Jurisdiction in this Court rests upon the federal statutory provision which confers jurisdiction on the Supreme Court in these circumstances, 28 U.S.C. § 1254(1). That statute provides that cases decided by the federal Courts of Appeal may be reviewed by the Supreme Court "by writ of certiorari granted upon the petition of any party to any civil … case, … after rendition of judgment."

CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS INVOLVED

U.S. Constitution, Art. III, Sec. 1:

> The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

28 U.S.C. § 2107:

> (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.

(b) In any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is—

(1) the United States;

(2) a United States agency;

(3) a United States officer or employee sued in an official capacity; or

(4) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States, including all instances in which the United States represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that officer or employee.

(c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds—

(1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and

(2) that no party would be prejudiced,

the district court may, upon motion filed within 180 days after entry of the judgment or order or within 14 days after receipt of such notice,

whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(d) This section shall not apply to bankruptcy matters or other proceedings under Title 11.

Fed. R. Civ. P. 11(d):

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

Fed. R. Civ. P. 36(a)(4):

(a) Scope and Procedure.

* * *

(4) Answer. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

Fed. R. Civ. P. 37(c):

(c) Failure to Disclose, to Supplement an Earlier Response, or to Admit.

(1) Failure to Disclose or Supplement. If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may inform the jury of the party's failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)—(vi).

(2) Failure to Admit. If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under Rule 36(a);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

Fed. R. Civ. P. 11, 36, 37, 59, 60 and Fed. R. App. P. 3 and 4 are set forth in the Appendix at App. 47-76.

STATEMENT OF THE CASE

Consistently and throughout the litigation, the District Court refused to review the basic starting points as set forth in this Petition. Having cast the ultimate result as a discovery issue, the District Court's discretion – and the Seventh Circuit's deference thereto – inevitably led to the incorrect result when applying the circumstances to the actual imposition and articulation of Rule 11 sanctions and Rule 37 costs.

The circumstances presented here demonstrate a reluctance by the Seventh Circuit to heed the Supreme Court's encouragement to approach appellate jurisdiction on a more broadly consistent basis for application of the rules pertinent to jurisdiction and pertinent doctrines laid down by *Hamer*. Consequently, there is a conflict between the decision of the Seventh Circuit below in the instant case (CA7 Cir. Dkt. 52) and this Court's decision in *Hamer*. There is also a conflict between the decision of the Seventh Circuit after its initial decision in *Hamer* was REVERSED, and the manner in which it appears to

have taken a step back, coming into conflict with this Court's decision in *Hamer* once again.

The District Court erred by misapplying Rule 11 to a discovery matter and by imposing costs of proof against a Party's counsel, instead of the *Party*. Rule 11 does not apply to matters of discovery. See, Rule 11(d). Also, *Estate of McNamara v. Navar*, 2020 WL 1934175 at *3 (S.D. Ind. April 22, 2020).

Rule 37 costs of proof may only be imposed on a "party," not the party's counsel. See, FRCP Rule 37(c)(2); also, *Insurance Benefits Administrators v. Martin,* 871 F.2d 1354,1360 (7th Cir. 1989). Instead, the District Court tied its awards of costs and sanctions to portions of the Federal Rules of Civil Procedure 11 and 37 that simply do not apply. The dispute over sanctions was narrowed down to a period of time embracing a snapshot of discovery (Dist. Dkts. 167, 170). Then the District Judge applied the law incorrectly. See, Rule 11(d).

Numerous other rulings by the District Court evidence clear errors of fact and misstatements of applicable law. The entire underlying issue leading to the Rule 37 award of costs reimbursement and Rule 11 attendance to continuing legal education sanction, arose from whether personal jurisdiction existed over Hawthorne Direct LLC in Illinois by virtue of its suit-related minimum contacts here, or whether it otherwise waived and/or forfeited personal jurisdiction over it in the district court and in the appellate court. Bound up in that skirmish was whether the litigation tactics employed by Defendants' counsel were appropriate and consistent with rules of

professional responsibility and the duty of proportionality as mandated under Fed. R. Civ. P. 1 and 26, or whether Defendants and their counsel abused the duty of candor in the court process. And, if so, did the District Court misapply Rules 11 and 37 to a discrete discovery dispute over Plaintiff Bovinett's answers and objections to Rule 36 Requests for Admission and an Interrogatory relating thereto. The Seventh Circuit seemed to feel that none of these circumstances were appropriate for examination on review, much less rose to the level of an abuse of discretion over discovery matters.

Further, the District Court erred by engaging in improper fact-finding when it delved into the full role of Hawthorne Direct's actions and impact in Illinois with respect to harm connected to Bovinett's personality rights. Despite Rule 9(b) particulars being properly alleged at the pleadings stage of the litigation where it was applicable to the District Court's early rulings (*e.g.*, Dist. Dkt. 42), the Court improperly engaged in purported fact-finding as if sitting in that capacity and usurping the jury's role.

Although Fed. R. Civ. P. 9(b) sets forth a heightened pleading standard for claims based on fraud, "(t)his standard does not require extreme specificity." *MedScript Pharmacy v. MyScript, LLC*, 77 F.Supp.3d 788, 793-94 (N.D. Ill. 2015). In addition, "[w]hen a Plaintiff is unable to attain specific information before filing a complaint, [he] is permitted to plead on information and belief." *Id.*, at 794 (cf. Compl. ¶ 64, fn. 1). Plaintiff has, in fact, pleaded all of the particulars for a fraud claim, and to the extent such matters are also part of the so-called "confusion-

based" claims, those were also pled with sufficient particularity at that stage of the litigation (Compl. ¶¶ 1-60, 62-75, and *passim*).

This action was filed August 28, 2017 (Dist. Dkt. 1). The controversy is now more than five years old. A motion to compel brought by Plaintiff Bovinett against Defendants early on in the proceeding was granted (Dist. Dkt. 59), and combined "Motion For Sanctions" against Defendants was entered and continued (Dist. Dkt. 63). Defendants were ordered to comply with outstanding discovery. Instead, they retaliated with sanctions requests (Dist. Dkts. 83, 103, 137).

None of Defendants' motions for sanctions cited a specific sub-section of the sanctions Statutes or Rules, namely 28 U.S.C. § 1927, Fed. R. Civ. P. 11 or 37. Other than attorney fees and costs, the relief sought by Defendants was designed to shape or even block the proceedings. Only when the District Court ruled on sanctions and proof of costs reimbursement did the specific references to Rules 11 and 37 get plugged in.

Ultimately, Plaintiff Bovinett's sanctions request (Dist. Dkts. 59, 63) was ignored by the District Judge in favor of Defendants' sanctions motions (Dist. Dkts. 83, 107, 131). From filing August 2017 through December 2019, and while key counts of the underlying action were still pending, the case settled (Dist. Dkt. 150). In the settlement, Defendants promised to cease using Bovinett's image in television commercials, and he was paid $40,000 for his release (Dist. Dkt. 155).

By December 2019 the Parties had signaled to the Court that they were in the process of settling the

controversy (Dist. Dkt. 141). By February 2020 they had filed a stipulation to dismiss all claims, with prejudice (Dist. Dkt. 150). Despite the purported dismissal "with prejudice," and in what can only be called a revenge tactic, Defendants sought to preserve their claims for sanctions versus Bovinett's former counsel Mark Barinholtz under various theories.

Those post-dismissal claims for fees and costs of proof were allowed to go forward (Dist. Dkt. 155). The District Court granted the motions, and quantified a reimbursement of fees and costs to Defendants pursuant to FRCP 37, but based on a fraction of high six-figure fees claimed by Defendants for the sanctions motions alone.[1] The Court also ordered a Rule 11 continuing legal education sanction against Barinholtz (Dist. Dkt. 176).

Petitioner appealed (Dist. Dkt. 181). The District Court's resolution of the sanctions motions (Dist. Dkts. 83, 107 and 131), was affirmed. But the Seventh Circuit stamped its *per curium* disposition as "Nonprecedential" (Cir. Dkt. 52). Indeed, Petitioner had responded and/or objected to such efforts by Defendants, including focusing on the injunction entered in the State of California enjoining HomeAdvisor from engaging in misleading television advertising practices, the revelation of how many millions of dollars were spent and made on the commercials embodying Bovinett's likeness and

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[1] The record in this regard, *i.e.*, Defendants' overall expenditure of fees and costs, is interpreted by Petitioner to be in the millions of dollars overall for the entire litigation. (See, Dist. Dkts. 170, 174).

image, the false affidavit submitted by an associate manager at Hawthorne Direct claiming to not know who Bovinett was, and other plainly false or at least misleading facts relevant to personal jurisdiction and other items pertinent to appellate jurisdiction (See, *e.g.*, Dist. Dkts. 32-34, 44, 59 and 63, 79, 85, 88, 145, 162, 174; also see, CA7 Cir. Dkts. 8, 14, 16 indicating the difficulty of untangling the timing, scope of review, and other aspects of appropriate jurisdiction in the Court of Appeals).

Petitioner is currently back in the District Court grappling with the continuing fallout of the Seventh Circuit's affirmance. There, Petitioner has filed a Rule 60(b)(5) motion seeking relief from the District Court's orders pertaining to 40 hours of continuing legal education, and that Barinholtz pay roughly $17,000 to HomeAdvisor.

Rule 60(b)(5) and (b)(6) provide:

" * * *

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> * * *
>
> (5) the judgment has been satisfied, released, or discharged; … or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief."

The concept of "inequity" is not rigidly binary. Rather, it is subject to a sliding scale of intensity. At some low level it could be immaterial or even harmless. At some point, however, it becomes a "sufficient" catalyst to warrant relief. We have reached that point in the instant case:

"To show sufficient inequity to warrant Rule 60(b)(5) relief, a party must show that "a significant change either in factual conditions or in law" renders continued enforcement of the judgment or order "detrimental to the public interest." *Rufo,* 502 U.S., at 384, 112 S. Ct. 748. * * * [T]he party can claim that relevant facts have changed to the point where continued enforcement of the judgment, order, or decree as written would work, say, disproportionately serious harm. See *Rufo, supra,* at 384, 112 S. Ct. 748 (modification may be appropriate when changed circumstances make enforcement "substantially more onerous" or "unworkable because of unforeseen obstacles")." *Horne v. Flores*, 129 S. Ct. 2579, 2616 (2009, J. Breyer in dissent).

Fed. R. Civ. P. 1 and 26(b)(1) impose duties on parties to keep discovery limited, proportional to needs of the case, and to otherwise secure a speedy and inexpensive determination of the action. Instead, Defendants went all out, spending lavishly and aiming questionable tactics at Petitioner (Dist. Dkt. 170).

In the Seventh Circuit Defendants initially failed to appear when noticed. They appeared in a Circuit Rule 33 mediation only when ordered to do so. At all times herein, Defendants' counsel has taken a hyper-adversarial stance in this controversy.

Defendants HomeAdvisor, Inc., Hawthorne Direct, LLC, and ANGI Homeservices, Inc., though having been awarded reimbursement of roughly $17,000 in fees and costs of defense pursuant to Rule 37, have never sought to enforce that sum. Though the Seventh Circuit affirmed the District Court's ultimate rulings (Dist. Dkts. 179, 180) "with costs" (CA7 Cir. Dkt. 53), Defendants never sought to submit or prove a claim for those either, in the Court of Appeals or in the District Court.

It's certainly not in the public interest to allow an attorney – a former opponent in a litigation that has been settled and dismissed with prejudice, to continue to clog the courts with satellite litigation exhibiting overly aggressive behavior and tactics.

Proceeding on a separate track, is Petitioner's right of further review to a higher court. Petitioner is advised by the U.S. Supreme Court, that his request for an extension of time to file his Petition for Writ of *Certiorari* in this case has been reviewed and granted by Circuit Justice Amy Barrett (Dist. Dkt. 200).

On July 17, 2019, the Court entered an Order allowing Barinholtz leave to withdraw as counsel to Plaintiff (Dkt. 137). At that time, Plaintiff's case and his substantive claims (breach of contract, alternatively unjust enrichment, and, successor liability versus ANGI) were viable and pending (Dkt. 95; 2018 WL 4635292 at *3 (N.D. Ill., Sept. 27, 2018).

No Summary Judgment motion was ever filed by Defendants. No effort has been made by Defendants' sanctions motions to satisfy the evidentiary safeguards of Fed. R. Civ. P. 56.1 (See, *Malec v.*

Sanford, 191 F.R.D. 581, 582-587 (N.D. Ill. 2000). A motion for sanctions is not a permissible substitute for a motion for summary judgment.

There have been no true findings of fact or actual merits rulings in this case below. Though Hawthorne Direct was ultimately dismissed "with prejudice" (Dist. Dkt. 95), that ruling was procedural, not merits-based. Under Fed. R. Civ. P. 54, Hawthorne is not a "prevailing party." Despite the Court's characterization of various elements of its 12(b)(2) ruling in favor of Hawthorne as being "with prejudice" (Dkt. 95), such ruling is not a final order. The case has not "ended" by entry of a judgment altering the relationship of the parties. It settled.

There is little doubt the Rothstein Fee Declaration (Dkt. 170) demonstrated grossly excessive, redundant and unnecessary billing which the District Court characterizes as inappropriate (Dist. Dkt. 176, p. 10). "[A] district court has the discretion to deny a request for attorneys' fees in its entirety when the amount of the request is grossly excessive" (emphasis added by counsel) (citations omitted). *Sommerfield v. City of Chicago,* 2017 WL 3675722 at *3 (N.D. Ill. Aug. 25, 2017). "[A]n excessive request for fees is a sanctionable event; and district courts should try to impose sanctions for each independently sanctionable event. If these turn out to offset, so it goes; ... ." *Central Ice Cream Co. v. Rafel, et al.*, 836 F.2d 1068, 1074 (7th Cir. 1987).

By virtue of both their Stipulation to Dismiss (Dkt. 150) and their Settlement Agreement (Dkt. 156), the Settlement Signatories' contention, that all claims are

now fully resolved, the District Court clearly lost jurisdiction by virtue of the doctrine of mootness which is constitutionally fused with the Article III "Case" or "Controversy" requirement. *Scott v. Westlake Servs.*, 948 F.Supp.2d 898, 907-09 (N.D. Ill. 2013).

REASONS FOR GRANTING THE WRIT

The goal of the federal court system is to act as a public institution of government which exists to ensure that members of the public have fair and equitable access to justice in a manner which is consistent with Article III of the U.S. Constitution. "Consistency" on a nationwide basis is the ultimate goal of that system. The glue which holds that system together is the body of statutes and rules which help to define such slippery concepts as finality, jurisdiction and proportionality. Fair access to justice only works, however, when those regulatory ground rules are clear, universally understood and applied by the various courts at all levels in the federal system.

The Court should grant *certiorari* in order to reverse the Seventh Circuit's "Nonprecedential Disposition" affirmance of the District Court's rulings. Important questions of federal appellate jurisdiction are presented by these circumstances, including the distinctions between federal time-limitations in statutes versus time-limitations in claims processing rules, and, all in the context of the jurisdictional concepts of timeliness and finality (Fed. R. App. P. 3, and 4; Fed. R. Civ. P. 59, and 60).

These concepts of important nationwide scope to federal court practice are brought into sharp focus

here, including as analyzed in depth in *Hamer v. Neighborhood Housing Services of Chicago*, 138 S. Ct. 13 (2017). That case has been misapplied in this matter by the district court and the Seventh Circuit itself. Also brought to the fore here are Federal Rules of Civil Procedure 11 and 37, and the maze of updates and cross-references leading to a less than clear, unfair and complex set of grounds and standards, particularly for awarding non-monetary sanctions as is the case here. Additionally, on occasion the Supreme Court weighs in on assessment and allocation of post-judgment attorney fees. See, *Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994) (reversing both lower courts).

In fashioning a Rule 11 sanction, the District Court did not clearly state what specific provision of that Rule applies here (Dkt. 176, *passim*). See, *Johnson v. Cherry*, 422 F.3d 540. 551-52 (7th Cir. 2005) (allegedly offending party must be on notice of the specific conduct for which he may be subject to sanctions). Also see, *Chern v. Layng*, No. 1:2020cv05381, 2021 WL 2399982 (N.D. Ill Jun. 11, 2021). Indeed, none of the Defendants' multiple sanctions motions below stated a specific sub-part under which the District Court should invoke sanctions – tantamount to a result looking for a rationale. (*E.g.*, *see* App. 43).

Fed. R. Civ. P. 11(d) unequivocally makes Rule 11, *inapplicable* to discovery requests, responses, objections and motions under Rules 26 through 37. Compounding the confusion, is the ill-defined "overlap" in the punitive standards of Section 1927 and the Court's inherent powers to punish. Those Rules appear to be the main thrust of Dist. Dkts. 83 and 107, if not also folded in to Defendants' motion to

supplement (Dist. Dkt. 131). Yet the District Court clearly relied on FRCP Rule 37 in fashioning its Rule 11 non-monetary sanction (Dist. Dkt. 176, p.10, "the Court has already awarded ... sanctions in accordance with Rule 37"). *Id.; see also, Moore's Fed. Practice* § 11.22[1][f] (ed. 9/2015) (a cross-motion is not necessary to award the target of such motions her reasonable expenses, including attorney's fees incurred in opposing the motion).

It is Barinholtz who should be allowed to submit a fee petition for having to defend against the vendetta. Being ordered to pay $17,000 to HomeAdvisor (a billion dollar enterprise) smacks of compensation, and is not properly within the purposes of Rule 11.

Barinholtz's Motion to Reconsider (Dist. Dkt. 179) Exhibit "1" attached thereto, evidences former Defendants' waiver and pledge to "not oppose" Barinholtz's efforts to file a post-order motion and then, if necessary, an appeal. That should have resolved that procedural aspect of the case. Yet the District Judge ignored even that express *waiver* from Defense Counsel Irwin when making its rulings (Dist. Dkt. 180). The Seventh Circuit claimed to only be able to review the case from and after denial of the motion for reconsideration, and without looking back into the record at all to see whether fundamental errors of fact and/or misstatements and/or application of existing law were present (CA7 Cir. Dkt. 52). That view of the scope of authority to review by the U.S. Courts of Appeal is too narrow.

Due to changed circumstances, the passage of time, and the absence of original purposes for which

sanctions were to be imposed, it is no longer equitable that any federal court pursue such measures prospectively, and/or allow Defendants such authority.

Good cause exists for granting this Petition for Writ of *Certiorari*: (1) there a reasonable probability of succeeding on the merits (meaning both that the Supreme Court will grant certiorari and that it will reverse) and (2) irreparable injury absent a stay. *Id.*;" see also *In re A.F. Moore & Asso*c., Inc., 974 F.3d 836; 2020 WL 5422791, at *3 (7th Cir. 2020) (per curiam) (See also, CA7 Practitioner's Handbook, 2020 ed., p. 215). Petitioner has in this controversy – post-sanctions – addressed the fact that reputation is a state protected property right (Dist. Dkt. 203); Petitioner's Motion For Rule 60(b)(5) relief). In that regard, the stigma associated with certain punitive measures adopted and imposed by the lower courts in order to function in an orderly fashion, should be taken into account due to the ongoing harm which may result from an overly strict interpretation and application of court-made claims processing rules designed to clarify, not confound, principles of finality and jurisdiction in the federal courts.

The Seventh Circuit Court of Appeals, in its *per curiam* disposition here, devoid of citations to the record, and "heard" without allowing oral argument, entered a final judgment predicated upon a 6-page "Nonprecedential Disposition" April 8, 2022 (CA7 Cir. Dkt. 53. Petitioner's Petition for Rehearing *En Banc* was denied on May 31, 2022).

Petitioner further avers there is an ongoing, irreparable injury incident to this Court's April 8, 2020 nonprecedential disposition (CA7 Cir. Dkt. 52). It is no small matter that rulings of both the District Court, and the Nonprecedential disposition of the Court of Appeals, both based on misunderstandings of facts and misapplication of laws, leave a defamatory sting in the record. Throughout this litigation, Defendants have demonstrated a clear intent to flout the spirit, if not the letter, of modern efforts by the federal courts to enforce a sense of proportionality into the Federal Rules of Civil and Appellate Procedure, designed to prevent abuse of federal courts to curtail extravagant expenditures not called for by the circumstances.

Moreover, further proceedings, if any are conducted in the District Court, would, if *certiorari* is granted, and particularly if the Court of Appeals is reversed, cause a needless waste of resources all around, including to the courts involved.

Fifty years ago, in *Board of Regents v. Roth*, 408 U.S. 564, 569-79 (1972), the U.S. Supreme Court discussed the relationship between stigma and the Constitutionally protected property interest in one's reputation. In *Dupuy v. Samuels*, 397 F.3d 493, 515 (7th Cir. 2005), our Court of Appeals stated that "The hallmark of property … is an individual entitlement grounded in state law…," also discussing "stigma," *Id.,* at 513-14.

Also see, *In re: Jewel Carter*, 638 B.R. 379, 402 (N.D. Ill. 2022) (performance of court-ordered obligation for period of time is entitled to

consideration); and *Shakman v. Pritzker*, 43 F.4th 723, 728 (7th Cir. 2022) (continued enforcement of court order no longer necessary.)

CONCLUSION

For the foregoing reasons, Petitioner, Mark Barinholtz respectfully requests this Court issue a Writ of *Certiorari* to review the judgment of the Seventh Circuit Court of Appeals.

Respectfully submitted,

MARK BARINHOLTZ
Counsel of Record
MARK BARINHOLTZ, P.C.
55 W. Monroe St., Ste. 3600
Chicago, IL 60603
(312) 977-0121
mark@mhbpc.com
Attorney–Petitioner *Pro Se*