**UNITED STATES BANKRUPTCY COURT**
**EASTERN DISTRICT OF MICHIGAN**
**BAY CITY**

IN RE: Kevin W. Kulek

Chapter 7 Petition
16-21030-dob
Honorable Daniel Opperman

_____/
RANDALL L. FRANK, TRUSTEE,
Plaintiff,

Adversary Case Number
17-02002-dob
Honorable Daniel Opperman

V

PAUL B. MALETICH
VIRTUAPIN CABINETS, INC.,
Defendants.
_____/

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_____/

## F.R.BANK.P. 9011 BRIEF IN SUPPORT OF MOTION FOR SANCTIONS

There are several statutes and rules in place that permit the imposition of sanctions for certain well-defined violations. See Fed. R. Civ. P 11(c), 16(f), 26(g)(3), 56(h); 18 U.S.C. § 401; 28 U.S.C. § 1927; see also 8 U.S.C. § 1229a(b)(6) (immigration

proceedings); 37 C.F.R. § 2.120(g) (trademark proceedings); Fed. R. App. P. 38 (appellate proceedings); Fed. R. Bankr. P. 9011 (bankruptcy proceedings).

It would undermine that regulatory scheme "to invoke that power to ease the burden of satisfying existing Civil Rules — to punish practices exempted by a Rule or that fall short of meeting a Rule's standard for sanctionable conduct." Aleo, 681 F.3d at 307 (Sutton, J., concurring). On the other hand, those rules and statutes do not cover the gamut of potentially offensive conduct. Those "mechanisms, taken alone or together, are not substitutes for the inherent power, for that power is both broader and narrower than other means of imposing sanctions." Chambers, 501 U.S. at 46. As the Court explained, many of the rules apply only in well-defined situations, whereas "the inherent power extends to a full range of litigation abuses." Ibid.

And although the inherent power may be exercised to redress bad faith conduct, the rules reach misconduct that might be merely unreasonable. Id. at 46-47. By recognizing that the conduct that triggers the court's inherent power to remediate or punish must include an element of bad faith. See Chambers, 501 U.S. at 46-47 (explaining that "the inherent power must continue to exist to fill in the interstices," but acknowledging that certain "narrow exceptions" to fee-shifting rules "effectively limit a court's inherent power to impose attorney's fees as a sanction to cases in which a litigant has engaged in bad-nfaith conduct or willful disobedience" (emphasis added)).

That limitation is consistent with Sixth Circuit precedent. See, e.g., Metz v. Unizan Bank, 655 F.3d 485, 489 (6th Cir. 2011). To use inherent power as the authority for imposing monetary or other sanctions against an attorney for his or her filings, a court must find that these three elements are present: "[1] that 'the claims advanced were

meritless, [2] that counsel knew or should have known this, and [3] that the motive for filing the suit was for an improper purpose such as harassment.'" Ibid. (quoting Big Yank Corp. v. Liberty Mut. Fire Ins. Co., 125 F.3d 308, 313 (6th Cir. 1997)).

In the instant matter, Defendants' Counsel has filed a motion to dismiss the instant adversary complaint based upon "non-service" as the complaint and summons were served on Defendants by ordinary mail. Defendant's Counsel even boldly professes that F.R. Bank.P. 7004 does not allow service by ordinary mail, and there is nothing in either the F.R.Civ.P. or Bank.R.Civ.P allowing service by ordinary mail

The position of Defendants is completely frivolous, as has been shown in Plaintiff's Response to the Motion.. This Court should not tolerate such abuses, especially given the lengthy opportunity Defendant and her Counsel have had to correct the deficiencies.

**RELIEF REQUESTED**

Plaintiff moves this Honorable Court to enter an order pursuant to F.R.Civ.P. 11 and F.R.Bank.P. 9011 that:

a. Finds Defendants' Counsel in violation of F.R.Civ.P. 11 and F.R. Bank.P. 9011;

b. Grants costs and attorney fees to Plaintiff's Counsel of $2,500.00 to be paid forthwith;

c. Strike Defendants' motion as a nonmonetary directive;

d. Grant such other relief as may be equitable.

Respectfully submitted,

/s/ Keith M. Nathanson
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Dated: May 4, 2017