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No. 72265-4-I

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COURT OF APPEALS  
DIVISION I  
OF THE STATE OF WASHINGTON

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TEMPLAR LABEL GROUP, INC., Plaintiff/Appellant

v.

SUB POP, LTD., Defendant/Respondent.

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BRIEF OF RESPONDENT

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A handwritten signature in black ink is written over a faint, circular date stamp. The signature is slanted and appears to be 'R. I. Gordon'. The date stamp is partially obscured by the signature.

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## 1. INTRODUCTION AND RELIEF REQUESTED.

Respondent Sub Pop, Ltd. (defendant below) was awarded terms against Anthony E. McNamer (“McNamer”), attorney for Templar Label Group, Inc. (“Templar”) (plaintiff below) pursuant to CR 11 in the amount of \$3,179.91. McNamer has appealed this award. Regrettably, the Amended Brief of Appellant, Anthony E. McNamer, contains statements to this Court central to his argument that are demonstrably false, warranting rejection of his appeal and imposition of further CR 11 sanctions.<sup>1</sup>

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<sup>1</sup> Such a statement is not made lightly. Central to McNamer’s argument against CR 11 sanctions is his assertion that he made a reasonable inquiry (by checking Washington State corporate records only) before suing the wrong party (Sub Pop, Ltd., respondent herein) and concluding (wrongly) that the correct defendant (Sub Pop Records) was “not an entity registered to do business in Washington.” (Amended Brief of Appellant, pp. 3, 9.) This false statement regarding Sub Pop Records not being duly licensed in Washington, based upon only checking corporate records, was made repeatedly in pleadings and declarations to the trial court [CP 332, 347, 350-351], despite the fact that, as early as January 27, 2014, the Declaration of Eric Brown confirmed that Sub Pop Records was not a corporation, but “a general partnership organized under Delaware law.” CP 25. February 5, 2014, McNamer acknowledged that Sub Pop Records is “a general partnership organized under Delaware law.” CP 158. Last July 8, 2014, printouts from the Washington State Department of Licensing, Business Licensing Service were attached as exhibits to the Decl. of Randolph I. Gordon in Reply to Anthony McNamer’s Supplemental Declaration and proved the Sub Pop Records general partnership to be duly licensed as a business in Washington. CP 362-367. While McNamer’s statements to the contrary made to the trial court below are false, it is inexplicable why McNamer continues to make this identical, false assertion to this Court nearly half a year later in his Amended Brief, pp. 3, 9, signed December 16, 2014. It is not a reasonable inquiry to check for a general partnership in corporate records nor, based on the record here, “well grounded in fact” nor “warranted on the evidence” to persist in the baseless, false statement to this Court that Sub Pop Records is not licensed to do business in Washington given the official record showing such a business license to be of record with the Business Licensing Service. CP 364-367. Based upon this, CR 11 sanctions continue to be justified both below and before this Court.

For the reasons set forth hereinafter, this appeal is frivolous, warranting denial of the appeal and an additional award of attorneys' fees and costs to Respondent Sub Pop Ltd. Respondent requests that Appellant's appeal be denied and additional sanctions awarded.

## **2. STATEMENT OF THE CASE.**

The Findings of Fact and Conclusions of Law Supporting Entry of Judgment Against Plaintiff and its Counsel Pursuant to CR 11 (hereinafter "Findings and Conclusions") are hereby incorporated by this reference. CP 368-379; **App. A.** The Judgment and Judgment Summary [Amended Brief of Appellant, Appendix, pp. A-3 – A-4] is attached as **App. B.**<sup>2</sup>

The award against McNamer was the culmination of a deliberative process whereby: (i) on March 10, 2014, an Order for Defendant's Motion for Attorney's Fees and Costs was granted determining the reasonable fees and costs to be awarded [CP 295-296]; (ii) on June 18, 2014<sup>3</sup>, a Preliminary Order on Defendant Sub

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<sup>2</sup> For the convenience of the Court, rather than reference the conformed copy appended to McNamer's amended brief, the copy as executed is attached as App. B hereto.

<sup>3</sup> The Preliminary Order was mistakenly dated July 18, 2014, but was filed with the Clerk on June 19, 2014, and within its language contemplates compliance

Pop Ltd's Motion for Entry of Judgment was entered "[i]n the abundance of caution and fairness to all parties" affording the parties "an opportunity to file additional legal briefing on the issue of who should properly be named as judgment debtors in this matter" [CP 5-6]; (iii) on July 14, 2014, the Findings and Conclusions were entered [CP 368-379][**App. A**]; (iv) on September 2, 2014, Judgment and Judgment Summary were entered against Templar and its attorney, McNamer. **App. B.**

The trial court found that Appellant McNamer filed a lawsuit against an innocent party on behalf of an entity lacking standing to do so without first undertaking reasonable inquiry. CP 370-371, 374-375. Although McNamer's pre-filing investigation was inadequate (he sued the wrong party), "for the purpose of considering sanctions in this matter, [the trial court] consider[ed] even more significant the motion practice initiated against Sub Pop, Lt. without any reasonable inquiry as mandated under CR 11." CP 370-371.<sup>4</sup>

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with deadlines beginning with June 27, 2014. Counsel concludes the actual date of signing was June 18, 2014. The "Preliminary Order of June 18, 2014" was cited in the Findings and Conclusions. CP 368.

<sup>4</sup> The trial court found that McNamer "conducted no discovery to determine the proper party or its own standing ... through deposition, interrogatories, inquiry of defense counsel, or otherwise." CP 370.

Given the serious questions regarding proper party and standing, ultimately resolved against Plaintiff Templar on the merits, these post-filing motions needlessly increased the cost of litigation, imposing significant legal fees upon an innocent party, Sub Pop, Ltd., without Mr. McNamer having undertaken the inquiry reasonable under the circumstances.

Findings and Conclusions, ¶ 1.9, CP 371; *see also* CP 375.

McNamer's motions, the trial court concluded, were "neither well-grounded in fact, nor warranted by existing law or a good faith extension or reversal of existing law." CP 375. McNamer, himself, imposed the unfair burden upon an innocent party and is properly sanctioned under CR 11. CP 376. The trial court found that Sub Pop, Ltd., an innocent <sup>5</sup> party, had been substantially burdened by baseless litigation [CP 374], concluding: "Here, holding accountable the responsible person [McNamer] and compensating the victim for the misconduct is the least severe sanction that carries out the purpose of CR 11 ...." CP 378.

On June 18, 2014, the Preliminary Order on Defendant Sub Pop Ltd's Motion for Entry of Judgment was entered affording the

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<sup>5</sup> The trial court found: "Good faith efforts to avoid the expenses of litigation were made by Sub Pop through its counsel of record when it raises these issues [lack of standing by Templar; Sub Pop Ltd. as wrong party] pre-filing and promptly in its pleadings." CP 369-370. The trial court concluded: "Templar's counsel had already been put on notice of both the fact that Sub Pop, Ltd. was an improper party and of the issue respecting lack of standing, before Templar filed its motions. Templar's motions, filed by Mr. McNamer, were neither well-grounded in fact, nor warranted by existing law or a good faith extension or reversal of existing law." CP 375. **App. A.**

parties “an opportunity to file additional legal briefing on the issue of who should properly be named as judgment debtors in this matter.” CP 5-6. The trial court noted that it was “undisputed” that CR 11 permitted it “‘upon motion or the court’s own initiative’ to ‘order sanctions against a party and/or its attorney.’” CP 376.

The award of fees and costs, after close review and an ample record, was found to be reasonable. CP 371-374, 376, 378.

McNamer has shown neither contrition for his imposition of needless costs upon an innocent party, nor understanding of his lack of reasonable inquiry. Rather, he continues to assert, even to *this* Court, that: (i) his pre-filing inquiry was reasonable, having *only* checked corporation records for a general partnership(!) and (ii) “Sub Pop Records ... is not an entity registered to do business in Washington.” Brief of Appellant, pp. 3, 9. This second assertion is neither “well grounded in fact” nor “warranted by the evidence” in light of the official State of Washington Business Licensing Service evidence of Sub Pop Records’ licensure and UBI number. CP 364-367; *see also* f.n. 1, *supra*. Yet, McNamer inexplicably misrepresents Sub Pop Records’ status to this Court, despite the truth having been made a matter of record last July 8, 2014, in Defendant Sub Pop Ltd.’s Supplemental Reply [CP 356-360], the

Declaration of Randolph I. Gordon in Reply [CP 362-363], and Exhibits thereto [CP 364-367]. McNamer should be sanctioned for this false assertion to this Court and Respondent's attorney's fees and costs on appeal awarded pursuant to RAP 18.1, 18.9 and the inherent authority of this Court.<sup>6</sup>

### **3. ISSUES PRESENTED**

**a. Did the trial court abuse its broad discretion in awarding terms against Appellant McNamer where, as here:**

(1) CR 11 expressly permits the trial court "upon motion or its own initiative" to impose appropriate sanctions upon a represented party or the person who signed a pleading, motion or legal memorandum in violation of the Rule ;

(2) The trial court found that McNamer failed to make inquiries reasonable under the circumstances before suing an innocent party on behalf of a party that, itself, lacked standing, and initiating motion practice, including motions that were neither well grounded in fact, warranted by existing law or a good faith argument for change in the law, and needlessly increased the cost of litigation, in violation of CR 11;

(3) The findings or the trial court decision was based upon substantial evidence and the exercise of discretion to award sanctions was neither manifestly

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<sup>6</sup> "A Washington court has the inherent power to assess the litigation expenses, including attorney fees, against an attorney for bad faith litigation conduct." *Wilson*, 45 Wash.App. at 174–75, 724 P.2d 1069 (citing *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980)). *State v. S.H.*, 102 Wash. App. 468, 474, 8 P.3d 1058, 1061 (2000).

unreasonable, nor exercised on untenable grounds or for untenable reasons;

(4) All counsel had an opportunity to brief and argue the application of CR 11 to McNamer; and

(5) The court awarded the least severe sanction necessary to carry out the purpose of the Rule?

**b. Are additional sanctions warranted, where, as here:**

(1) McNamer persists in making unfounded misrepresentations of fact to this Court in violation of CR 11; and/or

(2) McNamer's appeal is frivolous in that it "cannot be supported by any rational argument on the law or facts?"

**4. BRIEF SUMMARY OF ARGUMENT AND LEGAL AUTHORITY**

The trial court did not abuse its broad discretion in its award of CR 11 sanctions against McNamer. Given the extensive Findings and Conclusions and the record, McNamer's appeal suggesting otherwise is frivolous in that it "cannot be supported by any rational argument on the law or facts." *Clarke v. Equinox Holdings, Ltd.*, 56 Wash.App. 125, 132, 783 P.2d 82, review denied, 113 Wash.2d 1001, 777 P.2d 1050 (1989). There is no rational argument that the trial court abused its discretion.<sup>7</sup>

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<sup>7</sup> An abuse of discretion exists when the trial court's decision is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons.

Appellant McNamer simply *disagrees* with the trial court's findings supporting the trial court's exercise of its discretion, yet fails even to argue that such findings were not supported by substantial evidence.<sup>8</sup> There is no rational argument that the findings of fact fail to support the sanctions here when viewed, as they must be, in the light most favorable to respondent Sub Pop Ltd.<sup>9</sup> and show that an innocent party was subjected to needless expense because a party failed to make the inquiry necessary under the circumstances both pre-filing and before proceeding with unfounded motions.

Appellant 's arguments are readily summarized. McNamer disagrees with the trial court: (i) finding that he failed to make a reasonable inquiry before suing an innocent party; (ii) finding that he failed to make a reasonable inquiry regarding his party's lack of

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*State v. Dixon*, 159 Wash.2d 65, 76, 147 P.3d 991 (2006). Here, the award supported the purposes of CR 11.

<sup>8</sup> "Where the trial court has weighed the evidence, our review is limited to ascertaining whether the findings of fact are supported by substantial evidence and, if so, whether the findings support the conclusions of law and the judgment." *City of Tacoma v. State*, 117 Wash.2d 348, 361, 816 P.2d 7 (1991) (citation omitted).

<sup>9</sup> "Substantial evidence is evidence that, when viewed in the light most favorable to the party prevailing below, is sufficient to persuade a fair minded, rational person of the truth of the declared premise." *In re Marriage of Boisen*, 87 Wash.App. 912, 918, 943 P.2d 682 (1997), *review denied*, 134 Wash.2d 1014, 958 P.2d 315 (1998).

standing and the proper defendant before engaging in baseless motion practice; and (iii) entering judgment against him.

(i) McNamer attempts to justify his decision to sue the wrong (and an innocent) party by falsely claiming that the proper defendant (Sub Pop Records) was not even registered to do business in Washington and that it was reasonable to only look in the State's corporation records to find a general partnership and disregard the official Washington State Business License Service. *But see* p. 1, f.n.1 and p. 4, *supra* and pp. 15-16, *infra*.

(ii) McNamer attempts to justify his lack of reasonable inquiry regarding proper party and standing before filing baseless motions, but does not dispute the court's findings that he "conducted no discovery to determine the proper party or its own standing ..." and "needlessly increased the cost of litigation." CP 370-371; p. 3, f.n. 4, *supra*, and pp. 17-18, f.n. 11, *infra*.

(iii) McNamer, while conceding the trial court's discretion under CR 11, mischaracterizes what it did, claiming that the court "rewrote" history and added him as "an additional unnamed party to a judgment." Brief of Appellant, p. 15. In fact, the trial court specifically afforded McNamer the right to be heard before judgment was entered against him. On June 18, 2014, a

Preliminary Order on Defendant Sub Pop Ltd's Motion for Entry of Judgment was entered wherein the court stated: "In the abundance of caution and in fairness to all parties, the Court will not enter judgment in this matter until the parties have an opportunity to file additional legal briefing on the issue of who should be named as judgment debtors in this matter." CP 5. A briefing schedule invited both parties to propose findings and conclusions. CP 6. Sub Pop Ltd.'s Findings of Fact and Conclusions of Law Supporting Entry of Judgment Against Plaintiff and Its Counsel Pursuant to CR 11 were filed July 15, 2014. CP 358-379; **App. A.** Judgment was entered against Templar and its attorney, McNamer, on September 2, 2014, after a full opportunity to be heard. **App. B.**

## **5. ARGUMENT AND GROUNDS FOR RELIEF**

### **a. Authority under CR 11.**

The trial court noted that it was "undisputed" by the parties that CR 11 permitted it "'upon motion or the court's own initiative' to 'order sanctions against a party and/or its attorney.'" CP 376. CR 11 provides as much:

If a pleading, motion, or legal memorandum is signed in violation of this rule, **the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include**

**an order to pay to the other party or parties the amount of the reasonable expenses incurred**

because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee. [Emphasis added.]

**b. Standard of Review: Abuse of Discretion.**

It appears undisputed that the determination of whether a violation of CR 11 has occurred is vested in the sound discretion of the trial court. *Cooper v. Viking Ventures*, 53 Wash. App. 739, 742, 770 P.2d 659 (1989).

We review a trial court's CR 11 sanction decision for abuse of discretion. *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wash.2d 299, 338, 858 P.2d 1054 (1993). An abuse of discretion exists when the trial court's decision is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons. *State v. Dixon*, 159 Wash.2d 65, 76, 147 P.3d 991 (2006).<sup>10</sup>

McNamer does not dispute the correct standard of review, but fails to put forward any argument as to how the decision of the court is “manifestly unreasonable,” based on “untenable grounds” or “untenable reasons.” Rather, as noted, *supra*, pp. 7-9, he simply differs with the trial court’s findings.

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<sup>10</sup> *In re Recall of Lindquist*, 172 Wash. 2d 120, 141, 258 P.3d 9, 19 (2011), as corrected (Sept. 7, 2011); see also *MacDonald v. Korum Ford*, 80 Wash. App. 877, 884, 912 P.2d 1052, 1057 (1996); *Biggs v. Vail*, 124 Wash.2d 193, 197, 876 P.2d 448 (1994); *Watson v. Maier*, 64 Wash.App. 889, 896, 827 P.2d 311, review denied, 120 Wash.2d 1015, 844 P.2d 436 (1992).

**c. Findings of Fact: Substantial Evidence.**

“Where the trial court has weighed the evidence, our review is limited to ascertaining whether the findings of fact are supported by substantial evidence and, if so, whether the findings support the conclusions of law and the judgment.” *City of Tacoma v. State*, 117 Wash.2d 348, 361, 816 P.2d 7 (1991) (citation omitted). Substantial evidence is evidence that, when viewed in the light most favorable to the party prevailing below, is sufficient to persuade a fair minded, rational person of the truth of the declared premise. *In re Marriage of Boisen*, 87 Wash.App. 912, 918, 943 P.2d 682 (1997), *review denied*, 134 Wash.2d 1014, 958 P.2d 315 (1998). A challenged finding of fact may be supported by substantial evidence even if the evidence is in conflict or is susceptible to differing interpretations. *Sherrell v. Selfors*, 73 Wash.App. 596, 600–01, 871 P.2d 168, *review denied*, 125 Wash.2d 1002, 886 P.2d 1134 (1994) (citation omitted). “If the evidence satisfies this standard, we will not substitute our judgment for the trial court’s, even though we may have resolved disputed facts differently. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wash.2d 873, 879–80, 73 P.3d 369 (2003).” *Pierce Cnty. v. State*, 144 Wash. App. 783, 847, 185 P.3d 594, 627 (2008), *as amended on denial of reconsideration* (July 15, 2008).

**d. Sanctions Here Support the Purposes of CR 11.**

(1) ***The Sanctionable Conduct.*** Here the trial court found that an innocent party had been sued without reasonable inquiry and subjected to needless and expensive motion practice by a party lacking any standing to pursue the claims in the first place. CP 369-371. Moreover, appellant had been given prompt notice of the fact that the wrong party had been sued following suit (and before the initiation of motion practice) and *pre-suit notification that plaintiff below lacked standing to pursue the action.* CP 370.

(2) ***The Purposes of CR 11.*** The appellant disputes the trial court's findings, seeking to blunt the deterrent effect contemplated by CR 11 and to deprive respondent of compensation for the amounts reasonably expended to respond to the sanctionable filings.

In deciding whether the trial court abused its discretion, we must keep in mind that “[t]he purpose behind CR 11 is to deter *baseless* filings and to curb abuses of the judicial system”. [*Bryant v. Joseph Tree, Inc.*, 119 Wash.2d 210, 219, 829 P.2d 1099 (1992)] CR 11 is not meant to act as a fee shifting mechanism, but rather as a deterrent to frivolous pleadings. *Bryant*, at 220, 829 P.2d 1099. Courts should employ an objective standard in evaluating an attorney's conduct, and the appropriate level of pre-filing investigation is to be tested by “inquiring what was reasonable to believe at the time the pleading, motion or legal memorandum was submitted”. *Bryant*,

at 220, 829 P.2d 1099. In deciding upon a sanction, the trial court should impose the least severe sanction necessary to carry out the purpose of the rule. *Bryant*, at 225, 829 P.2d 1099.

*Biggs v. Vail*, 124 Wash. 2d 193, 197, 876 P.2d 448, 451 (1994).

The trial court concluded here: “As noted by our Court of Appeals in *Brigade*, the duty of every lawyer is to evaluate the cases before they are filed and put some other person to a tremendous expense. *Brigade v. Econ. Dev. Bd. for Tacoma-Pierce Cnty.*, 61 Wash. App. 615, 624-25, 811 P.2d 697, 702 (1991).” CP 377.

Both the federal rule and CR 11 were designed to reduce “delaying tactics, procedural harassment, and mounting legal costs.” 3A L. Orland, WASH.PRACT., *Rules Practice* § 5141 (3d ed. Supp.1991). CR 11 requires attorneys to “stop, think and investigate more carefully before serving and filing papers.” See Fed.R.Civ.P. 11 advisory committee note, 97 F.R.D. 165, 192 (1983). “[R]ule 11 has raised the consciousness of lawyers to the need for a careful pre-filing investigation of the facts and inquiry into the law.” Commentary, *Rule 11 Revisited*, 101 HARV.L.REV. 1013, 1014 (1988).

*Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219, 829 P.2d 1099 (1992).

**(3) Amounts Awarded Here Were Reasonably Expended in Response to the Sanctionable Conduct.** “When attorney fees are granted under CR 11, the trial court ‘must limit

those fees to the amounts reasonably expended in responding to the sanctionable filings. *Biggs*, 124 Wash.2d at 201.” *MacDonald v. Korum Ford*, 80 Wash. App. 877, 891, 912 P.2d 1052, 1060 (1996). The trial court took pains in its findings to determine the amounts reasonably related to responding to sanctionable filings. CP 371-374, 378-379. Appellant does not dispute that these figures – and more – were incurred. The record, including the Declarations of Randolph Gordon in Support of Defendant Sub Pop, Ltd.’s Motion for Reasonable Fees and Costs and Exhibits thereto [CP 212-263 and 264-273] and the Declaration of Jennifer Celano in Support of Defendant’s Motion for Attorney’s Fees and Costs [CP 264-273] amply support the award.

**(4) *The Sanctionable Conduct was Specified.*** “[I]n imposing CR 11 sanctions, it is incumbent upon the court to specify the sanctionable conduct in its order ....” *Biggs v. Vail*, 124 Wn.2d 193, 201, 876 P.2d 448 (1994).

The violation of Rule 11 is complete upon the filing of the offending paper; hence, an amendment or withdrawal of the paper, or even a voluntary dismissal of the suit, does not expunge the violation, although such corrective action should be used to mitigate the amount of sanction imposed. *See Cooter & Gell*, 496 U.S. at 395, 110 S.Ct. at 2455-56.

*Biggs v. Vail*, 124 Wash. 2d 193, 199-200, 876 P.2d 448, 452 (1994).

The trial court entered extensive findings and conclusions here, specifically finding that McNamer, on behalf of an entity lacking standing to do so, filed a lawsuit against an innocent party without first undertaking reasonable inquiry [CP 370-371, 374-375]; that the pre-filing investigation by McNamer was inadequate, resulting in suing the wrong party; that “for the purpose of considering sanctions in this matter, ... even more significant the motion practice [was] initiated against Sub Pop, Ltd. without any reasonable inquiry as mandated under CR 11” [CP 370-371]; and that Mr. McNamer “conducted no discovery to determine the proper party or its own standing ... through deposition, interrogatories, inquiry of defense counsel, or otherwise.” CP 370. The trial court found:

Given the serious questions regarding proper party and standing, ultimately resolved against Plaintiff Templar on the merits, these post-filing motions needlessly increased the cost of litigation, imposing significant legal fees upon an innocent party, Sub Pop, Ltd., without Mr. McNamer having undertaken the inquiry reasonable under the circumstances.

CP 371; *see also* CP 375.

**(5) *The Least Severe Sanction Necessary was Imposed.***

In deciding upon a sanction, the trial court should impose the least severe sanction necessary to carry out the purpose of the rule.

*Bryant*, at 225, 829 P.2d 1099; *Biggs*, at 197. The trial court concluded: "Here, holding accountable the responsible person (Mr. McNamer) and compensating the victim for the misconduct is the least severe sanction that carries out the purpose of CR 11 ...." CP 378.

**e. McNamer's Arguments are Unsupported by the Record.**

**(1) *False Statements by McNamer: No Reasonable***

***Inquiry Pre-Filing Misrepresentation.*** Consider the following false arguments presented to the trial court below:

The entity that Defendant now claims was the proper defendant [1] is not even registered to do business in Washington. To repeat. "Sub Pop Records" exists nowhere in the Washington State corporate records. [2] It is not a DBA, [3] it is not a partnership, it simply does not exist according to the official corporate database. [4] It is unclear whether this alleged entity is even operating legally within the state of Washington.

Despite the fact that the "entity" that Defendant alleges is the correct defendant [5] is not even registered to do business in Washington, Defendant argues that it was sanctionable conduct for Mr. McNamer to ignore the official corporate records, ignore the fact that [6] there is no entity called Sub

Pop Record anywhere (other than in Defendant's statements)....

CP 350-351 [Bracketed numbers inserted.]

Each of the bracketed numbers above is a false statement. In addition, McNamer reiterates the falsehood “Sub Pop Records’ is not even an entity registered to do business in Washington” in his Declaration in Response to Defendant Sub Pop, Ltd.’s Motion for Entry of Judgment. [CP 332, 347]. McNamer repeats this falsehood to this Court long after the record below disproved such a reckless assertion: “Sub Pop Records (the entity that Defendant asserts is the appropriate party) is not an entity registered to do business in Washington.” Amended Brief of Appellant, pp. 3, 9.

McNamer’s argument against CR 11 sanctions is that he made a reasonable pre-filing inquiry despite the admission that he admittedly *only* checked Washington State corporate records before suing the wrong party (Sub Pop, Ltd., respondent herein) and concluding (wrongly) that the correct defendant (Sub Pop Records) was “not an entity registered to do business in Washington .” (Amended Brief of Appellant, pp. 3, 9.)

As early as January 27, 2014, the Declaration of Eric Brown confirmed that Sub Pop Records was not a corporation, but “a

general partnership organized under Delaware law.” CP 25. In fact, February 5, 2014, McNamer acknowledged that Sub Pop Records is “a general partnership organized under Delaware law.” CP 158.

The truth was a few keystrokes away, as demonstrated last July 8, 2014, when Respondent attached printouts from the Washington State Department of Licensing, Business Licensing Service as exhibits to the Decl. of Randolph I. Gordon in Reply to Anthony McNamer’s Supplemental Declaration, proving that the Sub Pop Records general partnership to be duly licensed as a business in Washington. CP 362-367. While McNamer’s statements to the contrary made to the trial court below are false, it is inexplicable why McNamer continues to make this identical, false assertion to this Court nearly half a year later in his Amended Brief, pp. 3, 9, signed December 16, 2014. Based upon this, CR 11 sanctions continue to be justified both below and before this Court.

***(2) No Reasonable Inquiry Post-Filing Respecting Motion Practice: Wrong Party Sued; No Standing; Needless Expense.*** The trial court found that McNamer filed a lawsuit on behalf of an entity without standing without reasonable inquiry, subjecting an innocent party to needless expense. CP 370-371, 374-375. Although the pre-filing investigation by McNamer was

inadequate and he sued the wrong party, “for the purpose of considering sanctions in this matter, [the trial court] consider[ed] even more significant the motion practice initiated against Sub Pop, Lt. without any reasonable inquiry as mandated under CR 11.” CP 370-371.<sup>11</sup>

In *Brigade v. Econ. Dev. Bd. for Tacoma-Pierce County*, 61 Wash. App. 615, 620, 811 P.2d 697, 699 (1991), the court upheld sanctions against the attorney on facts similar to those present here: “The judge was right. Neither facts nor law supported Demarest's position when he filed the complaint or when he moved for summary judgment, and a reasonable inquiry would have revealed this to him.” The Court of Appeals cited the remarks of the trial judge approvingly:

... I think it is totally unjustified for you to file a frivolous action against two entities, put them to the expense of \$10,000—plus in attorney's fees and think I'm going to let you off the hook ... I'm going to assess [the fees] to you and maybe the lesson you're going to learn is that next time you will evaluate your cases before you file them and put some other person,

---

<sup>11</sup> The trial court found that Mr. McNamer “conducted no discovery to determine the proper party or its own standing ... through deposition, interrogatories, inquiry of defense counsel, or otherwise.” CP 370. In this regard, the trial court found McNamer’s post-filing motions had needlessly increased the cost of litigation, imposing significant legal fees upon an innocent party without McNamer having undertaken the inquiry reasonable under the circumstances. CP 371, *supra* at 14; *see also* CP 375.

some adversary to a tremendous ... expense. That's the duty, Mr. Demarest, of every lawyer ...

*Brigade, supra*, at 624-25.

As stated in the Answer by Sub Pop, Ltd., ¶ 3.2: “Templar Label Group has no standing under the contract with Butler because there is no right to assign the personal service contract between Butler and DCide.” CP 18. Black letter law in both Washington State and the Commonwealth of Virginia negate any standing on the part of Templar, plaintiff below: personal service contracts cannot be assigned.<sup>12</sup> McNamer made no inquiry, cited no authority, raised no good faith basis for changing the law.

**(3) *The Trial Court did not Abuse its Discretion by Entering Judgment Against Attorney McNamer.*** As previously shown, at pp. 2, 8-9, *supra*, the trial court’s award against McNamer was the culmination of a deliberative process. The Court held in its Preliminary Order: (i) “The Court’s Order on Defendant’s Motion for Attorney’s Fees and Costs (filed February 19, 2014) was

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<sup>12</sup> See Defendant Sub Pop, Ltd.’s Response in Opposition to Plaintiff Templar’s Motion to Dismiss Counterclaims. CP 98-105. The controlling and persuasive authority easily fits in this footnote. “A contract to render professional services is personal and non-assignable.” [citing *Deaton v. Lawson*, 40 Wash. 486, 490, 82 P.2d 879 (1905)].” *Kim v. Moffett*, 156 Wash. App. 689, 704, 234 P.3d 279, 287 (2010); *Reynolds and Reynolds Co. v. Hardee*, 932 F. Supp. 149, 153 (E. D. Va. 1996) (“Under Virginia law, contracts for personal services are not assignable, unless both parties agree to the assignment”); see also RESTATEMENT (THIRD) OF AGENCY, § 6.03 (2006); *Robbins v. Hunts Food & Industries, Inc.*, 64 Wash. 2d 289, 391 P.2d 713 (1964); *King v. West Coast Grocery Co.*, 72 Wash. 132, 129 P. 1081 (1913).

based in part on the Court's finding that CR 11 violations had occurred and sanctions were warranted" and (ii) "In the abundance of caution and in fairness to all parties, the Court will not enter judgment in this matter until the parties have an opportunity to file additional legal briefing on the issue of who should properly be named as judgment debtors in this matter." CP 5-6. McNamer can show no prejudice. The levying of sanctions by a trial court should not be rendered so difficult that its inherent power to enforce the civil rules is undermined where, as here, there is a robust set of findings and conclusions supporting the award and full opportunity to be heard on the merits was afforded all parties.

**f. Award for Fees and Expenses; Frivolous Appeal.**

An action is frivolous if it "cannot be supported by any rational argument on the law or facts." *Clarke v. Equinox Holdings, Ltd.*, 56 Wash.App. 125, 132, 783 P.2d 82, *review denied*, 113 Wash.2d 1001, 777 P.2d 1050 (1989). A court having jurisdiction need not find an improper purpose to find a civil action frivolous where it is unsupported by any rational argument and advanced without reasonable cause. RCW 4.84.185; *see also Highland Sch. Dist. No. 203 v. Racy*, 149 Wash.App. 307, 311, 202 P.3d 1024 (2009). McNamer advances no rational argument to support abuse

of discretion by the trial court; this appeal serves only to obstruct a proper CR 11 sanction, imposing upon an innocent party further costs and fees.

## **6. CONCLUSION**

This appeal should be dismissed and the trial court's award enforced. Mr. McNamer should also be sanctioned for a frivolous appeal and for false statements to this Court and Respondent's attorney's fees and costs on appeal awarded pursuant to RAP 18.1, 18.9 and the inherent authority of this Court. *See f.n. 6, supra.*

Dated this 12<sup>th</sup> day of January, 2015

Respectfully submitted,

**LAW OFFICES OF RANDOLPH I. GORDON PLLC**

By: 

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# APPENDIX A

THE HONORABLE PATRICK OISHI

**FILED**  
KING COUNTY, WASHINGTON

JUL 15 2014

SUPERIOR COURT CLERK  
BY Anne Smart  
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

TEMPLAR LABEL GROUP, INC., A NEW  
YORK CORPORATION,

PLAINTIFF,

v.

SUB POP LTD., A WASHINGTON  
CORPORATION,

DEFENDANT.

NO. 13-2-37533-8 SEA

(PROPOSED) DEFENDANT SUB POP LTD.'S  
FINDINGS OF FACT AND CONCLUSIONS OF  
LAW SUPPORTING ENTRY OF JUDGMENT  
AGAINST PLAINTIFF AND ITS COUNSEL  
PURSUANT TO CR 11 AND ORDER THEREUP

Defendant Sub Pop, Ltd., pursuant to the Preliminary Order on Defendant  
Sub Pop Ltd's Motion for Entry of Judgment entered by this Court on June 18, 2014  
(Sub #50), proposes the Findings of Fact and Conclusions of Law as follows:

THIS COURT being fully advised and fully familiar with the records, pleadings  
and files herein, and having received supplemental briefing and proposed findings of  
fact and conclusions of law from counsel pursuant to its Preliminary Order of June,  
18, 2014, and having reviewed the relevant case authority submitted by counsel for  
the parties hereto, hereby enters Findings of Fact and Conclusions of Law as  
follows:

(PROPOSED) FINDINGS OF FACT AND CONCLUSIONS OF LAW - 1

LAW OFFICES OF  
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1. FINDINGS OF FACT.

1.1 Sub Pop, Ltd.'s Answer to Plaintiff's Complaint gave Plaintiff Templar and its counsel notice that Sub Pop, Ltd. was not the correct entity to be served as party defendant. In its Answer, ¶ 2.2, Sub Pop, Ltd. states: "Defendant Sub Pop, Ltd. maintains that Plaintiff has sued the wrong entity in this matter and that Sub Pop, Ltd. is not a proper party respecting any of the allegations or claims asserted by Plaintiff. In its Answer, ¶ 2.10, Sub Pop, Ltd. further states: "Defendant Sub Pop, Ltd. specifically denies that Defendant Sub Pop, Ltd. is a proper party at interest or any wrongdoing on the part of Sub Pop, Ltd. ...."

1.2 Sub Pop asserted in its Answer at ¶¶ 1.1 and 2.3 the following facts:

1.1 Defendant does not have knowledge sufficient to admit or deny and, therefore, the same is DENIED for lack of information, except that it is ... DENIED that Plaintiff Templar Label Group is a proper assignee to any claims, arising out of contract or otherwise, against Ishmael Butler.

2.3 Defendant Sub Pop, Ltd. maintains that Plaintiff lacks standing to bring this action because it is not a proper assignee of the claims of Bright Gray Productions LLC formerly d/b/a DCide respecting Butler. Answer of Sub Pop, Ltd.

1.3 Even before this action had been commenced by Templar, the undersigned made clear in its September 13, 2013, Letter to Anthony McNamer, counsel for Plaintiff Templar Label Group, that:

One important threshold issue that needs to be resolved, raised in our August 24, 2013 letter but never addressed by you, is the absence of any assignment language in the 2001 personal service contract between DCide and Butler. We are simply unaware of any contractual basis for Templar Label Group, as a stranger to that contract, to claim any rights whatsoever. As you know, the law has strong presumptions

1 against specific performance of personal service contracts. Can you  
2 help with this by explaining Templar's standing in this matter?

3 1.4 It is undisputed that Templar and its counsel, Anthony McNamer, had  
4 been informed by pre-filing written communications from Sub Pop's counsel, the  
5 previous August 24, 2013, and September 13, 2013, that Templar lacked standing.  
6

7 1.5 It is undisputed that Templar and its counsel, Anthony McNamer, had  
8 been informed in the Answer filed by Defendant Sub Pop, Ltd. on December 3,  
9 2013, that Sub Pop, Ltd. was not the proper party defendant and that Templar,  
10 itself, lacked standing to pursue the claims asserted in its Complaint.  
11

12 1.6 Good faith efforts to avoid the expenses of litigation were made by Sub  
13 Pop through its counsel of record when it raised these issues pre-filing and promptly  
14 in its pleadings.  
15

16 1.7 Templar's counsel, Anthony McNamer, conducted no discovery to  
17 determine the proper party or its own standing to pursue the action after November  
18 5, 2013, when this action was filed, through deposition, interrogatories, inquiry of  
19 defense counsel, or otherwise. Nonetheless, Anthony McNamer, as counsel for  
20 Plaintiff Templar, proceeded to file, beginning on December 30, 2013, a series of  
21 motions and pleadings including Plaintiff Templar's Motion to Dismiss Defendant  
22 Sub Pop, Ltd.'s Counterclaims, Plaintiff Templar's Motion to Consolidate to Add Sub  
23 Pop Records, and Plaintiff Templar's Motion to Shorten Time, to name a few.  
24  
25  
26

27 1.8 Although this Court finds that the pre-filing investigation by Plaintiff's  
28 counsel, Anthony McNamer, was inadequate to resolve the conceded confusion by  
29 Mr. McNamer as to the proper defendant, since, among other things, the wrong

1 party was sued, for the purpose of considering sanctions in this matter, this Court  
2 considers even more significant the motion practice initiated against Sub Pop, Ltd.  
3 without any reasonable inquiry as mandated under CR 11.  
4

5 1.9 Given the serious questions regarding proper party and standing,  
6 ultimately resolved against Plaintiff Templar on the merits, these post-filing motions  
7 needlessly increased the cost of litigation, imposing significant legal fees upon an  
8 innocent party, Sub Pop, Ltd., without Mr. McNamer having undertaken the inquiry  
9 reasonable under the circumstances.  
10

11 1.10 For its part, Sub Pop, Ltd. reasonably had to respond to Templar's  
12 motions, all filed by Mr. McNamer, without his first having established either standing  
13 or that suit had been commenced against the correct entity.  
14

15 1.11 Counsel for Sub Pop, Ltd. submitted a request for an award of taxable  
16 costs for service and filing fees as authorized by RCW 4.84.010 and statutory  
17 attorney's fees of \$200 as permitted under RCW 4.84.080, supported by  
18 Declarations of Jennifer Celano and Randolph I. Gordon.  
19  
20

21 1.12 Although costs incurred in connection with this case total \$454.82, as  
22 set forth in the Declaration of Jennifer Celano, only some of these costs are properly  
23 recoverable. Costs of \$199.91 relating to the service of responsive pleadings and  
24 motions to Mr. McNamer in Portland, e-filing charges to King County Superior Court,  
25 and filing of working copies with the Court are taxable costs relating to the  
26 responses to Mr. McNamer's motions from Defendant Sub Pop, Ltd., which would  
27  
28  
29

1 not have been incurred had Mr. McNamer made reasonable inquiry into the identity  
2 of the proper party defendant and its own standing to commence the litigation.

3 Accordingly, taxable costs of \$199.91 and statutory fees of \$200.00 are properly  
4 awarded to defendant as the prevailing party.  
5

6 1.13 In addition, Defendant Sub Pop, Ltd., properly sought recovery of  
7 reasonable attorney's fees incurred by in response to Templar's motions, filed by Mr.  
8 McNamer. Not only was Sub Pop, Ltd. an innocent party that ought never to have  
9 been named, but Sub Pop, Ltd. was sued and required to answer and respond to  
10 motions notwithstanding the fact that Templar had no standing to bring the claims in  
11 the first instance.  
12

13  
14 1.14 Preparation and filing of the Answer and responses to Plaintiff's  
15 motions and legal argument before this Court was all directly a result of Templar's ill-  
16 considered and poorly investigated claim.  
17

18 1.15 The Declaration of Jennifer Celano reflects the total amount of legal  
19 fees incurred in response to Templar's allegations. Pre-filing efforts undertaken in  
20 an effort to avoid litigation, including communications with Mr. McNamer's office,  
21 however well-intentioned, are not properly recoverable under CR 11. The entry of  
22 11/25/2013 for \$1,400.00 concerns preparation and filing of the Answer and  
23 Counterclaims in response to Templar's ill-considered Complaint; the Answer was  
24 subsequently revised but no reimbursement is requested for any time on November  
25 27, 2013 or December 2, 2013. The preparation of the Answer – but not the  
26  
27  
28  
29

1 Counterclaims – is directly responsive to the Complaint and at least \$500 of the  
2 \$1400 is properly awarded.

3  
4 1.16 The time entries for 1/14/2014, 1/23-25/2014, 2/6-7/2014 comprise the  
5 bulk of the work responding to Templar's motions and seeking their dismissal based  
6 on lack of standing and improper party defenses. These responses reasonably  
7 required the preparation of four declarations, those of Messrs. Gordon, Brown,  
8 Butler, and Poneman, proposed orders, and legal memoranda based upon both  
9 Washington and Virginia law as well as other authoritative treatises regarding  
10 Templar's lack of standing and the misidentification. In addition, travel to and from  
11 the King County Superior Court and legal argument on February 14, 2014,  
12 consumed 1.0 hours of legal time.

13  
14  
15 1.17 In reviewing the portions of briefing that pertain to lack of standing, we  
16 see that lack of standing was central to both the defendant's motion to dismiss  
17 Templar's claims and defendant's defense against dismissal of its own claims  
18 (based on a choice-of-venue provision in a contract to which Templar was not a  
19 party and lacked standing). Looking at all the charges, the following are directly and  
20 substantially related to response to Templar's motions: 1/14/2014 (\$200.00);  
21 1/23/2014 (\$2,750.00); 1/24/2014 (\$250.00); 1/25/2014 (\$2,150.00); 2/6/2014  
22 (\$850.00). Subsequent entries, filing, paralegal time, revision, discussions with the  
23 client, and ministerial acts are all excluded. The time expended in terms of hourly  
24 charges is \$6,200, of which at least 40% is directly related to lack of standing issues  
25  
26  
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1 warranting dismissal of Templar's claims, or \$2,480.00, in addition to the \$500  
2 relating to the work properly awarded for the Answer, totaling \$2,980.00.

3  
4 1.18 Based upon review of the education, training and experience of counsel  
5 for Defendant Sub Pop, Ltd., the amounts at issue, the degree of expertise required,  
6 and the results obtained, together with other factors justifying the legal fees sought in  
7 this matter, all considered in light of the factors set forth in RPC 1.5 [Fees], the  
8 hourly rate for Mr. Gordon of \$500 per hour is fair, reasonable, and appropriate for  
9 the type and quality of services rendered for someone of his experience in the  
10 Western Washington legal community. Although others may perform services at a  
11 lower hourly rate, the work in this case was performed with clarity and efficiency, and  
12 the result obtained saved the court and both parties greater expense associated with  
13 prolonged litigation. Mr. Gordon, in submitting his fee and cost bill, properly removed  
14 duplicative services, secretarial and ministerial functions, and reasonably allocated  
15 and reduced billings for any unrelated fees and costs.

## 19 2. CONCLUSIONS OF LAW

20  
21 2.1 Sub Pop, Ltd. was substantially burdened by baseless litigation;  
22 public policy instantiated within CR 11 supports the notion that innocent parties not  
23 be burdened, as here, of unfounded litigation by parties lacking standing. Judicial  
24 economy and substantive fairness support fee-shifting as justified by CR 11.

25  
26 2.2 CR 1 mandates: "[The Civil Rules] shall be construed and  
27 administered to secure the just, speedy, and inexpensive determination of every  
28 action."  
29

1           2.3 CR 11(a) provides:

2           "The signature of a party or of an attorney constitutes a certificate by  
3           the party or attorney that the party or attorney has read the pleading,  
4           motion, or legal memorandum, and that to the best of the party's or  
5           attorney's knowledge, information, and belief, formed **after an inquiry**  
6           **reasonable under the circumstances** it [the pleading, motion or  
7           memoranda] is ***well grounded in fact*** and is ***warranted by existing***  
8           ***law or a good faith argument*** for the extension, modification, or  
9           reversal of existing law, and that it is not interposed for any improper  
10          purpose, such as to harass or to cause unnecessary delay or  
11          ***needless increase in the cost of litigation.***" [Emphasis added.]

12          2.4 Templar filed its lawsuit in November 5, 2013, notwithstanding the fact  
13          that Templar's counsel had already been advised in August and September in pre-  
14          sult correspondence of its lack of standing. Templar concedes in its pleadings that it  
15          had some confusion as to which entity was the proper defendant, yet proceeded  
16          against Sub Pop, Ltd., an innocent party, without resolving that confusion.

17          2.5 Templar has conceded that it has failed to conduct any discovery since  
18          November 5, 2013, when this action was filed, which was not reasonable inquiry  
19          under the circumstances: Templar's counsel had already been put on notice of both  
20          the fact that Sub Pop, Ltd. was an improper party and of the issue respecting lack of  
21          standing, before Templar filed its motions. Templar's motions, filed by Mr.  
22          McNamer, were neither well-grounded in fact, nor warranted by existing law or a  
23          good faith extension or reversal of existing law.

24          2.5 CR 11 also provides:

25          "If a pleading, motion, or legal memorandum is signed in violation of  
26          this rule, the court, upon motion or upon its own initiative, may impose  
27          upon the person who signed it, a represented party, or both, an  
28          appropriate sanction, which may include an order to pay to the other  
29          party or parties the amount of the reasonable expenses incurred

1 because of the filing of the pleading, motion, or legal memorandum,  
2 including a reasonable attorney fee."

3 2.6 This Court's Preliminary Order (Sub. #50) notes that this Court's Order  
4 on Defendant's Motion for Attorneys' Fees and Costs "was based in part on the  
5 Court's finding that CR 11 violations had occurred and were warranted."  
6

7 2.7 This Court now explicitly finds that Anthony McNamer, as counsel, is  
8 and should be held as one of the parties responsible for payment of reasonable  
9 attorney's fees of \$2,980.00 plus taxable costs.  
10

11 2.8 CR 11 expressly permits this Court "upon motion or the court's own  
12 initiative" to "order sanctions against a party and/or its attorney." This is undisputed.  
13 See Resp. of McNamer to Mot. For Entry of Judgment, p. 2.  
14

15 2.9 Anthony McNamer, himself, imposed the unfair burden upon an  
16 innocent party and is properly sanctioned under CR 11.  
17

18 2.10 The determination (already made) of whether a violation of CR 11 has  
19 occurred is vested in the sound discretion of the trial court. *Cooper v. Viking*  
20 *Ventures*, 53 Wash.App. 739, 742, 770 P.2d 659 (1989).  
21

22 2.11 If the court determines that a violation has occurred, the rule makes  
23 the imposition of sanctions mandatory. *Miller v. Badgley*, 51 Wash.App. 285, 301,  
24 753 P.2d 530 (1988).  
25

26 2.12 The trial court retains broad discretion regarding the nature and scope  
27 of sanctions, which could range from a reprimand to the full award of attorneys fees  
28 and other appropriate penalties. *Badgley*, at 303, 753 P.2d 530.  
29

1           2.13 Here, as in *Brigade v. Econ. Dev. Bd. for Tacoma-Pierce County*, 61  
2 Wash. App. 615, 620, 811 P.2d 697, 699 (1991), "neither facts nor law supported [Mr.  
3 McNamer's] position when he filed the complaint or when he moved for summary  
4 judgment, and a reasonable inquiry would have revealed this to him."  
5

6           2.14 As noted by our Court of Appeals in *Brigade*, the duty of every lawyer is  
7 to evaluate the cases before they are filed and put some other person to a  
8 tremendous expense. *Brigade v. Econ. Dev. Bd. for Tacoma-Pierce Cnty.*, 61 Wash.  
9 App. 615, 624-25, 811 P.2d 697, 702 (1991).  
10

11           2.15 The purpose behind CR 11 is to deter *baseless* filings and to curb  
12 abuses of the judicial system. See *Business Guides, Inc. v. Chromatic*  
13 *Communications Enters., Inc.*, 498 U.S. 533, —, 111 S.Ct. 922, 934, 112 L.Ed.2d  
14 1140 (1991). Both the federal rule and CR 11 were designed to reduce "delaying  
15 tactics, procedural harassment, and mounting legal costs." 3A L. Orland,  
16 Wash.Prac., *Rules Practice* § 5141 (3d ed. Supp.1991). CR 11 requires attorneys to  
17 "stop, think and investigate more carefully before serving and filing papers." See  
18 Fed.R.Civ.P. 11 advisory committee note, 97 F.R.D. 165, 192 (1983). "[R]ule 11 has  
19 raised the consciousness of lawyers to the need for a careful prefiling investigation  
20 of the facts and inquiry into the law." Commentary, *Rule 11 Revisited*, 101  
21 Harv.L.Rev. 1013, 1014 (1988). *Bryant v. Joseph Tree, Inc.*, 119 Wash. 2d 210,  
22 219, 829 P.2d 1099, 1104 (1992).  
23  
24  
25  
26

27           In deciding whether the trial court abused its discretion, we must keep  
28 in mind that "[t]he purpose behind CR 11 is to deter *baseless* filings  
29 and to curb abuses of the judicial system". *Bryant*, 119 Wash.2d at  
219, 829 P.2d 1099.

1 *Biggs v. Vail*, 124 Wash. 2d 193, 197, 876 P.2d 448, 451 (1994).

2 2.16 In deciding upon a sanction, the trial court should impose the least  
3 severe sanction necessary to carry out the purpose of the rule. *Bryant*, at 225, 829  
4 P.2d 1099; *Biggs*, *Id.* Here, holding accountable the responsible person (Mr.  
5 McNamer) and compensating the victim for the misconduct is the least severe  
6 sanction that carries out the purpose of CR 11 to deter and to compensate. Holding  
7 only the out-of-state client liable would undermine both goals.  
8  
9

10  
11 2.17 "The violation of Rule 11 is complete upon the filing of the offending  
12 paper; hence, an amendment or withdrawal of the paper, or even a voluntary  
13 dismissal of the suit, does not expunge the violation, although such corrective action  
14 should be used to mitigate the amount of sanction imposed." See *Cooter & Gell*, 496  
15 U.S. at 395, 110 S.Ct. at 2455-56. *Biggs*, at 199-200.  
16  
17

18 2.18 "[I]n imposing CR 11 sanctions, it is incumbent upon the court to  
19 specify the sanctionable conduct in its order ...." *Biggs v. Vail*, 124 Wn.2d 193, 201,  
20 876 P.2d 448 (1994), which this Court has done in these Findings and Conclusions.  
21  
22

23 2.19 But for Templar's and Anthony McNamer's unfounded and  
24 uninvestigated complaint and motions, these costs of mounting a defense, including  
25 legal fees, would not have been incurred. A reasonable attorney's fee of at least  
26 \$2,980.00 is warranted under CR 11 in addition to an award of taxable costs. The  
27 amount of this reasonable attorney's fee is awarded against both Templar and  
28 McNamer jointly.  
29

1           2.20 Mr. McNamer, although officed in Portland, Oregon, is practicing and  
2 admitted to practice in Washington State and is subject to the standards applicable  
3 to Washington counsel. Justice will be advanced by holding him to those standards  
4 and not leaving the award of this Court unable to be enforced effectively against out-  
5 of-state plaintiff Templar.  
6

7                           **3.0 ORDER**  
8

9           It is hereby ORDERED, ADJUDGED AND DECREED that Judgment be, and  
10 hereby is, awarded against both Plaintiff Templar Label Group, Inc. as the non-  
11 prevailing party, and its attorney, Anthony McNamer, pursuant to CR 11, but for  
12 whose conduct the costs would not have had to be incurred, jointly and severally, as  
13 follows:  
14

15                   Statutory fees: \$200.00

16                   Taxable costs: \$199.91

17                   Reasonable Attorney's Fees: \$2,980 (less \$200.00)

18                   TOTAL: \$3,179.91  
19

20                   *Signed this 14<sup>th</sup> day of July, 2014*  
21

22                     
23                   The Honorable Patrick Oishi  
24                   King County Superior Court  
25  
26  
27  
28  
29

# APPENDIX B

1 THE HONORABLE PATRICK OISHI

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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
7 IN AND FOR KING COUNTY

8 TEMPLAR LABEL GROUP, INC., A NEW  
9 YORK CORPORATION,

10 PLAINTIFF,

11 v.

12  
13 SUB POP LTD., A WASHINGTON  
14 CORPORATION,

15 DEFENDANT.  
16

NO. 13-2-37533-8 SEA

JUDGMENT AND JUDGMENT SUMMARY

17 I. Judgment Summary

- 18 1. Judgment Creditor: Sub Pop, Ltd.  
19  
20 2. Attorney for Judgment Creditor: Randolph I. Gordon  
21 Law Offices of Randolph I. Gordon pllc  
22 1218 Third Avenue, Ste. 1000  
23 Seattle, WA 98121  
24  
25 3. Judgment Debtors: Anthony McNamer  
26 and Templar Label Group, Inc.  
27  
28 4. Attorney for Judgment Debtors: Anthony McNamer, Esq.  
1400 SW Fifth Avenue, Suite 300  
Portland, Oregon 97201  
29  
5. Principal and Total Judgment: \$3,179.91\*  
\*Per March 10, 2014, Court Order  
6. Interest: Interest shall accrue on this Judgment at the rate of 12% per annum  
from the date of entry of this Judgment until paid in full.1

JUDGMENT AND JUDGMENT SUMMARY - 1

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RANDOLPH I. GORDON PLLC  
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II. Judgment

It is hereby Ordered:

1. Judgment shall be, and hereby is, entered against Anthony McNamer and Templar Label Group, Inc. in the amount of Three thousand one hundred seventy-nine dollars and ninety-one cents (\$3,179.91) pursuant hereto and this Court's Order of March 10, 2014.

2. Interest shall accrue on this Judgment at the rate of Twelve Percent (12%) per annum from the date of entry hereof until paid in full.

~~Done in Open Court~~ this \_\_\_\_ day of June, 2014.

*Signed 9/2/14*

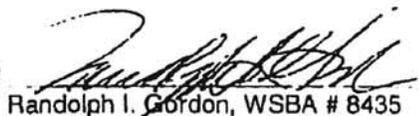


The Honorable Patrick Oishi  
Judge, King County Superior Court

Presented by:

LAW OFFICES OF RANDOLPH I. GORDON PLLC

By



Randolph I. Gordon, WSBA # 8435  
Attorneys for Defendant Sub Pop, Ltd.

**CERTIFICATE OF SERVICE**

I certify that on this date I have sent the reformatted **Respondent's Brief** to the following via email and USPS Certified/Return Receipt:

anthony@mcnamerlaw.com  
joan@mcnamerlaw.com

McNamer Law  
321 SW 4th Ave #305  
Portland OR 97204

I hereby certify under the laws of the State of Washington that the foregoing is true and correct.

DATED this 22<sup>nd</sup> day of January, 2015.

  
Randolph A. Gordon