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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:12-cv-00886-MSK-MEH

MALIBU MEDIA, LLC,

Plaintiff,

v.

JEFF FANTALIS and BRUCE DUNN,  
Defendants

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**PLAINTIFF’S NOTICE AND MOTION FOR RULE 11 SANCTIONS**

Plaintiff, Malibu Media, LLC (“Plaintiff”), pursuant to Fed. R. Civ. P. 11(b)(2)-(3), moves for the entry of an Order awarding sanctions based on the frivolous claims and contentions presented in the Amended Counterclaim and in open court by Defendant, Jeff Fantalis, and states:

**NOTICE**

Defendant Fantalis is hereby notified that Plaintiff brings this motion for sanctions under Rule 11, Federal Rules of Civil Procedure. In accordance with Rule 11(c)(1)-(2), the motion will not be filed or presented to the Court if the challenged part of the Counterclaim is withdrawn within twenty-one (21) days after service of this motion upon Defendant. If it becomes necessary to file and present this motion, appropriate notice of filing and of any hearing thereon shall be provided.

**MOTION FOR RULE 11 SANCTIONS**

1. Plaintiff moves for the entry of an order imposing Rule 11 sanctions on Defendant for asserting frivolous counterclaims and arguments in open court that are devoid of legal or factual merit.<sup>1</sup>

2. Fed. R. Civ. P. 11 (“Rule 11”) requires that “[b]y presenting to the court a pleading, written motion, or other paper...[an] unrepresented party certifies that to the best of the person’s knowledge, information and belief, formed after an inquiry reasonable under the circumstances:

\* \* \*

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

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

Fed. R. Civ. P. 11(b)(2)-(3).

3. Here, upon information and belief, Defendant is a sophisticated individual and information technology (IT) professional who provides third parties with customer relationship management software. Upon information and belief, Defendant’s wife is also an attorney.

4. Notwithstanding the foregoing, Defendant has filed frivolous counterclaims in this action that are wholly unwarranted by existing law or by nonfrivolous arguments for extending, modifying, or reversing existing law or for establishing new law. The frivolity and lack of merit of such counterclaims are set forth in Plaintiff’s Motion to Dismiss

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<sup>1</sup> This motion, absent the footnote, was served on Defendant contemporaneously with the attached Motion to Dismiss on August 9, 2012 (“Exhibit A”). On August 27, 2012, Defendant filed a Second Amended Counterclaim Complaint. This Second Amended Counterclaim has no legal effect and was stricken on August 30, 2012 by this Court. Consequently, the Amended Counterclaim remains at issue and this motion is ripe.

Defendant/Counter-Plaintiff Jeff Fantalis's Amended Counterclaim, which has been filed with the Court contemporaneously with service of the instant motion upon Defendant.

5. Defendant has further raised legally and factually baseless claims and contentions in open court against Plaintiff.

6. Such conduct clearly violates Rule 11(b)(2) and (3) requiring that Defendant present to the Court legally and factually supportable claims and contentions.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter an order:

(A) Awarding sanctions against Defendant based on his presentation to this Court of frivolous claims and contentions in violation of Fed. R. Civ. P. 11(b)(2)-(3);

(B) Awarding the reasonable expenses, including attorney's fees, incurred for the filing of and determination of this motion; and

(C) For such other and further relief as this Court deems just and proper.

Dated: August 8, 2012

Respectfully submitted,

By: /s/ Jason Kotzker

Jason Kotzker

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*Attorney for Plaintiff*

**CERTIFICATE OF COMPLIANCE WITH D.C. Colo. L. Civ. R. 7.1**

Pursuant to D.C. Colo. L. Civ. R. 7.1(A), Plaintiff has conferred with Defendant, Mr. Fantalis, concerning the relief Plaintiff seeks herein. Mr. Fantalis opposes all relief sought hereunder.

By: /s/ Jason Kotzker

Jason Kotzker

**CERTIFICATE OF SERVICE**

I hereby certify that on August 8, 2012, I served the foregoing document via overnight FedEx to Jeff Fantalis, 818 Trail Ridge Drive, Louisville, CO 80027.

By: /s/ Jason Kotzker  
Jason Kotzker