

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

MALIBU MEDIA, LLC

Plaintiff,

v.

STEPHEN MCSWEENEY, CHARLIE TOLLEY,
JEREMIAH MCKINNEY, JAMES HELFERICH, ERNEST
NURULLAEVA, an JOHN DOE 1 and 7,

Defendants.

Civil Action No. 1:12-cv-00842-TWP-MJD

MOTION TO ISSUE SANCTIONS

NOW COMES, a Defendant, JAMES HELFERICH, (“Helferich”) by and through his attorneys, SHAY KEPPLER PHILLIPS, LTD., who moves this Honorable Court to Issue Sanctions. In support thereof, Helferich provides the contemporaneously filed memorandum and states as follows:

1. On or about June 18, 2012, the Plaintiff, through its Counsel, Paul Nicoletti, Esq., filed its frivolous Complaint, lacking in law and fact. (ECF Doc. 1).
2. That Complaint, after the identification of persons who merely paid Internet bills, was amended and refilled as the Amended Complaint on or about October 13, 2012. (ECF Doc. 18).
3. That the Plaintiff’s filing of the Notice to Election of Statutory is without any reasonable basis in fact and law. (ECF Doc. 79).
4. All of the above could have been determined with even the faintest amount of reasonable investigation.
5. As further explained in the contemporaneously filed Memorandum, this Court should issue Sanctions under Federal Rule of Civil Procedure 11, 28 U.S.C. § 1927, as well as this Court’s “‘well-acknowledged’ inherent power of a court to levy sanctions in response to abusive litigation practices.” *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 765 (1980).
6. Pursuant to Local Rule 7-1(g) Counsel for Helferich made reasonable efforts to confer with opposing counsel to resolve the matters raised herein, including by scheduling a telephone conference between

Attorneys Phillips and Nicoletti on August 27, 2013 at 12:00 PM, Eastern Time. This conference did not resolve the dispute. The discussion was confirmed and further discussed with email communications August 28, 2013.

WHEREFORE, the Defendant, JAMES HELFERICH, respectfully requests that this Court enter an Order Issuing Sanctions against the Plaintiff and/or its counsel, including attorney's fees, expert fee's, and costs.

Dated: September 9, 2013

Respectfully submitted,

/s/ Jonathan LA Phillips
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CERTIFICATE OF SERVICE

I certify that on September 9, 2013 a copy of the foregoing Memorandum in Support of Motion to Strike was served to all relevant parties by:

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