

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

RENE VARGAS on behalf of himself and  
all other similarly situated persons, known  
and unknown,

Plaintiffs,

v.

TOMMY'S REDHOTS, INC.;  
TOMMY'S/LAKE IN THE HILLS, LTD.;  
TOMMY'S/MCHENRY, LTD.;  
THOMAS GRIECO, individually; and  
DONNY GRIECO, individually.

Defendant.

Case No. 14-CV-7144

**Judge Andrea R. Wood**

Magistrate Judge Michael T. Mason

**PLAINTIFF'S MOTION FOR SANCTIONS PURSUANT TO 28 U.S.C. §1927**

Plaintiff, Rene Vargas, by and through his attorneys, Caffarelli & Associates Ltd.  
moves pursuant to 28 U.S.C. §1927 his Honorable Court to enter sanctions against  
Defendants and/or attorney Robert Hanlon ("Hanlon").

**BACKGROUND**

Since the inception of this litigation, Defendants, and specifically Mr. Hanlon,  
have engaged in a repeated pattern of delay, baseless and repeated personal threats,  
failure to communicate, violation of deadlines, and dishonesty to the Court.

**Repeated Delays, Violations of Deadlines, and Violations of Court Orders**

1. This case was originally filed on September 12, 2014 (D.E. 1) and served on September 22, 2014 (D.E. 9-11), which means that pursuant to Fed. R. Civ. P. 12(a), the Defendants' responsive pleading was due on October 13, 2014. However, after numerous requests for extensions (all of which were unopposed by Plaintiff), Defendant did not file a responsive pleading until December 24 (D.E. 15), more than **two months** after the original deadline.

2. On January 9, 2015, Hanlon stated in open court that he would be conducting discovery relating to the Plaintiff's immigration status. As a result, Plaintiff's counsel, Alexis Martin, contacted Hanlon on January 22, 2015 to request an L.R. 37.2 conference regarding the immigration status issue and to schedule the parties' 26(f) conference. Defendants did not respond until after Plaintiff followed up again 18 days later. (Group Ex. A, L.R. 37.2 Letter dated 1/22/15, Emails from A. Martin to R. Hanlon dated 1/22/15, 2/9/15, 2/10/15.)
3. Hanlon continually refused to engage with Ms. Martin. In January and February 2015, Plaintiff's counsel had to contact Defense Robert Hanlon ("Hanlon") no less than four times to try and schedule 26(f) conference. (Id., Group Ex. B, Emails between A. Martin and R. Hanlon dated 2/12/15 and 2/13/15)
4. On February 12, 2015, after the parties' 26(f) conference, Plaintiff's counsel drafted and sent the joint status report to Defendants, which was due to be filed that day. Defendants failed to timely return their revisions despite follow-ups. (Group Ex. B).
5. On February 13, 2015, Plaintiff's counsel again had to contact Defendants for the overdue status report. (Id.)
6. Initial disclosures were due by March 5, 2015. (D.E. 23.) Although Plaintiff tendered his disclosures on time, Defendants did not. On March 16, 2015, Plaintiff emailed a L.R. 37.2 letter regarding Defendants overdue disclosures. (Ex. C, Emails and Letter from A. Martin to R. Hanlon and M. Poper dated 3/16/15 and 3/17/15.) Defendants subsequently tendered their initial disclosures on March 23, 2015. (Ex. D, Email from R. Hanlon to A. Martin dated 3/23/15).
7. After Plaintiff filed his First Amended Complaint on November 2, 2015 (D.E. 30), Defendants again failed to file a responsive pleading within the requisite 21 days. Fed. R. Civ. P. 12(a).<sup>1</sup>
8. On December 22, 2015, Defendants were granted until January 6, 2016, to file their responsive pleading. (D.E. 36.) Despite the Court's order, Defendants yet again failed to file any responsive pleading or motion for extension of time. On January 19, 2016 – nine days after their answer was due and only after Plaintiff

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<sup>1</sup> Hanlon incredibly claims that he was unable to open the ECF version of the Amended Complaint, but this does not mean that he did not receive notice of it or that he was unaware of the responsive pleading deadline. More significantly, there is a preponderance of evidence that Mr. Hanlon's claimed inability to view the ECF document is simply untrue. His then co-counsel Mr. Poper could have sent him a copy, he could have contacted Plaintiff to request a copy, or he could have simply gone to the clerk's office to request or print a copy.

filed his renewed motion for default – Defendants hurriedly<sup>2</sup> filed a motion for extension of time, again claiming to have problems with ECF.

9. Pursuant to the Court’s orders, the parties were to confer and file a proposed discovery plan by January 21, 2016. (D.E. 36.) On January 19, 2016, Plaintiff’s counsel Alejandro Caffarelli emailed Hanlon to schedule time to discuss proposed discovery. Hanlon did not respond. On January 21, 2016, Caffarelli again emailed Hanlon to discuss and with a proposed discovery plan for Hanlon’s review. Again, Hanlon did not respond. (Ex. E, Emails from A. Caffarelli to R. Hanlon dated 1/19/16 and 1/21/16).<sup>3</sup>
10. On January 28, 2016, the Court adopted the proposed discovery plan and granted until February 5, 2016 for amended initial disclosures. (Ex. F, Transcript of January 28, 2016 Proceedings; D.E. 45.) Caffarelli emailed Hanlon on January 28, 2016, confirming the deadline to exchange disclosures. (Ex. G, 1/28/16 Email from A. Caffarelli to R. Hanlon.) Hanlon did not respond. Instead, Defendants filed a Motion to Compel production of the amended disclosures on the same day the Court had ordered that the disclosures were due eight days later. (D.E. 43.)
11. On Friday, January 29, 2016, without conferring with counsel, Hanlon sent notice of Plaintiff’s deposition scheduled for exactly one week later on February 5, 2016. The following Tuesday, Caffarelli promptly notified Hanlon that Mr. Vargas would not be able to take a day off of work on the 5th, and offered multiple new dates for deposition – including February 11, 2016, which is less than a week following Defendants’ requested date. (Ex. H, 2/2/16 Email from A. Caffarelli to R. Hanlon.) As expected, Hanlon failed to respond.

### **Threats and Hostility**

1. On February 10, 2015, in response to an otherwise unremarkable Local Rule 37.2 letter, Hanlon responded with hostility, accusations of gamesmanship, and that he would be sending his Rule 11 Safe Harbor letter by the end of the week. (Ex. I, 2/10/15 Email from R. Hanlon to A. Martin.)
2. On February 19, 2015, around approximately 4:30PM Hanlon called Martin, claiming that the Plaintiff was currently at some purported witness’ house (Miguel Angel), threatening to “beat him up” if he didn’t sign an affidavit. (Ex. J, 2/19/15 Voicemail from R. Hanlon.) Despite the fact that Martin had never even

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<sup>2</sup> The fact that the motion was hurriedly put together is evidenced by the fact that it apparently was cut and pasted from a motion on behalf of non-parties “Barbara and Dean Paulcheck.” (D.E. 39 at 1, paragraph 1.)

<sup>3</sup> On January 28, 2016, Hanlon in open court expressed frustration that Caffarelli did not contact him to discuss the discovery plan (which is demonstrably false, see Exhibit E); however, despite his effort to put the onus on Caffarelli, it should be noted that the Court had ordered the parties to file a **joint** plan. It is undisputed that Hanlon made no effort of his own to contact Caffarelli ahead of the deadline. Nor did Hanlon ultimately file any proposed plan of his own.

heard of Miguel Angel and did not know how or why the Plaintiff would have any affidavit in his possession (which she explained to Hanlon), Martin agreed that any such conduct would be improper and told Hanlon that Miguel Angel should call the police. Martin informed Hanlon that she would call the Plaintiff immediately to find out what was going on. After speaking with the Plaintiff, Martin determined that Hanlon's accusations were completely false<sup>4</sup>

3. On February 20, 2015, Caffarelli sent Hanlon an email expressing concern over the tone he was taking in this litigation, that baselessly accusing Martin of suborning perjury was inappropriate, and requesting the parties move forward in a professional manner. (Ex. K, 2/20/15 Email from A. Caffarelli to R. Hanlon.) Hanlon did not respond to the email. Instead, that afternoon Hanlon began calling Martin again. At 1:11PM, Hanlon left Martin a voicemail claiming Vargas was back threatening Angel, that Martin herself had been personally named as suborning perjury and witness tampering, and that he would be filing a rule to show cause and asking the court to hold Plaintiff and counsel in contempt. (Ex. L, 2/20/15 Voicemail from R. Hanlon.) Following this voicemail, Hanlon called again to speak with Martin but Caffarelli intercepted the call. Hanlon said that he wanted to know what dates Plaintiff's counsel were available to go to court for his petition for rule to show cause. Caffarelli informed Hanlon that he could pick any date; Plaintiff's counsel would be there. Hanlon never filed any such petition.
4. On December 22, 2015, Hanlon falsely accused Ms. Martin of hostility and lack of cooperativeness in open court when, in fact, Hanlon had not spoken with Martin in nearly ten months, not to mention that in their prior communications Martin had repeatedly extended Defendants a high level of professional courtesy (despite not receiving any from Hanlon).
5. On January 28, 2016, Defendants filed their Motion to Compel, which (in addition to being filed against the Orders of this Court and without any legal right), again fixates on accusations against Plaintiff's counsel for evasion and some alleged unwillingness to cooperate. (See generally D.E. 43.)

### **Ongoing Dishonesty to the Court**

1. On January 15, 2016, at 3:58PM Plaintiff filed his Renewed Motion for Default. (D.E. 37; Ex. M, Time-Stamped Electronic Notification of Filing for Default.) At 4:07PM, Hanlon left Martin a voicemail, in which he claimed the answer was ready but that he had had been problems uploading it for the last 2 days (which still would have been 7 days late) and requesting to file Defendants' motion for leave to file answer unopposed. (Ex. N, 1/15/16 Voicemail from R. Hanlon.) At

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<sup>4</sup> Plaintiff's counsel has documentary evidence of Vargas' exact location, showing that Hanlon's claim was totally false and Vargas was nowhere near Angel, let alone threatening him. Should the Court wish to review this evidence, Plaintiff will submit it for *in camera* review. Upon receipt of this evidence, it became apparent to Ms. Martin that the entire incident was yet another example of Hanlon (or his clients') pattern of false accusations, threats, and gamesmanship.

4:45PM, Caffarelli emailed Hanlon stating that Plaintiff did not agree. (Ex. O, 1/15/16 Email from A. Caffarelli to R. Hanlon.) Ten minutes later, Hanlon files Defendants' Motion. (Ex. P, Time-Stamped Electronic Notification of Filing for Leave to Answer; D.E. 39.) In the Motion, Hanlon falsely states that he contacted Plaintiff to file the motion unopposed, but that the request was not answered or responded to by Plaintiff. (Id at ¶ 3.)

2. On January 28, 2016, the parties appeared in Court for presentment of their motions. Hanlon then lied to the Court repeatedly, as follows:
  - a. Hanlon did not receive the FAC from Plaintiff's counsel until January 4, 2016, when in fact it had been e-mailed to him in December within hours of the status call. (Compare Ex. F at 3:15-19, 4:15-16 with, D.E. 37-1, Page ID# 162.)<sup>5</sup>
  - b. Accusing Plaintiff of sending Defendants an incomplete copy of the Exhibits to the FAC. (Compare Ex. F at 3:17-21 with D.E. 37-1, Page ID# 162.) In his Motion for Leave to File Answer, Hanlon falsely claims that Exhibit D to the first amended complaint "is clearly an erroneous document." (D.E. 39, Page ID# 190.) However, in the exhibits to his Motion, it appears that Hanlon altered a document in his exhibit by substituting the e-mailed Adobe version of that page (which did not have the error) with the mailed version (which had the error) because that one page does not have the double ECF stamps of the Adobe version at the top, which exists in all other pages of his exhibit. Compare the double stamps at (D.E. 39, Page ID# 194-213.) with the single stamp at (D.E. 39, Page ID# 214.) Regardless, it is undisputed that the actual docket entry contains the legible exhibit. See (D.E. 31-1, Page ID# 140.) More significantly, however, this establishes that Hanlon did in fact receive the legible Adobe version of the First Amended Complaint on December, and that he alters documents. (D.E. 37-1, Page ID# 162.)
  - c. Claiming that he contacted Plaintiff's counsel to file Defendants' motion to answer as unopposed, and that after his call Plaintiff filed his renewed motion for default. (Compare Ex. F at 4:4-7 with Exs. M, N, and P, and D.E. 37, D.E. 39.)
3. On January 28, 2016, Defendants filed their Motion to Compel production of revised disclosures in which they falsely claim that Plaintiff had never contacted

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<sup>5</sup> Again, assuming that he was unable to open the automatically mailed docket version, Hanlon could have requested a copy from his then co-counsel Mr. Poper, requested a copy from Plaintiff's counsel, signed on to ECF to print a duplicate copy, or obtained a copy from the clerk's office. Moreover, the correspondence he attached to his Motion for Leave to File his Answer to First Amended Complaint Instantly is stamped "received January 10," which shows that he can't even keep his lies straight, because in Court he claimed that it was received on January 4. Compare (D.E. 39, Page ID# 194.) with Exhibit F, Page 3, Line 18.

him to meet and confer regarding the discovery plan. (Compare D.E. 43-2 with Ex. E.)

4. On January 28, 2016, Defendants filed their Motion to Compel production of revised disclosures wherein Defendants falsely state that Caffarelli refused to provide an estimation of damages until Defendants respond to discovery. (Compare D.E. 43 at ¶ 15 with Ex. G.)

### ANALYSIS

Sanctions may be entered by the inherent powers of the District Court or pursuant to 28 U.S.C. §1927. See Dal Pozzo v. Basic Mach. Co., 463 F.3d 609 (7th Cir. 2006).

“Any attorney or other person admitted to conduct cases in any court of the United States...who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” 28 U.S.C. §1927. Sanctions may be awarded under 28 U.S.C. §1927 “against an individual who has demonstrated ‘subjective or objective bad faith.’” Moriarty ex re. Local No. 727 v. Svec, 429 F.3d 710, 722 (7th Cir. 2005) (quoting Pac. Dunlop Holdings, Inc. v. Barosh, 22 F.3d 113, 120 (7th Cir. 1994)). A finding of bad faith does not require a finding of malice; reckless indifference to the law will qualify. Dal Pozzo, 463 F.3d at 614. “If a lawyer pursues a path that a reasonably careful attorney would have known, after appropriate inquiry, to be unsound, the conduct is objectively unreasonable and vexatious.” *Internal citations omitted. Id.*

This is not a case of Hanlon missing a deadline or tossing out a threat to file Rule 11 sanctions in a heated moment – such conduct, unfortunately, does occur in litigation. Rather, Hanlon has engaged in a repeated course of delay, threats, and misrepresentations that go far beyond what should be acceptable from a member of the bar. Defendants have taken or been granted an extension of time for every single action they have been

required to take thus far in this litigation. And rather than litigate his case, Hanlon has fixated on attacking counsel and went so far as to lie about witness tampering and threaten contempt. Hanlon has repeatedly lied to the Court both openly and in his filings. At this stage, no actual discovery has occurred, yet Plaintiff's counsel has already expended over \$20,000 in fees because they have been forced to address Hanlon's inflammatory threats and accusations, move for default, again move for default, move for a protective order, and respond to a highly improper motion to compel.

### CONCLUSION

For the myriad of reasons stated above, Plaintiff respectfully prays for this Court to sanctions Defendants' counsel for his behavior in an amount that the Court determines is just and fit in light of the totality of circumstances.

Dated: February 3, 2016

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Respectfully submitted,  
RENE VARGAS

/s/ Alejandro Caffarelli  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he served a copy of the attached document, **Plaintiff's Motion for Sanctions**, to the parties listed below by electronically filing the same with the Clerk of the U.S. District Court of the Northern District of Illinois on February 3, 2016.

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/s/ Alejandro Caffarelli  
One of Plaintiff's attorneys