

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MARTHA BRUNZOS, :
Plaintiff, :
 :
v. : C.A. No. 15-558S
 :
NATIONSTAR MORTGAGE LLC, :
Defendant. :

MEMORANDUM AND ORDER

Before the Court for determination¹ is Plaintiff's Motion for Rule 11 Sanctions. ECF No. 15. Plaintiff requests sanctions because, as she claims, Defendant's argument in its memoranda filed in connection with the parties' cross motions for summary judgment (ECF Nos. 4, 10) "completely ignores" the entire second paragraph on page two of its August 11, 2015, letter, conduct that she argues "is pretty much like lying to the Court." ECF No. 15 at 2. Invoking Fed. R. Civ. P. 11, she contends that Defendant's "willful failure to cite to the governing acceptance language in their own Exhibit is an attempt to mislead this Court about the most material aspect of this case." *Id.* As a remedy, Plaintiff requests that Defendant be ordered to add the second paragraph of the August 11, 2015, letter to its "memoranda" and be sanctioned for its conduct. Her motion does not reveal whether she complied with the mandatory requirement in Fed. R. Civ. P. 11(c)(2) that the motion be served but not filed until the accused filer has been afforded twenty-one days to correct or withdraw the offending pleading.

¹ Because motions for sanctions are not specifically excepted under 28 U.S.C. § 636(b)(1)(A) and, in general, are not of the same genre as the enumerated motions, in this Circuit, it is well settled that they should be treated as nondispositive unless the motion seeks a sanction that fully disposes of a claim or defense. Phinney v. Wentworth Douglas Hosp., 199 F.3d 1, 6 (1st Cir. 1999); Augustyniak Ins. Grp., Inc. v. Astonish Results, L.P., No. CA 11-464S, 2013 WL 998770, at *5 (D.R.I. Mar. 13, 2013). Plaintiff does not request a dispositive sanction; accordingly, I determine this motion in this memorandum and order.

Rule 11(b) permits, but does not require, the court to sanction an attorney for the filing or signing of a paper for “any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation” or for asserting or denying factual contentions that either lack evidentiary support or are unlikely to have such support after an opportunity for investigation or discovery. Fed. R. Civ. P. 11(b). Sanctions are appropriate when, viewed objectively, the attorney’s conduct manifests either intentional or reckless disregard of the attorney’s duties to the court. Cruz v. Savage, 896 F.2d 626, 631-32 (1st Cir. 1990) (“serious and studied disregard for the orderly process of justice”) (quoting United States v. Nesglo, Inc., 744 F.2d 887, 891 (1st Cir. 1984)); Augustyniak Ins. Grp., Inc. v. Astonish Results, L.P., No. CA 11-464S, 2013 WL 998770, at *8 (D.R.I. Mar. 13, 2013). Sanctions under Fed. R. Civ. P. 11 may be imposed only for misconduct in presenting “a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it.” Balerna v. Gilberti, No. 12-1302, 2013 WL 693109, at *4 (1st Cir. Feb. 27, 2013). Further, Fed. R. Civ. P. 11 has a safe harbor provision in Rule 11(c)(2), which strictly mandates that a motion for sanctions cannot be filed unless it is first served on the opposing party who must be afforded twenty-one days to withdraw the offending pleading. Fed. R. Civ. P. 11(c)(2). When these procedural safeguards are disregarded, sanctions under Fed. R. Civ. P. 11 must be denied. Lamboy-Ortiz v. Ortiz-Velez, 630 F.3d 228, 244-45 (1st Cir. 2010); see Gordon v. Unifund CCR Partners, 345 F.3d 1028, 1030 (8th Cir. 2003) (abuse of discretion to issue Rule 11 sanctions when party did not comply with procedural requirements).

Plaintiff’s motion is frivolous. In support of both its opposition to Plaintiff’s motion for summary judgment and its own motion for summary judgment, Defendant filed an affidavit that authenticates the entire August 11, 2015, letter. ECF No. 9-2 at 3-4, ECF No. 9-9. Thus,

whatever portions of the letter it might have deemed appropriate to quote to the Court in the argument portion of its memoranda, it candidly and appropriately included the entire content of the letter as part of the record that it presented to the Court. Indeed, Plaintiff herself seems guilty of the precise conduct of which she accuses Defendant, in that she was selective in her quotations from the letter but also attached the entire letter with her reply filed in connection with her summary judgment motion. ECF No. 13-1.

Based on the foregoing, Plaintiff's Motion for Rule 11 Sanctions is denied.

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
May 10, 2016