IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

Energy Transfer Equity, L.P., and Energy Transfer Partners, L.P., Plaintiffs, Greenpeace International (aka "Stichting Greenpeace Council"); Greenpeace, Inc.; Greenpeace Fund, Inc.; Banktrack (aka "Stichting Banktrack"); Earth First!; and John and Jane Does 1-20, Defendants.	)	Case No. 1:17-cv-00173 **PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO EARTH FIRST! JOURNAL'S MOTION FOR SANCTIONS AND IN SUPPORT OF MOTION TO STRIKE**

Plaintiffs Energy Transfer Equity, L.P. and Energy Transfer Partners, L.P. (together, "Energy Transfer" or "Plaintiffs") respectfully submit this memorandum of law in opposition to Earth First! Journal's motion for sanctions and in support of Plaintiffs' motion to strike Earth First! Journal's motion.

PRELIMINARY STATEMENT

This action arises from an illegal scheme designed to manufacture international opposition to Energy Transfer and the Dakota Access Pipeline ("DAPL") through the dissemination of materially false and misleading allegations of environmental harm, intentional desecration of cultural and religious resources, and human rights abuses. The scheme also involved intentional acts of local violence and terrorism on the ground in North Dakota by hordes of protestors from out-of-state, who purported to be staging peaceful opposition to the construction of the pipeline, but in reality were intentionally clashing with local security and law enforcement to create a public spectacle. The Complaint alleges Earth First! was instrumental in funding, training, and directing these violent out-of-state protesters -- conduct that Earth First! is

known for. Those public spectacles were, in turn, used to generate international media attention, which defendants exploited to further their business and political agendas and drive donations to perpetuate their fraudulent scheme.

The conduct alleged in the Complaint began during the summer of 2016 and has continued to the present. The most recent publicity stunt was this motion filed by non-party Earth First! Journal purporting to seek sanctions against the Plaintiffs on behalf of defendant Earth First! (a party it claims not to be, and in fact contends does not exist at all). Non-party Earth First! Journal -- which publishes Earth First!'s direct action manual and serves as Earth First!'s informational network -- claims that Earth First! lacks capacity to be sued, and thus contends that Plaintiffs should be sanctioned for even attempting to do so. On January 10, 2018, Earth First! Journal served Plaintiffs with a safe harbor letter and a copy of its motion for sanctions. Earth First! Journal, true to form, did not bother to wait for Plaintiffs to consider their demand that Plaintiffs withdraw their claims. Instead, revealing the true purpose of the motion, Earth First! Journal immediately published the motion on its website and disseminated copies to the media, weeks before it could file its motion under law, and in contravention of the spirit of the safe harbor rule. *See* Exs. 1-2.[1]

Critically absent from Earth First! Journal's motion is any legal authority demonstrating Earth First! Journal has standing to bring this motion or assert any claims on behalf of defendant Earth First! in this action. And, even setting aside this dispositive procedural deficiency, Earth First! Journal's motion fails on the merits because principles of equitable estoppel preclude Earth

[1] "Ex. __" refers to the exhibits attached to the Declaration of Lauren Tabaksblat dated February 21, 2018.

First! from denying its existence, particularly at this early stage of the proceedings before Plaintiffs have had an opportunity to conduct discovery.

Accordingly, Plaintiffs respectfully request the Court deny Earth First! Journal's motion for sanctions (ECF No. 64) and strike the motion from the docket.

FACTS

Earth First! is a radical eco-terrorist group that funds, trains, and engages in property destruction and other illegal activity. (ECF No. 1 ¶ 38(l).) Founded in 1980 by leaders of various environmental nongovernmental organizations, for the past four decades its members have organized around common interests, goals, objectives, and stated purposes, chief among them, the commitment to further its anti-development agenda through anarchist political philosophy, including civil disobedience and criminal sabotage. (*See id.*; Exs. 3, 8.) Earth First! holds annual leadership conferences, known as "Organizers Conferences," where it sets strategic and tactical goals for the year, fundraises to achieve those goals, and uses those funds to, among other things, fund direct actions and meetings and gatherings throughout the year, drawing participants from around the world who share common interests and political and environmental values and ideals. (*See* Ex. 4-6.)[2] Participants in the Organizers Conference serve in a leadership or representative capacity, including navigating "internal dynamics of Earth First!," organizing direct actions, and scouting locations for future gatherings. (*See* Ex. 4.) Earth First! disseminates information concerning its strategic and tactical goals, direct actions, and locations

[2] On the agenda for Earth First!'s 2018 Organizers Conference is plotting direct action against Energy Transfer's latest infrastructure project, the Bayou Bridge Pipeline, which is the tail end of DAPL. (Ex. 7.)

for meetings and gatherings through the website of its agent Earth First! Journal, which acts as the organization's informational network. (*See* Exs. 4-7.)

Earth First! directed and participated in the coordinated campaign against DAPL by, among other things, providing $500,000 in seed money to a group of violent eco-terrorist infiltrators who formed a rogue group known as "Red Warrior Camp." Red Warrior Camp drove many of the violent protests that took place between August 2016 and February 2017 on the ground in North Dakota at and around the DAPL construction site at the Lake Oahe crossing and the Missouri River. (ECF No. 1, ¶¶ 38(l)-(m), 91-94, 104, 313-23.) Agents and affiliates of Red Warrior Camp, funded by Earth First!, refused to work with and undermined the Standing Rock Sioux Tribe in managing the protest site, sold drugs bought with donated money to other protestors at the site, and initiated violent conflicts and acts of terrorism, resulting in destruction of federal and private lands and construction equipment. (*Id.*)

Plaintiffs made five attempts to serve Earth First! through identified members and affiliates. (ECF No. 34 at 3-5.) After these efforts to personally serve individual agents or affiliates of Earth First! failed, on September 29, 2017, Plaintiffs served Earth First! with the summons and complaint by letter to the North Dakota Secretary of State, who acknowledged and admitted service on behalf of Earth First!. (ECF Nos. 15, 35-11.) Nevertheless, Earth First! has not appeared in this action, nor responded to the complaint.

On October 23, 2017, counsel for Earth First! Journal -- which claims to be "separate and distinct" from Earth First! -- wrote to Plaintiffs' counsel challenging Earth First!'s capacity to be sued and the effectiveness of service on Earth First!. (ECF No. 35-16.) In response, Plaintiffs filed a motion to declare service on Earth First! effective. (ECF Nos. 33, 34.) Earth First! Journal moved for leave to appear as a non-party, or in the alternative as an amicus curiae to

oppose Plaintiffs' motion. (ECF No. 45.) By order dated December 7, 2017, the Court authorized Earth First! Journal to file "an Amicus Curiae brief in opposition to Plaintiffs Motion . . . for Declaration of Effective Service on Defendant Earth First!." (ECF No. 50.) Earth First! Journal filed the brief the next day. (ECF No. 51.)

ARGUMENT

I. Earth First! Journal Lacks Standing to Bring the Motion for Sanctions.

Earth First! Journal did not seek leave of this Court to file the motion for sanctions, nor does Earth First! Journal offer any legal authority demonstrating it has standing to assert claims on behalf of Earth First!. While the Court granted Earth First! Journal's motion to appear as an amicus curiae, the explicit terms of the December 7, 2017 order limited Earth First! Journal's participation in this action to filing a single amicus brief in opposition to Plaintiffs' Motion for Declaration of Effective Service on Defendant Earth First!, which Earth First! Journal filed on December 8, 2017. (*See* ECF No. 50 (granting Earth First! Journal leave to file an "Amicus Curiae brief *in opposition to Plaintiffs Motion . . . for Declaration of Effective Service on Defendant Earth First!*") (emphasis added); *see also* ECF No. 51.) The Court's order is consistent with the local rules, which provide that an amicus curiae "may file a *brief* only by leave of court or if the *brief* states that all parties have consented to its filing." D.N.D. Civ. L.R. 7.1(G)(1) (emphasis added). The local rules further instruct that if an amicus curiae wishes to file a subsequent brief, the amicus curiae should seek permission to do so by separate motion. *See id*. ("[a] motion for leave to file an *amicus curiae* brief *must also be accompanied by the proposed brief*") (emphasis added).

Even assuming *arguendo* that the Court had granted Earth First! Journal leave to proceed in this action as an amicus curiae, such status does not confer standing on Earth First! Journal to

exercise litigating rights of a named party. Numerous courts have rejected efforts to expand the role of an amicus curiae, holding "an amicus curiae is not a party and has no control over the litigation and no right to institute any proceedings in it, *nor can it file any pleadings or motions in the case*." *Minn. by Campion v. CMI of Ky, Inc.*, No. 08-603 (DWF/AJB), 2011 WL 13227960, at *5 (D. Minn. Feb. 11, 2011) (emphasis added) (denying motion to enforce consent decree because "[a]micus curiae cannot move on behalf of a party with standing") (citations omitted); *see also NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1068 (N.D. Cal. 2005) (participation as amicus curiae "is restricted to suggestions relative to matters apparent on the record or to matters of practice") (citation omitted); *Miller-Wohl Co. v. Comm'r of Labor and Industry of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982) (denying amicus curiae's motion for fees because "[a]n amicus curiae is not a party to litigation") (citation omitted). Thus, "amicus ha[ve] been consistently precluded from initiating legal proceedings, filing pleadings, or otherwise participating and assuming control of the controversy in a totally adversarial fashion." *United States v. Michigan*, 940 F.2d 143, 164-67 (6th Cir. 1991) (district court abused its discretion in conferring "rights of a named party" to amicus curiae, including right to file pleadings, conduct discovery, and initiate contempt proceedings) (citation omitted).

Likewise, courts routinely deny sanctions motions filed by non-parties on the grounds that a non-party to a case "lack[s] standing to seek Rule 11 sanctions." *New York News, Inc. v. Kheel*, 972 F.2d 482, 489 (2d Cir. 1992); *Pinpoint IT Servs., L.L.C. v. Atlas IT Exp. Corp.*, 802 F. Supp. 2d 691, 693 (E.D. Va. 2011) (denying non-party motion for sanctions for lack of standing); *Matter of Search Warrant*, No. 3:16-MJ-00691 (SALM), 2017 WL 4418858, at *2 (D. Conn. Oct. 5, 2017) (same) (citation omitted); *see also Port Drum Co. v. Umphrey*, 852 F.2d 148, 150 (5th Cir. 1988) ("Rule 11 is designed to regulate proceedings among parties already

before the court in a particular case."); 2-11 Moore's Federal Practice – Civil § 11.22 (2018) ("Ordinarily, a non-party may not move for sanctions.").

Earth First! Journal has repeatedly asserted its "separate and distinct" existence from defendant Earth First! as a shield to evade liability and challenge service on Earth First! Earth First! Journal should not now be allowed to use its relationship with Earth First! as a sword to assert defenses and seek sanctions on Earth First!'s behalf that Earth First! has elected not to assert for itself. Accordingly, Earth First! Journal lacks standing to bring this motion, and its motion should be denied on the basis of this threshold deficiency.

II. Earth First! Should Be Estopped From Denying Its Existence.

The North Dakota Supreme Court has held that an unincorporated association which "do[es] business as a legal entity" may be sued on the principle of estoppel. *Askew v. Joachim Mem. Home*, 234 N.W.2d 226, 236 (N.D. 1975). Factors relevant to determining whether an unincorporated association may "be estopped to den[y] its own existence" are: (i) a membership too large to feasibly join all as defendants; (ii) regularly constituted officers and organization; (iii) accumulation of funds; (iv) has chosen a name under which to do business; (v) holds itself out as capable of contracting in that name; and (vi) is engaged in business under that name. *Id.* The presence of these factors, while relevant, are not determinative. Rather, whether a party does business as a legal entity is a fact-specific inquiry which must take into account the circumstances of each particular case. *See id.* ("an association doing business as a legal entity may, *if the facts and circumstances warrant*, be estopped to deny its own existence").

A "pleading need not allege . . . a party's capacity to . . . be sued . . . [or] the alleged legal existence of an organized association of persons that is made a party." Fed. R. Civ. P. 9(a). Rather, the burden is on the defendant to assert lack of capacity as a defense. *Id.* When the

defense is asserted at the pleading stage, a plaintiff need only allege facts, which taken as true, sufficiently allege capacity to be sued. *See Sec. Life Ins. Co. of Am. v. Sw. Reinsure, Inc.*, No. 11-1358 (MJD/JJK), 2011 WL 6382857, at *4-5 (D. Minn. Dec. 20, 2011). Critically, prior to the end of discovery, Plaintiffs are not required to allege capacity to be sued with complete insight. *Id.* at *5 (denying motion to dismiss for lack of capacity to be sued under Rule 17 because "further discovery will shed light" on issue); *see also Daniels v. Retired Senior Volunteer Program*, No. 2:05-CV-0114, 2006 WL 783438, at *3 (S.D. Ohio Mar. 27, 2006) ("Given the dearth of information about [defendant], [defendant] bears the burden of demonstrating lack of capacity to be sued, and that this matter is before the Court on a Rule 12 motion to dismiss, the Court is not prepared at this juncture to rule definitively that [defendant] lacks the capacity to be sued."); *Askew*, 234 N.W.2d at 232 (addressing capacity to be sued at the close of evidence following directed verdict).

Applying the *Askew* factors, Earth First! Jo urnal should be estopped from denying Earth First!'s legal existence. Earth First! Journal concedes that Earth First! is comprised of thousands of individual members (ECF No. 51 at 2) who, for nearly four decades, have operated under the "Earth First!" name to further their common interests, objectives, and goals through direct actions involving civil disobedience and acts of terrorism and destruction. (*See* ECF No. 1 ¶ 38(l); Ex. 3, 8.)[3] Moreover, the organization's strategic goals and internal governance are set by leadership during annual Organizers Conferences. (*See* Ex. 4.) Earth First! disseminates information about its strategic goals and objectives, direct actions, and other acts in furtherance of these objectives on the website of its agent Earth First! Journal, which acts as the

[3] While Earth First! Journal re-characterizes Earth First!'s "members" as "activists," at a minimum, Plaintiffs are entitled to discovery concerning the role of these activists.

organization's informational network (*see* Exs. 4-5, 7), and raises and disburses funds to achieve these goals (*see* Exs. 5-6), including the accumulation and disbursement of $500,000 in seed money to form Red Warrior Camp to direct, incite, and perpetrate attacks against Energy Transfer and DAPL on the ground in North Dakota. (*See* ECF No. 1 ¶ 38(l)).

While Earth First! Journal attempts to recast Earth First! as a "philosophy" or "movement" with "no structure or leadership" (EFJ Br. at 1-2), in determining whether an unincorporated association is subject to suit, federal courts do not simply accept an organization's self-serving description of itself, but rather consider the totality of the circumstances to determine whether sufficient facts exist to give rise to an inference of capacity to be sued, viewing all facts in the light most favorable to plaintiff. Thus, in *United States v. Rainbow Family*, the court rejected an unincorporated association's contentions that they were not subject to suit because they lacked "organization, structure, or hierarchy" and thus amounted to nothing more than "a gathering of persons sharing a similar outlook or philosophy." 695 F. Supp. 294, 298 (E.D. Tex. 1988). In *Rainbow Family*, the court acknowledged there were "no established leaders or agents" and the association operated under various trade names, yet the court held that defendant should be estopped from denying its existence because it held "meetings or gatherings . . . throughout the year"; had an "informational network," including "methods of disseminating decisions and other information"; participants "share[d] many common interests and political values or ideals, and express[ed] those shared ideas and interests through [ ] activities"; and "decisions [we]re made collectively, on such matters as the time and location of future gatherings." *Id.* at 298.

Each indicia which supported the court's finding of capacity to suit in *Rainbow Family* is present here.[4] Accordingly, under *Askew* and *Rainbow Family,* Earth First! Journal should be equitably estopped from denying Earth First!'s existence.[5]

III. Sanctions Are Not Warranted

In any event, Plaintiffs' good faith assertion of claims against Earth First! arising from Earth First!'s direct role in funding, directing, and manufacturing international opposition to DAPL -- including violent acts of terrorism and arson and destruction of federal lands and construction equipment -- does not warrant the imposition of sanctions under the standards articulated by the Eighth Circuit and the cases Earth First! Journal purports to rely upon.[6]

"The imposition of sanctions [under Rule 11] is a serious matter and should be approached with circumspection." *Dalton v. Manor Care of W. Des Moines IA, LLC*, No. 4:12-CV-00172-JEG, 2013 WL 12177875, at *2 (S.D. Iowa July 8, 2013) (citing *O'Connell v. Champion Int'l Corp.*, 812 F.2d 393, 395 (8th Cir. 1987)). Even where the "basis for [a] claim . .

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[4] *Doe v. McKesson*, 272 F. Supp. 3d 841, 849 (M.D. La. 2017), relied on by Earth First! Journal, is inapposite because the court determined that Black Lives matter, as the term was used in the complaint, was "a *social movement* that was catalyzed on social media" and lacked any evidence of "organization or entity of any sort," including meetings and structure of decision-making, like those present here.

[5] Additionally, Fed. R. Civ. P. 17(b)(3) provides that an unincorporated association -- defined as "a body of persons acting together and using certain methods for prosecuting a special purpose or common enterprise" -- may be sued even if no such capacity exists under state law. *Estates of Ungar ex rel. Strachman v. Palestinian Auth.*, 304 F. Supp. 2d 232, 258 (D.R.I. 2004).

[6] The cases cited by Earth First! Journal in support of the imposition of sanctions involve egregious misconduct clearly distinguishable from the conduct alleged here. *See, e.g.*, *Bergeron v. Nw. Publ'ns Inc.,* 165 F.R.D. 518, 520-23 (D. Minn. 1996) (imposing sanctions where plaintiff had no medical evidence to support his claim and four doctors declined plaintiff's request to support his claims); *Salmon v. CRST Expedited, Inc.,* No. 14-CV-0265, 2016 WL 3945362, (N.D. Okla. July 19, 2016), *aff'd sub nom. Salmon v. Nutra Pharma Corp.*, 687 F. App'x 713 (10th Cir. 2017) (sanctioning legal intern's filing of frivolous claims that were "so baseless that the case can best be described as a shakedown").

. [is] 'thin,' and ultimately fail[s] to withstand summary judgment," where plaintiff's claims show legal or evidentiary support, they are "not so baseless as to warrant Rule 11 sanctions." *Exec. Air Taxi Corp. v. City of Bismarck, N.D.*, 518 F.3d 562, 571 (8th Cir. 2008); *see also Canada v. Dominion Enter.*, No. 4:13CV00345 JLH, 2014 WL 2204913, at *4 (E.D. Ark. May 27, 2014) (sanctions not warranted where plaintiff's attorney investigated facts and drew inferences from those facts, though inferences proved to be wrong).

As this Court has held, Rule 11 permits a party to allege facts which "either have evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." *Sylvan Learning, Inc. v. Ebsen*, No. 3:13-cv-49, 2014 WL 12469949, at *2-3 (D.N.D. Jan. 7, 2014) (quotation marks omitted). This standard for pre-filing investigation recognizes that "sometimes a litigant may have good reason to believe that a fact is true or false but may need discovery, formal or informal, from opposing parties or third persons to gather and confirm the evidentiary basis for the allegation." *Id.* at *2.

Likewise, there is a high bar for sanctions under 28 U.S.C. § 1927:

> [T]he language of 28 U.S.C. § 1927 appears to require a finding of objectively unreasonable behavior and a finding of bad faith. . . . [T]he party seeking sanctions may establish counsel's bad faith by showing intentional or reckless disregard of the attorney's duties to the court. Sanctions imposed in accordance with 28 U.S.C. § 1927 are discretionary [and] [t]he Eighth Circuit has warned that [b]ecause section 1927 is penal in nature, it should be strictly construed so that it does not dampen the legitimate zeal of an attorney in representing his client. Ultimately, [t]he imposition of sanctions is a serious matter and should be approached with circumspection.

Larson v. Martin, 440 F. Supp. 2d 1067, 1069 (D.N.D. 2006) (Hovland, J.) (internal quotations and citations omitted).[7]

[7] Earth First! Journal's own authority militates against imposing sanctions under these facts. In *Temple*, the court found that naming the wrong corporate entity as a defendant in its original complaint was not sanctionable conduct. *Temple v. WISAP USA*, 152 F.R.D. 591, 597, 620 (D. Neb. 1993) (no Rule 11 violation arose from initial naming of wrong entity in original

Here, Plaintiffs investigated Earth First!'s involvement in the criminal conduct alleged in the Complaint, and identified Earth First!'s operations in Lake Worth, Florida, despite Earth First!'s labyrinthine structure and interconnections with other environmental organizations and advocacy groups. (*See generally* ECF Nos. 34, 35.) Plaintiff's pre-complaint investigation and allegation that Earth First! was a non-profit corporation organized under the laws of Florida were reasonable at the time they were made because Plaintiffs' pre-filing investigation revealed that several key members of Earth First! operated out of Fort Worth, Florida, and that Earth First! was likely a trade-style for legal entities doing business as Earth First!.[8] (ECF Nos. 34, at 3-5.) Under these circumstances, the law is clear that sanctions are not warranted even if Plaintiffs' preliminary allegations and understanding proved to be wrong. *See Sylvan*, 2014 WL 12469949, at *2-3; *Canada v. Dominion*, 2014 WL 2204913, at *4.

Finally, sanctions are not warranted because Plaintiffs have not persisted in identifying Earth First! as a non-profit corporation, but, as Earth First! Journal concedes, upon uncovering that Earth First! is not a non-profit corporation, Plaintiffs have properly treated it as an unincorporated association subject to suit in all subsequent submissions to this Court.[9] (*See* ECF Nos. 34, 35; *see also* ECF No. 64 at 5-6.)

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complaint). Only after ignoring copious warning signs that the wrong party had been named and filing an amended complaint five months later naming the same improper defendant without "any prefiling inquiry" did the court find attorney Welsh's conduct sanctionable. *Id.* at 600-02.

[8] In fact, Earth First! Journal is itself a trade-style used by formal organizations The Night Heron Grassroots Activist Center, Inc. and Daily Planet Publishing, Inc. Contrary to Earth First! Journal's contention that one can simply search an entity's name on the website of the Division of Corporations of the Florida Department of State to ascertain its legal existence (EFJ Br. at 6), a search of "Earth First! Journal" in the Florida business entity search yields no results, even though Earth First! Journal is concededly a "formally organized entity" (EFJ Br. at 1).

[9] *See Ellipsis, Inc. v. Color Works, Inc.*, No. 03-2939BV, 2005 WL 3466566, at *5-6 (W.D. Tenn. Dec. 16, 2005) (recommending denial of sanctions or withholding consideration of sanctions until decision on summary judgment or conclusion of litigation, where, as here, investigation remained ongoing and plaintiff did not continue to pursue allegations for which it

IV. This Court Should Strike Earth First Journal!'s Motion.

This Court should strike Earth First! Journal's sanctions motion pursuant to its inherent power to control its own docket. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-46 (1991). That power includes "the authority to sanction procedural impropriety in an appropriate manner, including by striking impertinent documents from the docket." *Wright v. Am.'s Bulletin*, No. CV 09-10-PK, 2010 WL 816164, at *13 (D. Or. Mar. 9, 2010) (citing *Chambers*, 501 U.S. at 44-45). This authority is properly exercised to strike briefing that is not in compliance with a court's orders. *See Centillium Commc'ns, Inc. v. Atl. Mut. Ins. Co.*, No. C 06-07824 SBA, 2008 WL 728639, at *6 (N.D. Cal. Mar. 17, 2008).

Applying these principles, in *Chicago Insurance Co. v. City of Council Bluffs, Iowa*, the court struck as "improper and impertinent" defendants' supplemental brief in opposition to plaintiff's motion for summary judgment where the court "did not grant [d]efendants leave to supplement" and "[d]efendants never sought leave to supplement their summary judgment responses," but "[i]nstead . . . simply filed" the supplemental responses "presumptuous[ly]." No. 1:07-CV-21, 2012 WL 13018889, at *2 (S.D. Iowa Jan. 10, 2012) (quotations omitted).

The same result is compelled here. As set forth above, Earth First! Journal's motion cites no authority whatsoever authorizing Earth First! Journal to file a motion for sanctions in this action. The Court's order granting Earth First! Journal leave to appear as an amicus curiae limited Earth First! Journal's participation to filing a single brief in opposition to Plaintiffs' Motion for Declaration of Effective Service on Defendant Earth First!, which Earth First! Journal

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had not discovered supporting evidence); *id.* at *6 ("Subdivision (b) does not require formal amendment to pleadings for which evidentiary support is not obtained, but rather calls upon a litigant not thereafter to advocate such claims or defenses.") (quoting Fed. R. Civ. P. 11, advisory committee's note to 1993 Amendment).

filed on December 8, 2017. Earth First! Journal did not seek leave of the Court to file another brief in this action, as required under the local rules of this District.

Striking Earth First! Journal's motion is particularly appropriate here, where Earth First! Journal's sole purpose in bringing this frivolous motion was to generate publicity for the campaign against Energy Transfer. As direct evidence of its improper motive, Earth First! Journal did not wait for Plaintiffs to consider the demand that Plaintiffs withdraw their claims, but instead immediately published the motion on its website and disseminated copies to the media, weeks before it could file its motion under law, and in contravention of the spirit of the safe harbor rule.

Accordingly, the Court should exercise its inherent authority to sanction Earth First! Journal's abuse of the federal rules and strike Earth First! Journal's motion from its docket.

CONCLUSION

For the foregoing reasons, Earth First! Journal's motion for sanctions should be denied in its entirety and Plaintiffs' motion to strike should be granted.

DATED this 21st day of February, 2018.

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