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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 R. Prasad Industries,

10 Plaintiff,

11 v.

12 Flat Irons Environmental Solutions
13 Corporation, et al.,

14 Defendants.

No. CV-12-08261-PCT-JAT

ORDER

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16 Pending before the Court is Plaintiff R. Prasad Industries' ("Prasad") Motion for
17 28 U.S.C. § 1927 Sanctions (Doc. 89) against Defendants Flat Irons Environmental
18 Solutions Corporation, Gary Miller, Jane Doe Miller, Robert Carlile, and Jane Doe
19 Carlile (collectively "Defendants") and their counsel, Frederic M. Douglas ("Mr.
20 Douglas") related to Defendants' filing of the First Amended Answer, Counterclaims,
21 Cross-claims, and Jury Demand ("FAACC") (Doc. 55). Also pending is non-parties
22 Franklin Thomas Hovore, Powers & Hovore PLLC, and Hovore Law PLLC's
23 (collectively, "Hovore") Motion for Entry of Judgment under Rule 54(b) (Doc. 85) and
24 Motion for 28 U.S.C. § 1927 Sanctions (Doc. 84) against Defendants and Mr. Douglas.
25 Each motion is fully briefed. The Court now rules on the motions.

26 **I. BACKGROUND**

27 Prasad brought the Complaint (Doc. 1) against Defendants alleging a breach of
28 contract (and related claims) stemming from the failed purchase of large quantities of

1 fertilizer. On or about November 5, 2012, Prasad hired Hovore to pursue its legal
2 remedies and Hovore drafted and mailed a demand letter to Defendants. (*Id.* ¶ 67).
3 Among other things, the demand letter opines that Defendants’ actions constituted a
4 “criminal act” and states that if the \$525,000 is not immediately returned, Prasad and the
5 Guyana consulate will “jointly file a criminal action against [Defendants] with the
6 Attorney General of Arizona.” (*Id.* at Ex. CC). After Defendants failed to respond to the
7 demand letter, this litigation commenced on December 30, 2012 when, on behalf of
8 Prasad, Hovore filed the Complaint (Doc. 1) against Defendants.

9 The Complaint included a claim under the civil portion of the Arizona
10 Racketeering statute, Ariz. Rev. Stat. Ann. § 13-2314.04 (West 2013). On January 17,
11 2013, Prasad served a letter and a copy of the Complaint to the Arizona Attorney
12 General’s office (Doc. 14; Doc. 55 at Ex. 1), pursuant to Subsection H of the Arizona
13 Racketeering statute.¹

14 Defendants allege that on February 14, June 11, and June 14, 2013, Hovore
15 communicated to Mr. Douglas that Hovore had been and intended to further
16 communicate with the Arizona Attorney General’s office regarding potential criminal
17 charges against Defendants. (Doc. 55 at 37–38, ¶¶ 29–32). On June 21, 2013, Defendants
18 filed their original Answer, Counterclaims, and Jury Demand (Doc. 35) and served the
19 pleading on Hovore with “Summons for Third-Party Defendants” (Docs. 36–40). The
20 Counterclaim portion of Defendants’ pleading contained four counts alleging that Prasad
21 and Hovore extorted Defendants, abused the judicial process, and intentionally inflicted
22 emotional distress on Defendants by “threatening” to notify the Arizona Attorney General
23 of Defendants’ alleged criminal actions and acting on those “threats.” (Doc. 35). Because
24 of Defendants’ attempt to inject Prasad’s counsel, Hovore, into the proceedings as a party
25 potentially adverse to Prasad, Hovore was forced to severely limit its representation of
26 Prasad until the “counterclaims” could be resolved. As a result, Prasad hired independent

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28 ¹ A.R.S. § 13-2314.04(H) requires that “[a] person who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court.”

1 counsel to assist with its representation and Hovore hired its own counsel.

2 Prasad and Hovore both filed Motions to Dismiss under Rules 12(b)(1), (5), and
3 (6), and to Strike Defendants' original Answer and Counterclaims. (Docs. 43–44, 48).
4 These motions explained the numerous jurisdictional, factual, and legal deficiencies of
5 Defendants' "counterclaims." Defendants did not file a Response to Prasad and Hovore's
6 motions. However, on August 2, 2013, Defendants filed the First Amended Answer,
7 Counterclaims, Cross-claims, and Jury Demand ("FAACC") (Doc. 55) and served the
8 pleading on Hovore with "Summons for Third-Party Defendants" (Docs. 57–58, 60–63).
9 In the counterclaims and cross-claims portion of the FAACC, Defendants added a fifth
10 count alleging the "interstate transmission of extortionate threats" in violation of 18
11 U.S.C. § 875(d). (Doc. 55 at 55). Moreover, the only significant change in the original
12 four claims was that, to preserve complete diversity, the original four counts were now
13 pleaded by only the California-residing Carlile Defendants and not also the Arizona-
14 residing defendants (Flat Irons and the Miller Defendants).² Prasad and Hovore filed Rule
15 12(b)(1) and 12(b)(6) Motions to Dismiss and Rule 12(e) and 12(f) Motions to Strike that
16 were substantially similar to their original motions. (Docs. 64, 68). Hovore also filed a
17 Motion for Sanctions pursuant to 28 U.S.C. § 1927. (Doc. 68).

18 In its December 17, 2013 Order (Doc. 83), the Court dismissed the
19 "counterclaims" against Prasad on jurisdictional grounds without prejudice. The Court
20 dismissed the "counterclaims" against Hovore with prejudice because, among other
21 reasons, Hovore was not a proper party to this litigation. The Court did not reach the
22 merits of Prasad and Hovore's Rule 12(b)(6) motions. Additionally, the Court denied
23 Hovore's motion for 28 U.S.C. § 1927 sanctions and Prasad's request for attorneys' fees
24 without prejudice and instructed Hovore and Prasad to refile the requests as separate
25 motions formatted according to the guidelines in LRCiv 54.2.

26 Now, Hovore and Prasad have both refiled their requests as the instant motions for
27 sanctions under 28 U.S.C. § 1927, or, alternatively, under the Court's inherent power or

28 ² Hovore are Arizona residents.

1 A.R.S. § 12-349. (Docs. 85, 89). Additionally, Hovore seeks a Rule 54(b) entry of final
2 judgment on the dismissal of Defendants’ “counterclaims” against them. (Doc. 84).

3 **II. HOVORE’S MOTION FOR 54(b) JUDGMENT**

4 In Defendants’ FAACC (Doc. 55), Defendants included claims against Hovore
5 alleging that during Hovore’s representation of Prasad in this litigation, Hovore abused
6 process and attempted to extort Defendants. Upon motion to dismiss by Hovore, the
7 Court dismissed Defendants’ “counterclaims” against Hovore with prejudice. Although
8 the instant litigation between Prasad and Defendants continues, there are no pending
9 claims by or against Hovore. Consequently, Hovore now moves for entry of final
10 judgment on Defendants’ claims under Rule 54(b). (Doc. 85).

11 Defendants’ object and argue that “[a] dismissal for lack of subject matter
12 jurisdiction must be without prejudice” because the dismissal did not resolve the merits
13 of the underlying claims.³ (Doc. 92 at 4–5). Defendants’ argument is a red herring.
14 Whether the Court dismissed Defendants’ claims against Hovore with or without
15 prejudice has no bearing on Hovore’s Motion for Entry of Judgment under Rule 54(b)
16 (Doc. 85). Defendants make no other specific argument against entering judgment under
17 Rule 54(b). (*See* Doc. 92).

18 Rule 54(b) provides that when more than one claim for relief is presented in an
19 action, or when multiple parties are involved, the district court may direct the entry of a
20 final judgment as to one or more but fewer than all of the claims or parties “only if the
21 court expressly determines that there is no just reason for delay.” Fed. R. Civ. P. 54(b).
22 Judgment under Rule 54(b) is appropriate where there are distinct and severable claims
23 and where immediate review of the adjudicated claims will not result in later duplicative
24 proceedings at the trial or appellate level. *See Wood v. GCC Bend, LLC*, 422 F.3d 873,

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26 ³ To the extent that Defendants are asking the Court to reconsider its decision to
27 dismiss Defendants’ claims with prejudice, such request is untimely. *See* LRCiv 7.2(g)(1)
28 (“Absent good cause shown, any motion for reconsideration shall be filed no later than
fourteen (14) days after the date of the filing of the Order that is the subject of the
motion.”). Here, Defendants have not attempted to show good cause for their delay in
seeking reconsideration. (*See* Doc. 92).

1 878–89 (9th Cir. 2005). Judgment under Rule 54(b) is not appropriate in routine cases
2 where the risk of “multiplying the number of proceedings and of overcrowding the
3 appellate docket” outweighs “pressing needs . . . for an early judgment.”
4 *MorrisonKnudsen Co. v. Archer*, 655 F.2d 962, 965 (9th Cir. 1981); see *Curtiss-Wright*
5 *Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980).

6 Here, the first requirement for a Rule 54(b) certification is satisfied. The Court has
7 finally and completely resolved Defendants’ claims against Hovore. (Dec. 17, 2013
8 Order, Doc. 83 at 4–6, 13 (determining that Hovore is not a party in this litigation and
9 dismissing Defendants’ “counterclaims” against Hovore without leave to amend)).

10 The Court must next determine whether “there is any just reason for delay.” *Wood*,
11 422 F.3d at 878. This in turn implicates “the historic federal policy against piecemeal
12 appeals.” *Id.* Relevant factors include (1) whether a Rule 54(b) judgment would result in
13 unnecessary appellate review; (2) whether the claims finally adjudicated are separate,
14 distinct, and independent of other claims; (3) whether appellate review of the adjudicated
15 claims could be mooted by future developments in the case; and (4) whether an appellate
16 court would have to decide the same issues more than once if there were subsequent
17 appeals. *Id.* at 878 n. 2. These factors favor a Rule 54(b) certification.

18 First, certification will not result in unnecessary appellate review. Even if
19 Defendants appeal this Court’s ruling, the procedural issue of whether Hovore is a party
20 in this litigation does not overlap with the remaining issues in this litigation (*e.g.* Prasad’s
21 breach of contract and related claims against Defendants).

22 Second, Defendants’ claims against Hovore related to alleged extortion and abuse
23 of process during Hovore’s representation of Prasad in the instant litigation are separate
24 and distinct from Prasad’s underlying contract dispute with Defendants. Defendants’
25 claims against Hovore do not arise out of the same facts as Prasad’s claims against
26 Defendants. (Doc. 83 at 8 (finding that the two sets of claims “bear no logical or factual
27 relationship”). Moreover, the two sets of claims present completely separate legal
28 theories against different kinds of Defendants. (*Compare* Pl.’s V. Compl., Doc. 1, with

1 Defs.’ First Am. Answer, Countercl., Cross-cl., and Jury Demand, Doc. 55).

2 Third, review of Defendants’ claims against Hovore will not be mooted by any
3 future developments in the instant litigation, excepting a complete settlement. The Court
4 can foresee no ruling on Prasad’s claims that will alter or affect its ruling on Defendants’
5 claims against Hovore.

6 Fourth, the appellate court will not be required to decide the same issues more
7 than once if there are subsequent appeals. Any appeal related to Prasad’s claims against
8 Defendants will not raise the procedural issues that resulted in dismissal of Defendants’
9 claims against Hovore.

10 In sum, the Court finds that Defendants’ claims against Hovore have been finally
11 and completely resolved and that there is no just reason to delay entry of final judgment
12 in favor of Hovore. Accordingly, Hovore’s Motion for Entry of Judgment under Rule
13 54(b) (Doc. 85) is granted.⁴

14 **III. MOTIONS FOR SANCTIONS**

15 Hovore has filed a Motion for Sanctions (Doc. 84) seeking recovery of reasonable
16 attorneys’ fees and expenses expended in defeating Defendants’ “counterclaims” against
17 Hovore in the FAACC. Hovore seeks sanctions against Defendants’ counsel, Mr.
18 Douglas, under 28 U.S.C. § 1927. (*Id.* at 4, 10). Additionally, Hovore seeks sanctions
19 against Defendants, themselves, under either the Court’s inherent power or A.R.S.
20 § 12-349. (*Id.*). In a remarkably similar motion (*compare* Doc. 84, *with* Doc. 89), Prasad
21 seeks recovery of its reasonable attorneys’ fees and expenses expended in defeating
22 Defendants’ “counterclaims” against Prasad in the FAACC (Doc. 89 at 2–3, 7–8).

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26 ⁴ The Court notes that Defendants’ claims against Hovore consisted of five counts,
27 but only Count V was brought by all Defendants—Counts I, II, III, and IV were brought
28 by the Carlile Defendants only. Consequently, Defendants request that the Court specify
that the entry of final judgment on Counts I, II, III, and IV is only against the Carlile
Defendants. (Doc. 92 at 5–7). For the sake of clarity, the Court agrees and the final
judgment shall so specify.

1 As a initial matter, Mr. Douglas appears to concede (*see* Doc. 90 (arguing bad
2 faith, but not multiplication of the proceedings)), and the Court finds, that the FAACC
3 multiplied the proceedings. After filing the original four “counterclaims”⁶ against Hovore
4 (which were filed in CM/ECF as a “Third Party Complaint”) in the Answer (Doc. 35),
5 Hovore (and Prasad) filed a motion to dismiss all four claims under Rules 12(b)(1),
6 12(b)(5), and 12(b)(6). (Docs. 43, 48). Hovore’s (and Prasad’s) motion put Mr. Douglas
7 on notice of the numerous pleading, jurisdictional, and factual deficiencies in the original
8 counterclaims. Nonetheless, instead of responding to the pending motions to dismiss,
9 Mr. Douglas (for Defendants) filed the FAACC characterizing the claims as “cross-
10 claims” in addition to “counterclaims,” dropping Arizona-residing Defendants from the
11 four claims in an attempt to preserve diversity jurisdiction against Arizona-residing
12 Hovore, and adding a fifth federal cause of action (interstate transmission of extortionate
13 threats). Notably, not only were the procedural and jurisdictional changes futile, but
14 Defendants also subsequently withdrew the new federal claim and the original intentional
15 infliction of emotional distress claim *after* Hovore (and Prasad) filed motions to dismiss
16 the FAACC. (Doc. 76 at 13; Doc. 77 at 19). Thus, with respect to Hovore, the FAACC
17 unnecessarily and unreasonably multiplied the proceedings.

18 With regard to subjective bad faith, on this record, incompetence is at least as
19 likely an explanation of Mr. Douglas’ pleading strategy as bad faith. As such, the Court
20 cannot immediately conclude that Mr. Douglas’s litigation strategy evidences subjective
21 bad faith. However, because “[b]ad faith is present when an attorney knowingly or
22 recklessly raises a frivolous argument[,]” Hovore need not present direct evidence of
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24 misrepresents the Court’s previous Order. LRCiv 54.2, by its explicit terms, does not
25 apply to motions for § 1927 sanctions. LRCiv 54.2(a). Nonetheless, because of the
26 Court’s familiarity with motions for attorneys’ fees that follow the formatting guidelines
27 in LRCiv 54.2(c)–(e), the Court’s previous Order requested that, “for the ease of the
28 Court,” Hovore and Prasad “follow the *format* described in [LRCiv 54.2]” when filing
the instant § 1927 motion. (Doc. 83 at 14 (emphasis added)). The Court did not and has
not ordered that these § 1927 motions follow the *procedural* requirements of LRCiv 54.2.

⁶ Theft by extortion under Arizona Law, Extortion under California law, Abuse of Process, and Intentional infliction of emotional distress. (Doc. 35 at 41–50).

1 subjective bad faith to prevail. *Keegan*, 78 F.3d at 436; *id.* (“For sanctions to apply, if a
2 filing is submitted recklessly, it must be frivolous, while if it is not frivolous, it must be
3 intended to harass. . . . [R]eckless non-frivolous filings, without more, may not be
4 sanctioned.”). Thus, although Hovore represents no direct evidence of subjective bad faith,
5 “a finding that [Mr. Douglas] recklessly raised a frivolous argument which resulted in the
6 multiplication of the proceedings is also sufficient to impose sanctions under § 1927.” *In*
7 *re Girardi*, 611 F.3d 1027, 1061 (9th Cir. 2010); *see, e.g., B.K.B. v. Maui Police Dept.*,
8 276 F.3d 1091, 1107 (9th Cir. 2002) (“[R]ecklessness plus knowledge was sufficient to
9 justify the imposition of § 1927 sanctions.”); *Fink v. Gomez*, 239 F.3d 989, 993 (9th Cir.
10 2001) (holding that “recklessness suffices for § 1927, but bad faith is required for
11 sanctions under the court’s inherent power”).

12 **a. Recklessness**

13 First, the Court finds that, with respect to Hovore, Mr. Douglas filed the FAACC
14 recklessly. As the Court noted in its previous Order, Mr. Douglas variously and
15 inconsistently labeled the claims against Hovore (for extortion, abuse of process, and
16 intentional infliction of emotional distress) as cross-claims, counterclaims, and a third-
17 party complaint. (Doc. 83 at 4). By filing these claims, Mr. Douglas attempted to inject
18 Hovore into this litigation with complete disregard for the Federal Rules of Civil
19 Procedure. As the Court remarked, “it would be patently ridiculous for Defendants” to
20 file a third-party complaint against Hovore because Defendants’ claims are not
21 allegations that Hovore is, in some way, liable to Defendants for Prasad’s claims against
22 Defendants.” (*Id.* at 5). Furthermore, the Court explained that “[i]t is elementary” that a
23 cross-claim or counterclaim against Hovore is impermissible because Hovore was not,
24 respectively, a co-party of Defendants in this action or a party already opposing
25 Defendants. (*Id.*). To the extent that Mr. Douglas, in good faith, believed that he could
26 properly plead Defendants’ claims against Hovore as counterclaims, even a cursory
27 reading of the Rule 13(a) or (b) would have revealed that Mr. Douglas must first (or at
28 least concurrently) properly join Hovore as an additional party to this litigation under

1 Rules 13(h), 19, or 20. Mr. Douglas' failure to even attempt to so join Hovore and follow
2 the Federal Rules of Civil Procedure constitutes recklessness. Mr. Douglas' recklessness
3 is especially apparent where, as here, the consequences of the haphazard and improper
4 pleading was to create a conflict of interest between Prasad and Prasad's counsel,
5 interrupting Hovore's representation of Prasad and requiring both Prasad and Hovore to
6 obtain independent representation during the pendency of the improperly pleaded claims
7 against Hovore.

8 Mr. Douglas' recklessness in filing the FAACC is also apparent from the
9 jurisdictional gamesmanship in pleading diversity jurisdiction over the state law claims
10 against Hovore. In the original "counterclaims" against Hovore, *all* Defendants, including
11 the Arizona-residing Miller and Flat Irons Defendants, made all four claims against
12 Arizona-residing Hovore. (Doc. 35). Next, Hovore's 12(b)(1) motion to dismiss
13 explained the lack of complete diversity (as well as recognizing that Mr. Douglas had
14 failed to even allege the citizenship of Hovore). In response, Mr. Douglas attempted to
15 remedy the diversity-jurisdictional shortcomings of the original claims against Hovore by
16 confusingly and inconsistently pleading that the diversity-based claims (Counts I, II, III,
17 IV) were filed against Arizona-residing Hovore by *only* the California-residing Carlile
18 defendants. Nonetheless, the same causes of action alleged that *all* Defendants brought
19 the claims against Prasad (who possesses different citizenship than any defendant). (Doc.
20 55 at 42–55). As if this wasn't confusing enough, in the FAACC Mr. Douglas materially
21 repeated the factual basis from the original claims, including allegations that Hovore's
22 actions affected *all* Defendants equally.⁷ (Doc. 55 at 30–42). Of course, it is possible that
23 the Miller and Flat Irons Defendants decided to give up their claims against Hovore so
24 that the Carlile Defendants' identical claims could preserve complete-diversity and
25 continue. However, on the record before the Court, it is substantially more likely that Mr.
26 Douglas' cynically pleaded confusing and inconsistent jurisdictional allegations in a

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28 ⁷ The FAACC's factual allegations make no attempt to distinguish the Carlile,
Miller, or Flat Irons Defendants, except for their state of residence. (Doc. 55 at 30–42).

1 transparent attempt to preserve diversity jurisdiction over the claims against Hovore.
2 Thus, the Court finds that Mr. Douglas' jurisdictional shenanigans in the FAACC also
3 demonstrate recklessness.

4 **b. Frivolousness**

5 Second, the Court finds that the claims against Hovore in the FAAC were
6 frivolous.

7 A "frivolous" filing is one "that is both baseless and made
8 without a reasonable and competent inquiry." *See Holgate v.*
9 *Baldwin*, 425 F.3d 671, 677 (9th Cir. 2005) (construing
10 "frivolous filing" in the context of Rule 11 and quoting
11 *Keegan Mgmt.*, 78 F.3d at 434). That is, in the contexts of
§ 1927, frivolousness should be understood as referring to
legal or factual contentions so weak as to constitute objective
evidence of improper purpose.

12 *In re Girardi*, 611 F.3d at 1062. Although the Court did not rule on the merits of
13 Hovore's 12(b)(6) motion to dismiss (*see* Doc. 83), examination of the record and
14 Defendants' pleadings reveals that the extortion, abuse of process, and intentional
15 infliction of emotional distress claims against Hovore were both baseless and made
16 without a reasonable and competent inquiry. Initially, the Court notes that despite being
17 on notice of Hovore's arguments concerning the factual and legal deficiencies of the
18 original intentional infliction of emotional distress claim against Hovore, Mr. Douglas
19 repleaded a materially identical claim in the FAACC. (Docs. 35, 55). Then, after Hovore
20 reraised the same arguments in their subsequent motion to dismiss, Mr. Douglas
21 voluntarily withdrew the intentional infliction of emotional distress claim. (Doc. 76 at 13;
22 Doc. 77 at 19). Mr. Douglas has not explained how a reasonable and competent inquiry
23 between Hovore's original motion to dismiss and the FAACC failed to reveal the lack of
24 merit that his post-FAACC inquiry apparently revealed. Thus, the Court finds Mr.
25 Douglas' voluntary withdrawal of the claim to be evidence of the claim's legal or factual
26 weakness.

27 Not dissimilarly, the FAACC added Count V: Interstate Transmission of
28 Extortionate Threats in violation of federal law (and therefore implicating federal

1 question jurisdiction as an alternative to the diversity-jurisdiction alleged in the other four
2 claims against Hovore). (Doc. 55 at 5). However, in Response to Hovore’s motion to
3 dismiss, Mr. Douglas voluntarily withdrew the claim. (Doc. 76 at 13; Doc. 77 at 19). In
4 the context of this litigation, the implication is that Mr. Hovore conducted a reasonable
5 and competent inquiry only *after* filing the FAACC, and then determined that the claim
6 lacked a legal or factual basis.

7 With regard to the three claims that Mr. Douglas did not voluntarily withdraw
8 post-motion to dismiss—extortion under Arizona and California law and abuse of
9 process—the Court finds that the claims were both baseless and made without a
10 reasonable and competent inquiry. Defendants predicate their “counterclaims” on
11 Hovore’s alleged extortionate communications during Hovore’s attempts to resolve the
12 underlying litigation. As the Court previously explained:

13 On or about November 5, 2012, Prasad hired Hovore to
14 pursue its legal remedies [for the underlying breach-of-
15 contract dispute] and Hovore drafted and mailed a demand
16 letter to Defendants. Among other things, the demand letter
17 opines that Defendants’ actions constituted a “criminal act”
18 and states that if the \$525,000 is not immediately returned,
19 Prasad and the Guyana consulate will “jointly file a criminal
20 action against [Defendants] with the Attorney General of
21 Arizona.” Defendants neither responded to the demand letter
22 nor returned the \$525,000. This litigation commenced on
23 December 30, 2012 when, on behalf of Prasad, Hovore filed
24 the Complaint against Defendants.

25 . . .

26 Defendants allege that on February 14, June 11, and June 14,
27 2013, Hovore communicated to Defendants that Hovore had
28 been and intended to further communicate with the Arizona
Attorney General’s office regarding potential criminal
charges against Defendants. On June 21, 2013, Defendants
filed their original Answer, Counterclaims, and Jury Demand
and served the pleading on Hovore with “Summons for Third-
Party Defendants.” The Counterclaim portion of Defendants’
pleading contained four counts alleging that Prasad and
Hovore extorted Defendants, abused the judicial process, and
intentionally inflicted emotional distress on Defendants by
“threatening” to notify the Arizona Attorney General of
Defendants’ alleged criminal actions and acting on those
“threats.”

(Doc. 83 at 2–3 (internal citations omitted)). The Court has reviewed the pre-filing

1 demand letter (Doc. 1 at Ex. CC) and post-filing settlement emails (Doc. 55 at Exs. 2–4)
2 and finds nothing extortionate or abusive about them. Although the Court may not agree
3 that Hovore’s aggressive “bull-dog” language is the most effective way to resolve a
4 dispute, the complained-about communications appear to be nothing but normal attorney-
5 to-attorney communications in a contentions dispute. Indeed, Hovore’s warning of
6 “scorched earth litigation” (Doc. 55 at Ex. 2) if settlement is not reached, while not
7 congenial, is certainly not tantamount to extortion.

8 The demand letter’s statement that Hovore “will file a criminal action against
9 [Defendants] with the Attorney General of Arizona” (Doc. 1 at Ex. CC) and Hovore’s
10 later communications with the attorney general’s office (Doc. 55 at Exs. 3–4) may at first
11 appear troubling, but even a cursory examination of the underlying law demonstrates that
12 Hovore’s statement and actions are not problematic. As the Court previously noted,
13 Prasad’s complaint “included a claim under the civil portion of the Arizona Racketeering
14 statute, Ariz. Rev. Stat. Ann. § 13-2314.04 (West 2013).” (Doc. 83 at 2). This is critical
15 because A.R.S. § 13-2314.04(H) requires that “[a] person who files an action under this
16 section shall serve notice and one copy of the pleading on the attorney general within
17 thirty days after the action is filed with the superior court.” Thus, had Mr. Douglas
18 performed even a cursory examination of Arizona law, Mr. Douglas would have realized
19 that Hovore’s “threat” was not extortion, but rather an aggressive statement of intent to
20 comply with Arizona law. Thus, a reasonable and competent inquiry by Mr. Douglas
21 would have revealed that Defendants’ extortion and abuse of process “counterclaims”
22 against Hovore in the FAACC were wholly without merit. In sum, the Court finds that
23 Defendants’ “counterclaims” against Hovore in the FAACC are frivolous because they
24 were so weak as to constitute objective evidence of improper purpose. *In re Girardi*, 611
25 F.3d at 1062.

26 Having found the FAACC both reckless and frivolous, the Court finds subjective
27 bad faith on the part of Mr. Douglas. Additionally, the FAACC unnecessarily and
28 unreasonably multiplied the proceedings. Accordingly, the Court finds that under § 1927,

1 Hovore is entitled to the reasonable attorneys' fees and expenses expended because of the
2 FAACC; the Court will order Mr. Douglas to personally satisfy said expenditures.⁸

3 Additionally, Hovore requests the fees and costs incurred in the briefing and
4 argument associated with this motion for sanctions. (Doc. 83 at 10). In support of
5 entitlement, Hovore cites to *Anderson v. Director, Office of Workers Compensation*
6 *Programs*, 91 F.3d 1322, 1325 (9th Cir. 1996). *Anderson*, however, is specific to fee
7 applications under 42 U.S.C. § 1988. Therefore, the Court finds *Anderson* inapplicable to
8 Hovore's 28 U.S.C. § 1927 sanctions award for defending against the "counterclaims" in
9 the FAACC. Accordingly, the Court denies Hovore's request for fees and costs
10 associated with this motion for sanctions.

11 Additionally, the Court declines Hovore's request to use the Court's inherent
12 power and A.R.S. § 12-349 as grounds to make Defendants joint and severally liable for
13 the sanctions awarded against Mr. Douglas. (*See* Doc. 83 at 10). The record before the
14 Court contains no evidence suggesting that Defendants, themselves, played a role in Mr.
15 Douglas' vexatious litigation strategy against Hovore. Rather, Mr. Douglas avows that he
16 is solely responsible for the FAACC and that he, alone, should be subject to sanctions.
17 (Decl. of Mr. Douglas, Doc. 90-1 ¶ 37). Accordingly, Mr. Douglas, and Mr. Douglas
18 alone, will be personally liable for satisfying these § 1927 sanctions.

19 **B. Prasad's Entitlement to Sanctions**

20 In a motion remarkably similar to Hovore's motion (*compare* Doc. 84, *with*
21 Doc. 89), Prasad seeks recovery of its reasonable attorneys' fees and expenses expended
22 in defeating Defendants' "counterclaims" against Prasad in the FAACC (Doc. 89 at 2-3,
23 7-8). Prasad advances nearly identical arguments of entitlement under 28 U.S.C. § 1927
24 or, alternatively, the Court's inherent power or A.R.S. § 12-349.

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26 ⁸ To avoid duplicative or excessive sanctions, the Court declines to award Hovore
27 additional sanctions under the alternative grounds of the Court's inherent power or
28 A.R.S. § 12-349.

1 **1. Sanctions Under 28 U.S.C. § 1927**

2 Prasad argues that sanctions against Mr. Douglas, personally, are warranted
3 because Mr. Douglas brought claims against Prasad in the FAACC “in bad faith and with
4 the improper purpose of creating a conflict of interest between Hovore and Prasad and
5 that there was no legal or factual basis to bring or maintain these claims.” (Doc. 89 at 5).
6 In lieu of presenting direct evidence of Mr. Douglas’ subjective bad faith, Prasad asks the
7 Court to objectively infer bad faith through the totality of Mr. Douglas’ pleadings and
8 litigation strategy, including Mr. Douglas’ alleged frivolousness and recklessness in filing
9 the FAACC. (*Id.* at 5–8). In Response, Mr. Douglas offers excuses for the various
10 deficiencies in Defendants’ pleadings and argues that Prasad’s circumstantial evidence
11 inadequately demonstrates subjective bad faith. (Doc. 91 at 12–15).

12 Although Prasad advances remarkably similar arguments as Hovore and Mr.
13 Douglas advances a remarkably similar opposition, fundamental differences between
14 Prasad and Hovore require different analysis. Like Hovore, Prasad asks the Court to infer
15 subjective bad faith by finding that Mr. Douglas “knowingly or recklessly raise[d] a
16 frivolous argument.” *Estate of Blas v. Winkler*, 792 F.2d 858, 860 (9th Cir. 1986).

17 Also like with Hovore, the Court finds that Defendants’ counterclaims against
18 Prasad were frivolous. Unlike with Hovore, however, the Court cannot find recklessness
19 through Mr. Douglas’ jurisdictional gamesmanship because the FAACC did not engage
20 in such shenanigans with respect to Prasad.⁹ Similarly, Mr. Douglas did not recklessly
21 disregard the Federal Rules of Civil Procedure with regard to Prasad in the FAACC
22 because, as an opposing party, Prasad could be the target of a counterclaim.
23 Fed. R. Civ. P. 13. Although the Court ultimately held that it did not have supplemental
24 jurisdiction over Defendants’ counterclaims, such holding does not indicate recklessness
25 on this record. Hovore presents no evidence that Mr. Douglas knew or should have
26 known with certainty that the Court would not exercise supplemental jurisdiction.

27 _____
28 ⁹ As a foreign corporation, Prasad is completely diverse from all Defendants and
jurisdiction had already been established in Prasad’s complaint.

1 Meanwhile, Mr. Douglas avows that his research indicated that, in certain circumstances,
2 an abuse of process claim by a defendant against a plaintiff can be a compulsory
3 counterclaim.¹⁰ (Decl. of Mr. Douglas, Doc. 91-1 ¶ 55).

4 Prasad appears to primarily rely on the Court’s previous statement that “it strains
5 the limits of credulity that Defendants, in good faith, contend that their counterclaims
6 comprise part of the same constitutional ‘case’ as Prasad’s original breach-of-contract
7 related complaint against Defendants.” (Doc. 83 at 8). However, the Court did not find
8 that Mr. Douglas (or Defendants) actually acted in bad faith. On the record currently
9 before the Court, there simply is not enough evidence for the Court to conclude that Mr.
10 Douglas acted with subjective bad faith by knowingly or recklessly filing the frivolous
11 counterclaims against Prasad in the FAACC. Accordingly, the Court finds that Prasad is
12 not entitled to § 1927 sanctions against Mr. Douglas.

13 **2. Sanctions Under the Court’s Inherent Power or A.R.S. § 12-349**

14 Before awarding sanctions under its inherent powers, the Court must make an
15 explicit finding that counsel’s conduct “constituted or was tantamount to bad faith.”
16 *Primus Auto. Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 648 (9th Cir.1997) (quoting
17 *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 767 (1980)). As explained above, the Court
18 does not find that Defendants or Mr. Douglas acted with bad faith when bringing the
19 FAACC counterclaims against Prasad. Accordingly, the Court finds that Prasad is not
20 entitled to sanctions under the Court’s inherent power.

21 With regard to sanctions under A.R.S. § 12-349, the statute states:

22 Except as otherwise provided by and not inconsistent with
23 another statute, in any civil action commenced or appealed in
24 a court of record in this state, the court shall assess reasonable
attorney fees, expenses and, at the court's discretion, double
damages of not to exceed five thousand dollars against an

25
26 ¹⁰ Mr. Douglas cites to *Pochiro v. Prudential Inc. Co. of Amer.*, 827 F.2d 1246,
1252–53 (9th Cir. 1987). In *Pochiro*, the defendants alleged that the plaintiff’s initiation
27 of the litigation was, itself, an abuse of process. *Id.* Thus, the court held that the
28 defendants’ abuse of process counterclaim was compulsory in the litigation precipitated
by the filing of plaintiff’s lawsuit against the defendants. *Id.* Although *Pochiro* is easily
distinguishable and not applicable to the instant litigation, Mr. Douglas’ citation gives
some support to his claim that he brought the counterclaims against Prasad in good faith.

1 attorney or party, including this state and political
2 subdivisions of this state, if the attorney or party does any of
the following:

- 3 1. Brings or defends a claim without substantial justification.
- 4 2. Brings or defends a claim solely or primarily for delay or
5 harassment.
- 6 3. Unreasonably expands or delays the proceeding.
- 7 4. Engages in abuse of discovery.

8 A.R.S. § 12-349(A). Furthermore, “[f]or the purposes of this section, ‘without substantial
9 justification’ means that the claim or defense is groundless and is not made in good
10 faith.” A.R.S. § 12-349(F).

11 Initially, the Court notes that it is unclear if this state statute can even be applied
12 by this federal Court sitting in an Arizona-law based diversity action. The District of
13 Arizona has recently applied A.R.S. § 12-349 as a mandatory sanction against a party for
14 its litigation conduct, specifically unreasonably expanding or delaying the proceedings.
15 *Fleck v. Quality Loan Serv. Corp.*, No. CV-10-8256-PCT-DGC, 2012 WL 2798792, at *2
16 (D. Ariz. July 9, 2012) (“Under Arizona law—which applies in this diversity action—a
17 court ‘shall’ award attorneys’ fees when an attorney unreasonably expands or delays the
18 proceeding.” (citing A.R.S. § 12–349(A)(3))).

19 In contrast, in a case involving frivolous claims, the District of Arizona declined to
20 apply A.R.S. § 12-349. *Stilwell v. City of Williams*, 3:12-CV-8053-HRH, 2014 WL
21 1654530 (D. Ariz. Apr. 25, 2014) (“The Ninth Circuit has held that this state law statute,
22 which the court of appeals characterized as a ‘sanctions statute’ does not apply to actions
23 in federal court, even if the court is sitting in diversity.” (citing *In re Larry’s Apartment,*
24 *L.L.C.*, 249 F.3d 832, 837–38 (9th Cir. 2001)).

25 The above cases notwithstanding, in 2001, the Ninth Circuit Court of Appeals
26 specifically examined a federal court’s imposition of sanctions under A.R.S. § 12-349 on
27 a party for improper litigation tactics in a bankruptcy proceeding and explicitly held that
28 the Arizona law did not apply. *In re Larry’s Apartment, L.L.C.*, 249 F.3d 832, 837–38

1 (9th Cir. 2001). The Ninth Circuit explained:

2 It is well established that “[u]nder the *Erie* doctrine [*Erie R.*
3 *Co. v. Tompkins*, 304 U.S. 64 (1938)], federal courts sitting in
4 diversity apply state substantive law and federal procedural
5 law.” *Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415,
6 427 (1996). “Classification of a law as ‘substantive’ or
7 ‘procedural’ for *Erie* purposes is sometimes a challenging
8 endeavor.” *Id.* When it comes to attorneys’ fees, we have
9 declared that “[a] federal court sitting in diversity applies
10 state law in deciding whether to allow attorney’s fees when
11 those fees are connected to the substance of the case.” *Price*
12 *v. Seydel*, 961 F.2d 1470, 1475 (9th Cir. 1992); *see also Kona*
13 *Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 883 (9th Cir.
14 2000). Thus, attorneys’ fees may be awarded by a district
15 court when they are part of the state’s substantive, rather than
16 procedural, requirements. *See, e.g., Klopfenstein v. Pargeter*,
17 597 F.2d 150, 152 (9th Cir. 1979) (explaining that state law
18 governs the question of attorneys’ fees in diversity actions
19 and holding that Alaska R. Civ. P. 82 authorized the district
20 court’s award of attorneys’ fees to the prevailing party).
21 However, when fees are based upon misconduct by an
22 attorney or party in the litigation itself, rather than upon a
23 matter of substantive law, the matter is procedural. Imposition
24 of sanctions in that instance “depends not on which party
25 wins the lawsuit, but on how the parties conduct themselves
26 during the litigation.” *Chambers v. NASCO, Inc.*, 501 U.S. 32,
27 53 (1991). . . .

28 In other words, the federal courts must be in control of their
own proceedings and of the parties before them, and it is
almost apodictic that federal sanction law is the body of law
to be considered in that regard. Anything less would leave
federal courts subject both to the strictures of state statutes,
and to state court judicial construction of those statutes. And
the fact that an action is based on diversity, or is otherwise
driven by substantive state law, should make no difference
whatsoever. As we said long ago, “[w]hen an attorney
appears before a federal court, he is acting as an officer of
that court, and it is that court which must judge his conduct.”
Cord v. Smith, 338 F.2d 516, 524 (9th Cir. 1964). . . .
Therefore, the bankruptcy court erred when it relied upon an
Arizona statute for the purpose of imposing sanctions upon
Galam; if sanctions were to be imposed at all, it had to be
under the policies and procedures delineated under federal
law.

29 *Id.* at 837–38.

30 Of particular significance to the instant motion for sanctions, in *dicta*, the *In re*
31 *Larry’s Apartment* court specifically explained that parties in federal courts should rely
32 on 28 U.S.C. § 1927 to govern their behavior, not state court sanctions statutes.

1 [T]he proper body of law and the one on which parties in
2 federal court can and should adhere to and rely upon is
3 federal, not state, law. That is not only a question of
4 protecting the federal courts' power over their own
5 proceedings, but also a question of fairness to those who are
6 obliged to conform to federal standards when in federal court.
7 For example, [Fed. R. Civ. P.] 11 contains prerequisites and
8 protections for parties, who are accused of violating its
9 strictures, and parties should be able to rely upon those in
10 federal court proceedings. The same can be said about the
11 scope of and protections offered by 28 U.S.C. § 1927.

12 *In re Larry's Apartment*, 249 F.3d at 839.

13 The Court finds the Ninth Circuit's analysis of the issue in *In re Larry's*
14 *Apartment* both persuasive and binding on this District Court. Therefore, the Court finds
15 that A.R.S. § 12-349 is inapplicable here. But even if A.R.S. § 12-349(A) applied here,
16 the Court would decline to award Prasad attorneys' fees because the Court has not found
17 that Defendants brought their counterclaims in bad faith. A.R.S. § 12-349(A)(1), (F).
18 Furthermore, with regard only to Prasad, the Court has not found that Defendants'
19 counterclaims were brought "solely or primarily for delay or harassment," A.R.S. § 12-
20 349(A)(2), or "unreasonably expands or delays the proceedings," A.R.S. § 12-349(A)(3).
21 In bringing these counterclaims against Prasad, Defendants may have "strain[ed] the
22 limits of credulity" that the claims were brought in good faith (Doc. 83 at 8), but on the
23 record before the Court, and only with regards to Prasad, the Court does not find that
24 Defendants and Mr. Douglas crossed the line into bad faith. Accordingly, the Court finds
25 that Prasad is not entitled to sanctions under A.R.S. § 12-349.

26 **B. Reasonableness of Hovore's Attorneys' Fees and Expenses**

27 Hovore's Motion seeks \$38,754.40 in fees and \$67.14 in costs. However, Section
28 1927 authorizes only reasonable attorneys' fees, expenses, and costs "incurred because
of" the sanctioned conduct. 28 U.S.C. § 1927. Here, the Court sanctions Mr. Douglas for
recklessly filing frivolous claims against Hovore. Therefore, the Court must examine
Hovore's request and exclude any fees or costs not incurred because of Defendants'
claims against Hovore. Furthermore, the Court must exclude all unreasonable attorneys'
fees or expenses.

1 **1. Attorneys’ Fees and Costs Incurred because of the Frivolous**
2 **Claims Filed Against Hovore**

3 Hovore seeks a total of \$38,754.40 in attorneys’ fees and \$67.14 in costs on behalf
4 of the law firm of Lewis, Brisbois, Bisgaard & Smith, LLP. (Doc. 84 at 2). This sum
5 represents a total of 214.8 hours¹¹ expended by a combination of partner Todd Rigby,¹²
6 associate Michael F. Edgell,¹³ and paralegal Donna Altobello.¹⁴ In their briefs, both
7 Hovore and Mr. Douglas appear to assume that Hovore engaged Lewis, Brisbois,
8 Bisgaard & Smith, LLP solely to defend Hovore against Defendants’ claims. (See Docs.
9 84, 90, 95). Indeed, the time entries submitted by Hovore accrued during the period of
10 June 27, 2013 through December 2, 2013, which the Court notes is a period wholly
11 contained within the pendency of Defendants’ claims against Hovore.¹⁵ Thus, the Court
12 finds that the requested 214.8 hours were incurred because of the frivolous claims filed
13 against Hovore.

14 **2. Reasonableness**

15 In determining a reasonable attorney’s fee, the Court must
16 begin with the “lodestar” figure which is “the number of
17 hours reasonably expended on the litigation multiplied by a
18 reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424,
19 433 (1983). There is a “strong presumption” that the lodestar
20 is the reasonable fee. *Pennsylvania v. Delaware Valley*
21 *Citizens Council for Clean Air*, 478 U.S. 546, 565 (1986).
22 When deciding the reasonable number of hours expended and

23 ¹¹ Hovore’s briefs incorrectly state a total of 463.4 hours. However, the Court has
24 thoroughly reviewed the submitted time-entries and found several clerical errors. For
25 example, a June 28, 2013 entry for Mr. Rigby lists 130.0 hours when the correct entry is
26 0.6 hours. (Docs. 84-1, 90-1, 95-1). Similarly, a July 17, 2013 entry for Mr. Rigby states
27 120.0 hours when the correct entry is 1.2 hours. (*Id.*). Upon careful review, the Court
28 calculates a total of 214.8 hours expended.

 Additionally, the Court notes that the correct fee request based on the corrected
214.8 hours is \$38,392.00.

¹² 30.4 hours.

¹³ 179.8 hours.

¹⁴ 4.6 hours.

¹⁵ Mr. Douglas, on behalf of Defendants, filed the original claims against Hovore
on June 21, 2013 (Doc. 35) and the FAACC on August 2, 2013 (Doc. 55). The Court
issued its Order dismissing the claims on December 17, 2013 (Doc. 83).

1 the reasonableness of the hourly rate, a court may consider:
2 “(1) the novelty and complexity of the issues[;] (2) the special
3 skill and experience of counsel[;] (3) the quality of
4 representation[;] and (4) the results obtained.” *Cabrales v.*
5 *Cnty. of Los Angeles*, 864 F.2d 1454, 1464 (9th Cir. 1988),
6 *vacated*, 490 U.S. 1087 (1989), *reinstated*, 886 F.2d 235 (9th
7 Cir. 1989). Additionally, “[i]n determining reasonable hours,
8 counsel bears the burden of submitting detailed time records
9 justifying the hours claimed to have been expended. Those
10 hours may be reduced by the Court where documentation of
11 the hours is inadequate; if the case was overstaffed and hours
12 are duplicated; [or] if the hours expended are deemed
13 excessive or otherwise unnecessary.” *Chalmers v. City of*
14 *L.A.*, 796 F.2d 1205, 1210 (9th Cir. 1986), *reh’g denied*,
15 *amended on other grounds*, 808 F.2d 1373 (9th Cir. 1987)
16 (internal citations omitted).

17 *Moshir v. Automobili Lamborghini Am. LLC*, 927 F. Supp. 2d 789, 797 (D. Ariz. 2013).
18 The Court will adhere to these factors in its analysis of the reasonableness of Hovore’s
19 request for attorneys’ fees and costs.

20 **a. Reasonable Hourly Rate**

21 Hovore submits that the hourly rates charged in this case were: \$215 for Mr.
22 Rigby (Partner); \$175 for Mr. Edgell (Associate); and, \$80 for Ms. Altobello (Paralegal).
23 (Doc. 84 at 12). Mr. Douglas generally “dispute[s] the hourly rate[s] asserted by the
24 Hovore Parties” on the grounds that Hovore has not provided a complete copy of the
25 written fee agreement between Hovore and Lewis, Brisbois, Bisgaard & Smith, LLP.
26 (Doc. 90 at 16–17; Decl. of Mr. Douglas, Doc. 90-1 at ¶ 9). Specifically, Mr. Douglas
27 argues that LRCiv 54.2(d)(2) requires Hovore to submit a “complete copy of any written
28 fee agreement, or a full recitation of any oral fee agreement,” without which the Court
has no basis to determine if the hourly rates represented are true or accurate. (*Id.*).

Critically, however, LRCiv 54.2(d)(3) also provides that “[i]f no fee agreement exists,
then counsel must attach a statement to that effect.”

Here, Hovore has submitted the declaration of Mr. Edgell explaining that no
written fee agreement between Hovore and Lewis, Brisbois, Bisgaard & Smith, LLP
exists because Lewis, Brisbois, Bisgaard & Smith, LLP’s hourly rates for this
representation were negotiated directly by Hovore’s malpractice insurer. (1st Decl. of Mr.

1 Edgell, Doc. 84-1 ¶ 6; 2nd Decl. of Mr. Edgell, Doc. 95-1 ¶ 6). Although Mr. Douglas
2 argues that Mr. Edgell’s declaration is vague and evasive, the Court disagrees.
3 Furthermore, the Court notes that Mr. Edgell declares (and Mr. Douglas does not dispute)
4 that all of the fees identified in the itemized statement are fees that have been billed and
5 which have been paid or are expected to be paid. There being no evidence to the contrary,
6 the Court is satisfied that the rates represented—\$215, \$175, and \$80—are the true rates
7 for the instant representation.

8 Mr. Douglas has not made specific arguments that the rates represented— Partner
9 \$215; Associate \$175; and Paralegal \$80—are unreasonably high. (*See* Doc. 90).
10 Additionally, the Court has considered the skill and experience of Mr. Rigsby, Mr.
11 Edgell, and Ms. Altobello, as well as the novelty and complexity of the issues, the quality
12 of the representation, and Hovore’s complete success.¹⁶ Upon consideration of these
13 factors and the Court’s experience with hourly rates charged in the Phoenix legal
14 community, the Court finds the rates represented—Partner \$215; Associate \$175; and
15 Paralegal \$80—are reasonable and will use these rates in the lodestar calculation. *See*
16 *Fleck v. Quality Loan Serv. Corp.*, CV-10-8256 PCT-DGC, 2012 WL 2798792, at *2 (D.
17 Ariz. July 9, 2012) (setting an associate hourly rate at \$250 and a paralegal hourly rate at
18 \$125).

19 **b. Reasonable Number of Hours Expended**

20 Hovore provides the Court with 220 time-and-task entries totaling 214.8 hours.
21 (Doc. 84-1). Citing a variety of reasons, Mr. Douglas objects to all but 28 entries and
22 argues that a total of 195.7 hours¹⁷ should be removed from the fee-award as

23 ¹⁶ Incomprehensibly, Mr. Douglas argues that Hovore did not completely prevail
24 because the Court denied (Doc. 83) Hovore’s motion to strike the “counterclaims” in the
25 FAACC. Mr. Douglas’ argument defies logic and common sense because, in fact, the
26 Court dismissed Defendants’ “counterclaims” against Hovore with prejudice. (*Id.*). Thus,
the Court effectively mooted Hovore’s motion to strike by granting Hovore’s alternative
motion for greater relief.

27 ¹⁷ Mr. Douglas’ briefing claims 122.6 hours are excessive (Doc. 90 at 15), but at
28 the end of his table of objections, Mr. Douglas states that his objections total to 155.6
hours (Doc. 90-1 at 59). Upon review of Mr. Douglas’ table of objections, however, the
Court calculates that Mr. Douglas actually requests that the Court exclude a total of 195.7

1 unreasonable. (Doc. 90 at 14–19; Decl. of Mr. Douglas, Doc. 90-1 at 3–12, ¶¶ 6–16; Doc.
2 90-1 at Ex. A). Mr. Douglas’ objections, however, generally lack specificity and copy-
3 paste stock language from one or more of several categories. The Court notes that
4 because Mr. Douglas’ copy-pasted language lacks specificity to the specific time-and-ask
5 entry objected to, the Court is forced to speculate as to Mr. Douglas’ actual grounds for
6 grievance. Nonetheless, the Court has thoroughly reviewed Mr. Douglas’ objections and
7 believes the following to be a fair summary of Mr. Douglas’ various objections:

8 • Excessive: Mr. Douglas objects that many tasks, especially research tasks should
9 not be difficult or time-consuming for an ordinary attorney. In essence, Mr. Douglas
10 argues that if his claims really were frivolous, than an ordinary attorney should have been
11 able to defeat them with little to no research.¹⁸

12 • Not Necessary: Mr. Douglas objects that the task was not required by the scope of
13 representation. For example, Mr. Douglas objects to Mr. Rigby’s July 10, 2013 entry of
14 0.4 hours for “outline additional potential conflict issues to address with ethics counsel
15 focusing on current claims and anticipated worst case scenarios” because there were not
16 yet “causes of action claimed for ethical violations in this litigation.”¹⁹ (Doc. 90-1 at 10–
17 11). As another example, Mr. Douglas objects to Mr. Edgell’s August 1, 2013 entry of
18 0.3 hours for “plan and prepare for: develop strategy for witness depositions” because
19 “Hovore parties did not notice any depositions.”²⁰ (*Id.* at 18).

20
21 hours.

22 ¹⁸ However, frivolity does not automatically equate to simplicity of research,
23 analysis, and brief-writing. This is especially true here because Defendants
24 indiscriminately and confusingly attempted to plead cross-claims, counterclaims, and a
25 third-party complaint while realigning parties to engage in jurisdictional shenanigans.
Additionally, Mr. Douglas neglects to mention that in his own declaration, he declares
that he spent over 35 hours researching Defendants’ claims (Decl. of Mr. Douglas,
Doc. 90-1 ¶¶ 19, 26)—an amount not dissimilar to the amount he claims is excessive for
Hovore’s counsel.

26 ¹⁹ However, Defendants’ claims included extortion and abuse of process; both
27 claims implicated ethical rules and a potential conflict of interest with Hovore’s client,
Prasad.

28 ²⁰ However, Hovore’s counsel did attend and participate in depositions of various
defendants.

1 • Block billing: Mr. Douglas objects that several entries of multiple hours constitute
2 block billing. For example, Mr. Douglas claims that Mr. Edgell’s September 29, 2013
3 entry of 4.5 hours for “dispositive motions: draft/revise: draft reply in support of motion
4 to dismiss” is a “block-billed entry that should be excluded.”²¹

5 • “Attorney performed lengthy research that paralegal should have performed”: Mr.
6 Douglas objects to numerous research-time entries that a paralegal, not Mr. Edgell (an
7 associate) should have performed the research. For example, Mr. Douglas objects to Mr.
8 Edgell’s September 19, 2013 entry of 1.2 hours for “dispositive motions: research: begin
9 researching cases cited in opposing briefs.”²² (Doc. 90-1 at 44).

10 • Vague and Ambiguous: Mr. Douglas objects that various entries do not contain
11 enough specificity for the Court to determine the reasonableness of the hours spent on the
12 task. For example, Mr. Douglas objects to Mr. Edgell’s September 23, 2013 entry of 1.1
13 hours for “analysis/strategy: review/analyze: analyze documents provided by client to
14 determine if they are responsive to requests for production and are discoverable.”²³
15 (Doc. 90-1 at 45–46).

16 • Communications with Client: Mr. Douglas objects to every single entry for
17 communicating with Hovore (the client) on the grounds that the entries provide
18 “insufficient evidence” and an “incomplete description” under LRCiv 54.2(e)(2)(A)
19 (requiring telephone calls identify all participants and the reason for the telephone call).
20 For example, Mr. Douglas objects to Mr. Edgell’s August 19, 2013 entry of 0.1 hours for
21
22

23 ²¹ However, an entry is “block-billed” only if it contains multiple individual and
24 unrelated tasks. *See* LRCiv 54.2(e)(1)(B). An entry is not “block-billed” simply because
25 it ascribes multiple hours to a single task.

26 ²² However, Mr. Douglas does not explain why some research is okay for
27 attorneys and other research must be performed by a paralegal. Further, the Court notes
28 that reasonable legal research conducted by an attorney is, of course appropriate and
recoverable.

²³ However, the Court finds that this entry, like the other “vague and ambiguous”
entries, provides sufficient information for the Court to determine its reasonableness.

1 “analysis and advice communicate (with client): communicate with client redaction.”²⁴
2 (Doc. 90-1 at 33).

3 • Clerical Task: Mr. Douglas objects to numerous motion and brief-drafting entries
4 that a clerical employee, not an attorney, should have performed the task. For example,
5 Mr. Douglas objects to a July 12, 2013 entry of 1.5 hours for “dispositive motions:
6 draft/revise draft final revisions to motion to dismiss in preparation for filing.” (Doc. 90-1
7 at 14).²⁵

8 • Duplicative: Mr. Douglas objects that several entries are duplicative of previous
9 entries and work. For example, Mr. Douglas objects that Ms. Altobello’s the August 2,
10 2013 entry of 1.1 hours for “fact investigation/development: review/analyze: review file
11 to prepare initial disclosure statement” is duplicative of time entries on July 29 and 31,
12 2013. (Doc. 90-1 at 18–19).²⁶

13 • Insufficient Evidence and No Declaration by Timekeeper: Mr. Douglas objects to
14 every single entry from Mr. Rigby and Ms. Altobello because Hovore did not submit a
15 declaration from either timekeeper. Instead, Hovore, submitted a declaration from Mr.
16 Edgell attesting to the accuracy of the timekeeping entries from Mr. Rigby and Ms.
17 Altobello.²⁷

18
19 ²⁴ However, Hovore replies that the various communications are privilege and and
20 that such regular communications, which total only a few hours over a multi-month
21 representation, are legitimate legal services. (Doc. 95-1 at 56). LRCiv 54.2(e)(2) explains
22 that the description must balance providing sufficient information for the Court to
23 determine reasonableness with sensitivity for attorney-client privilege and attorney work-
24 product doctrine. In order to protect this balance, LRCiv 54.2(e)(2) makes a reduction in
25 the award for such insufficiencies discretionary, not mandatory. LRCiv 54.2(e)(2) (“the
26 Court *may* reduce the award accordingly”) (emphasis added).

27 ²⁵ However, Mr. Douglas does not explain why some motion and brief drafting is
28 okay for attorneys and other drafting must be performed by clerical staff. Further, the
Court notes that reasonable motion and brief drafting conducted by an attorney, including
editing and revising, is, of course appropriate and recoverable.

²⁶ However, entries on similar topics or with similar descriptions are not
necessarily duplicative because a single task may not be performed in a single contiguous
sitting. The Court, of course, independently analyzes all time entries and excludes
duplicative entries.

²⁷ However, LRCiv 54.2 only requires a declaration from moving counsel (Mr.
Edgell). LRCiv 54.2(d)(4). Furthermore, said declaration must include the “relevant

1 Having thoroughly reviewed the submitted time-and-task entries, Mr. Douglas’
2 objections, and Hovore’s responses,²⁸ the Court overrules Mr. Douglas’ objections except
3 as follows:

4 • Mr. Edgell’s July 17, 2013 entry of 1.1 hours for “prepare notice of errata and
5 amended motion to dismiss.” (Doc. 90-1 at 16). It is not reasonable to charge Mr.
6 Douglas for Mr. Edgell’s drafting error.

7 • Mr. Edgell’s September 7, 2013 entry of 0.4 hours for “research basis for stay of
8 proceedings pending outcome of motion to dismiss.” (Doc. 90-1 at 41). The Court had
9 already denied a stay request on August 21, 2013. Thus, this time was unreasonable.

10 • Mr. Edgell’s October 28, 2013 entry of 0.3 hours for “analyze request for
11 admissions issued by opposing parties to Prasad,” and November 11, 2013 entry of 0.1
12 hours for “analyze Prasad responses to requests for admissions.” (Doc. 90-1 at 58).
13 Although Defendants’ claims against Hovore forced Hovore to participate in limited
14 discovery, this entry appears specific to Prasad’s discovery, not Hovore’s. Thus, this time
15 was unreasonable.

16 • Mr. Rigby’s December 2, 2013 entry of 0.2 hours for “review file re . . . likelihood
17 of oral argument and potential ruling before the end of the year,” and of 0.7 hours for
18 “outline oral argument considerations and comprehensive approach.” (Doc. 90-1 at 58–
19 59). No party requested oral argument on the motion to dismiss and the Court did not
20 indicate or otherwise schedule oral argument. Thus, this time was unreasonable.

21 In sum, the Court finds all of the submitted time-and-task entries reasonable
22 except for the six entries described above. Therefore, the Court excludes only 1.9 hours
23 of Mr. Edgell’s time and 0.9 hours of Mr. Rigby’s time. Accordingly, the Court finds that
24 Mr. Rigby expended 29.7 reasonable hours, Mr. Edgell expended 177.9 reasonable hours,
25

26 qualifications, experience, and case-related contributions of *each* attorney for whom fees
27 are claimed.” (LRCiv 54.2(d)(4)(A).

28 ²⁸ The Court is also mindful of the numerous issues raised by Defendants’ claims,
and the added complexity engendered by Mr. Douglas’ jurisdictional shenanigans and the
confusing nature of the FAACC’s claims against Hovore.

1 and Ms. Altobello expended 4.6 reasonable hours.

2 **c. Lodestar Calculation**

3 Mr. Rigby expended 29.7 reasonable hours at the partner rate of \$215 per hour, for
4 a total of \$6385.50. Mr. Edgell expended 177.9 reasonable hours at the associate rate of
5 \$175 per hour, for a total of \$ 31,132.50. Ms. Altobello expended 4.6 reasonable hours at
6 the paralegal rate of \$80 per hour, for a total of \$391.00. These three sums yield a final
7 lodestar calculation of \$37,909.00. “Because there is a ‘strong presumption’ that the
8 lodestar is the reasonable fee, *Moshir*, 927 F. Supp. 2d at 805 (quoting *Pennsylvania*, 478
9 U.S. at 565), the Court finds \$37,909.00 in total attorneys’ fees claimed for Lewis,
10 Brisbois, Bisgaard & Smith, LLP to be reasonable.²⁹

11 **d. Costs**

12 Hovore seeks \$67.14 in costs expended in the prosecution of this matter. (Doc. 84
13 at 2; Doc. 84-1 at 21). Mr. Douglas objects that the expenses should be excluded because
14 Hovore has not attached appropriate supporting documentation, such as receipts. (Doc. 90
15 at 20). Indeed, Hovore’s only support is the itemized list of six expenses (Doc. 84-1 at
16 21) and Mr. Edgell’s declaration that the costs were expended (Doc. 84-1 at Ex. 2 ¶ 10;
17 Doc. 95-1 at Ex. 1 ¶ 12). LRCiv 54.2(e)(3) provides the Court discretion to disallow costs
18 or expenses that are not verified by the party seeking them. LRCiv 54.2(e)(3) (“Failure to
19 itemize and verify costs may result in their disallowance by the Court.” Because Hovore
20 has not submitted verification of the six itemized expenses, such as receipts or invoices,
21 the Court excludes them. Accordingly, the Court awards Hovore \$0.00 in costs.

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24 ²⁹ To the extent that Mr. Douglas’ argues that he “is not financially able to pay
25 attorney fees or costs in this matter, such that ordering sanctions will not effectively serve
26 to deter future violations,” the Court remains unpersuaded. Mr. Douglas’ inchoate
27 argument relies exclusively on his declaration that he has, and has been, “experiencing
28 extreme financial hardship such that [he] is not able to pay any attorney fees or costs
without increasing [his] extreme financial hardship.” (Decl. of Mr. Douglas, Doc. 90-1
¶ 38). Mr. Douglas has not, however, actually presented any proof of extreme hardship,
such as an affidavit, testimony, or other evidence. Consequently, the Court has no basis
on which to objectively find that Mr. Douglas suffers from extreme hardship such that the
Court should use its discretion to reduce the fee award Hovore is otherwise entitled to
receive.

1 **IV. CONCLUSION**

2 Accordingly,

3 **IT IS ORDERED** that Hovore's Motion for Entry of Judgment under Rule 54(b)
4 (Doc. 85) is GRANTED. Final judgment is entered in favor of the Hovore Defendants
5 and against the Carlile Defendants with respect to Counts I, II, III, and IV. Final
6 judgment is entered in favor of the Hovore Defendants and against all Defendants with
7 respect to Count V.

8 **IT IS FURTHER ORDERED** that Hovore's Motion for Sanctions under
9 28 U.S.C. § 1927 (Doc. 84) is GRANTED. Hovore is awarded attorneys' fees in the
10 amount of \$37,909.00 from attorney Frederic M. Douglas.

11 **IT IS FURTHER ORDERED** that Prasad's Motion for Sanctions (Doc. 89) is
12 DENIED.

13 Dated this 23rd day of September, 2014.

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James A. Teilborg
Senior United States District Judge