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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff

v.

**MARQUEZ BROTHERS
INTERNATIONAL, INC.; MARQUEZ
BROTHERS ENTERPRISES, INC.;
MARQUEZ BROTHERS FOODS, INC.;
MARQUEZ BROTHERS SOUTHERN
CALIFORNIA, INC.; MARQUEZ
BROTHERS NEVADA, INC.; MARQUEZ
BROTHERS TEXAS, INC.; and DOES 1
thru 10,**

Defendants

CASE NO. 1:17-CV-44 AWI-EPG

**ORDER ON DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

**ORDER ON PLAINTIFF'S
MOTION TO AMEND
THE COMPLAINT**

**ORDER ON DEFENDANTS'
MOTION FOR SANCTIONS**

(Doc. No.'s 46, 48, 49)

The U.S. Equal Employment Opportunity Commission (the "EEOC" or the "Agency") has alleged Defendants engaged in unlawful employment practices by failing to hire multiple persons based on their race. Pertinent to this Order:

- I. Defendants seek summary judgment on all claims based on its defenses of laches and unclean hands, and also based on various alleged "jurisdictional" issues—that Section 706 of Title VII grants no authority to lodge a "pattern or practice" suit or a class suit after the charging-parties have died, and that the EEOC has not conciliated in good faith or pursuant to its own rules;
- II. The EEOC has requested leave to amend the complaint, conceding mistakes in seeking certain relief and in not stating that two charging parties have died;
- III. Defendants seek sanctions against the EEOC under Rule 11, 28 U.S.C. § 1927, and the Court's inherent powers.

The Court will (I) grant Defendants' summary judgment motion in part and deny in part, (II) grant the EEOC's motion to amend, and (III) order supplemental briefing on the motion for sanctions.

1 Background¹

2 On October 4, 2010, Alfred Davis filed a charge with the EEOC contending Defendants
3 refused to hire him or otherwise give him an application for employment “because of his race,
4 Black.” Doc. No. 59-3, ¶ 1 (Statement of Facts). Mr. Davis charged that Defendants only hire
5 individuals of Hispanic origin, and that he believed other non-Hispanics were treated similarly.
6 See Doc. No. 56-5 (Davis Charge of Discrim.). On September 28, 2011, Marvell Moon filed a
7 charge with the EEOC that mirrored Mr. Davis’s. Doc. No.’s 59-3, ¶ 2; 56-7 (Moon Charge of
8 Discrim.) (hereinafter, Mr. Davis and Mr. Moon are the “Charging Parties.”).

9 In late 2011, the EEOC opened an investigation into these two charges, interviewing
10 Defendants’ human resources manager and attempting to interview a former employee. See Doc.
11 No. 56-27 (EEOC’s 1/3/2012 Let. to Def’s.). Additionally, over the next year and a half, the
12 EEOC sent eight separate letters requesting Defendants turn over documentation concerning their
13 hiring practices—including all applications Defendants received in the few years prior. See Doc.
14 No.’s 56-15, -17, -18, -19, -21, -22, -23, and -24 (EEOC’s Let’s. to Def’s). Defendants initially
15 responded by objecting to the EEOC’s requests, then by providing some of the requested
16 information a year later, and finally by submitting Mr. Davis’s application in April 2013. See
17 Doc. No.’s 56-16, -20, and -23 (Def.’s 1/13/12, 11/20/12, and 4/22/13 Let’s. to EEOC). After the
18 EEOC received Mr. Davis’s application, it noted Defendants had still not submitted all of the
19 requested information, and requested full disclosure; Defendants failed to respond. See Doc. No.
20 56-24 (EEOC’s 6/20/13 Let. to Def’s).

21 Between April 2013 and June 2015, the EEOC only contacted Defendants once, in
22 September 2014, about this investigation. Doc. No. 59-3, ¶ 5. In June 2015, the EEOC issued a
23 determination letter under Mr. Davis’s charge, finding reasonable cause to believe that Defendants
24 refused to hire Mr. Davis because of his race; the EEOC invited Defendants to “join in a collective
25 effort toward a just resolution of this matter.” Doc. No.’s 56-6 (EEOC’s 6/30/15 Determ. Let.
26 Davis); 48-2, ¶¶ 9-10 (Madrid Decl. Supp. Defs. Sanctions Mot.). In January 2016, the EEOC
27

28 ¹ These facts are presented in a light most favorable to the nonmoving party, here, the EEOC. E.E.O.C. v. Boeing Co., 577 F.3d 1044, 1049 (9th Cir. 2009).

1 issued its last conciliation correspondence with Defendants concerning Mr. Davis’s charge;
2 Defendants rejected the EEOC’s offer, and in March 2017 the EEOC concluded its conciliation
3 efforts in Mr. Davis’ case. See Doc. No.’s 49-2, at p.14 (EEOC’s 3/31/16 Let. Concil. Failure
4 Davis); Id. at pp. 4-5 (EEOC’s 3/23/18 Let.). Near the end of the conciliation process, the EEOC
5 became aware that Mr. Davis had died a few months prior, in December 2015. Doc. No.’s 59-3, ¶
6 34; 49-2, pp. 5-6. The EEOC did not immediately share this information with Defendants. See Id.

7 In August 2016, the EEOC found reasonable cause in Mr. Moon’s case, and again invited
8 conciliation with Defendants on the same issues. See Doc. No.’s 56-8 and -9 (EEOC’s 8/19/16
9 Let. of Determ. Moon). Conciliation continued through January 10, 2017, concluding without
10 resolution. See Doc. No.’s 56-9; 56-29 (EEOC’s 1/10/17 Concil. Failure Let. Moon).

11 On January 11, 2017—almost a year after discovering Mr. Davis’s death—the EEOC filed the
12 instant suit, under its own name, alleging Defendants “engaged in a pattern or practice of hiring
13 Hispanics and non-hiring non-Hispanics based on race[,]” in violation of Title VII, § 706(f)(1) and
14 (3); 42 U.S.C. §§ 2000e-5(f)(1) and (3). See Doc. No. 5 (1AC). The EEOC sought multiple forms
15 of injunctive relief, and also prayed the Court order Defendants:

16 D. . . . to make Alfred Davis and a class of similarly situated non-Hispanic
17 individuals whole by providing compensation for past and future pecuniary
18 losses, including but not limited to back pay, hiring, and where appropriate, front
19 pay; as well as multiple forms of injunctive relief . . . ;

20 E. . . . to make Alfred Davis and a class of similarly situated non-Hispanic
21 individuals whole by providing compensation for non-pecuniary losses . . .
22 includ[ing] pain and suffering . . . ;

23 F. . . . to pay Alfred Davis and a class of similarly situated non-Hispanic
24 individuals punitive damages

25 See Id. at p. 14-15. Defendants filed a motion to dismiss based on, among other things, the alleged
26 failure to adequately plead pattern-or-practice discrimination and its defense of laches; the Court
27 denied these requests. See Doc. No.’s 17 and 28. The parties pivoted toward settlement, setting a
28 conference schedule before Magistrate Judge Thurston. See Doc. No.’s 32 and 34.

In October 2017, the EEOC became aware that Mr. Moon had died almost two-and-a-half
years prior, in May 2015. See Doc. No.’s 56-4 (Li Decl. at ¶ 2); 49-2, p. 5-6; 59-3, ¶ 34. The
EEOC then filed its Rule 26 disclosures, omitting Mr. Davis and Mr. Moon from its witness list.

1 Doc. No. 59-3, ¶ 30. In December 2017, Defendants discovered the deaths of the two Charging
2 Parties after conducting an independent investigation. Doc. No.'s 45, p. 3, ¶¶ 17-24 (Transcript of
3 Proceedings); 59-3 at ¶ 33. Shortly after, Defendants requested the scheduled settlement
4 conference be vacated, and a summary judgment timetable be instituted; the Magistrate Judge
5 stayed further discovery until the summary judgment proceedings concluded. See Doc. No. 36.

6 On both March 5 and 12, 2018 Defendants notified the EEOC that they would be seeking
7 sanctions. See Doc. No.'s 55-19 and -20 (Defs.' Let.'s re: Sanctions). On March 23, the EEOC
8 filed the instant request for leave to amend the 1AC, maintaining it "did not deliberately conceal
9 Davis and Moon's deaths[,]” averring instead these omissions were due to “oversights and
10 mistakes.” See Doc. No.'s 46, p. 2, ¶¶ 19-21 (Mot. to Amend); 56-4, p. 3, ¶ 5. Therein, the EEOC
11 submitted its intention to remove the prayer for money damages on behalf of Mr. Davis and Mr.
12 Moon, but otherwise stated its intent to press forward with the request for injunctive relief and
13 damages on behalf of the “class.” See Doc. No. 46. Defendants responded by filing the instant
14 motions for summary judgment and for sanctions, seeking among other things dismissal of the suit
15 with prejudice. See Doc. No.'s 48 and 49.

16 **I. Defendants' summary judgment motion is partially meritorious**

17 Legal Standard for Summary Judgment

18 Summary judgment is proper when no genuine issue as to any material fact exists, entitling
19 the moving party to judgment as a matter of law. Rule 56.² A dispute is “genuine” if there is
20 sufficient evidence for a reasonable jury to return a verdict for the non-moving party. Freecycle
21 Sunnyvale v. Freecycle Network, 626 F.3d 509, 514 (9th Cir. 2010) (citing Anderson v. Liberty
22 Lobby, Inc., 477 U.S. 242, 248 (1986)). A fact is “material” if it might affect the outcome of the
23 suit under the governing law. United States v. Kapp, 564 F.3d 1103, 1114 (9th Cir. 2009).

24 The party seeking summary judgment bears the initial burden of informing the court of the
25 legal basis for its motion and of identifying the portions of the declarations, pleadings, and
26 discovery that demonstrate an absence of a genuine issue of material fact. Soremekun v. Thrifty
27 Payless, Inc., 509 F.3d 978, 984 (9th Cir. 2007) (citing Celotex Corp. v. Catrett, 477 U.S. 317,

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² Citations to the “Rules” is to the Federal Rules of Civil Procedure, unless otherwise noted.

1 323 (1986)). Where the moving party will bear the burden of proof on an issue at trial, the movant
2 must affirmatively demonstrate that no reasonable trier of fact could find other than for the
3 movant. *Id.* Where the moving party will not bear the burden of proof on an issue at trial, the
4 movant may prevail by “merely by pointing out that there is an absence of evidence to support the
5 nonmoving party's case.” *Id.* If a moving party fails to carry its burden of production, then “the
6 non-moving party has no obligation to produce anything, even if the non-moving party would
7 have the ultimate burden of persuasion.” *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d
8 1099, 1102-03 (9th Cir. 2000) (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 160 (1970)).

9 If the moving party meets this initial burden, the opposing party must then establish that a
10 genuine issue as to any material fact actually exists. *Id.* at 1103. The opposing party cannot rest
11 upon the mere allegations or denials of its pleading, but must instead produce evidence that sets
12 forth specific facts showing that there is a genuine issue for trial. *Estate of Tucker v. Interscope*
13 *Records*, 515 F.3d 1019, 1030 (9th Cir. 2008) (quoting *Anderson*, 477 U.S. at 248). The opposing
14 party’s evidence is to be believed, and all justifiable inferences that may be drawn from the facts
15 before the court must be drawn in favor of the opposing party. *Anderson*, 477 U.S. at 255;
16 *Narayan v. EGL, Inc.*, 616 F.3d 895, 899 (9th Cir. 2010). While a “justifiable inference” need not
17 be the most likely or the most persuasive inference, it must still be rational or reasonable. *Id.* The
18 parties have the obligation to particularly identify material facts, and the court is not required to
19 scour the record in search of a genuine disputed material fact. *Simmons v. Navajo Cnty.*, 609 F.3d
20 1011, 1017 (9th Cir. 2010). A party’s “conclusory statement that there is a genuine issue of
21 material fact, without evidentiary support, is insufficient to withstand summary judgment.”
22 *Bryant v. Adventist Health Sys./W.*, 289 F.3d 1162, 1167 (9th Cir. 2002). Further, a “motion for
23 summary judgment may not be defeated . . . by evidence that is ‘merely colorable’ or ‘is not
24 significantly probative.’” *Anderson*, 477 U.S. at 249-50; *Addisu v. Fred Meyer, Inc.*, 198 F.3d
25 1130, 1134 (9th Cir. 2000).

26 Fundamentally, summary judgment may not be granted “where divergent ultimate
27 inferences may reasonably be drawn from the undisputed facts.” *Fresno Motors, LLC v. Mercedes*
28 *Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2015).

1 **A. Defendants’ “jurisdictional bar” arguments fail**

2 Parties’ Arguments

3 In their motion for summary judgment, Defendants argue this suit is “jurisdictionally
4 barred” for two reasons—each due to the fact that both Mr. Davis and Mr. Moon died well before
5 the EEOC’s filing of this lawsuit. First, Defendants contend Section 706 of Title VII only grants
6 the EEOC the authority to seek redress on behalf of living charging parties, and the EEOC’s
7 Section-706 claim cannot otherwise be supported by a “pattern or practice” rationale because this
8 kind of suit is solely a creature of Section 707. Thus, because the EEOC filed a Section-706 claim
9 seeking relief for a “class” of individuals without living charging parties, no “jurisdiction” exists
10 and therefore judgment in Defendants’ favor should issue. Second, Defendants contend the
11 EEOC’s conciliation on behalf of the deceased Charging Parties is contrary to the Agency’s
12 internal rules, and demonstrates failure to conciliate in good faith. Defendants therefore claim
13 “jurisdiction” is lacking, necessitating summary judgment in their favor.

14 The EEOC counters that the Charging-Parties’ deaths have no effect on the EEOC’s ability
15 to bring discrimination claims in its own name on behalf of a “class” of similarly-harmed
16 individuals under Section 706. The Agency maintains its failure to inform Defendants of the
17 Charging Parties’ deaths was an inadvertent mistake, and even if the Court determines the EEOC
18 acted in bad faith during conciliation, the sole remedy available to Defendants is for the Court to
19 remand for further conciliation, not to institute an adverse judgment against the EEOC and its
20 “class” members.

21 Analysis

22 Though the Court is “troubled” (to quote Magistrate Judge Grosjean) about some of the
23 EEOC’s actions in this case, the fact remains that Defendants’ “jurisdictional” arguments fail
24 under established precedent. Title VII speaks of jurisdiction in terms of delegating to the courts
25 the power to hear EEOC lawsuits generally. See 42 U.S.C. § 2000e–5(f)(3) (“Each United States
26 district court . . . shall have jurisdiction of actions brought under this subchapter. Such an action
27 may be brought in any judicial district court in the State in which the unlawful employment
28 practice is alleged to have been committed . . .”). Beyond that, Congress has indeed imposed

1 pre-lawsuit duties on the EEOC, which includes a duty to investigate the charge and determine
2 whether “reasonable cause” exists to believe the truth of the charging party’s allegations. §2000e-
3 5(b). However, the EEOC's pre-suit conciliation requirement is merely “a precondition to suit”
4 and not “a jurisdictional prerequisite.” *E.E.O.C. v. Alia Corp.*, 842 F. Supp. 2d 1243, 1254 (E.D.
5 Cal. 2012) (citing *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010) (“We do not agree that a
6 condition should be ranked as jurisdictional merely because it promotes important congressional
7 objectives.”)). Therefore, Defendants “jurisdictional” argument is without merit.

8 Insomuch as Defendants are challenging the legal underpinnings of the EEOC’s Title VII
9 suit, the Court has already resolved the sufficiency of the EEOC’s pleadings in its prior order. See
10 Doc. No. 28, at pp. 12-14. The rationale of that Order remains unchanged, even in the face of the
11 Charging Parties’ deaths. Once an aggrieved party has filed a charge, Section 706 empowers the
12 EEOC—not the individual charging party—to investigate the accusations, determine whether
13 reasonable cause exists, conciliate with the employer, and, if necessary, file suit to eliminate such
14 unlawful conduct. 42 U.S.C. § 2000e-5(b); *Waffle House v. EEOC*, 534 U.S. 279, 291 (2002)
15 (“[Title VII] clearly makes the EEOC the master of its own case and confers upon the EEOC the
16 authority to determine whether the public interest is served to commit public resources to seek
17 victim-specific relief.”); *Gen. Tel.*, 446 U.S. at 326 (“When the EEOC acts, albeit at the behest of
18 and for the benefit of specific individuals, it acts also to vindicate the public interest in preventing
19 employment discrimination”); see also *Atonio v. Wards Cove Packing Co., Inc.*, 810 F.2d 1477,
20 1480 (9th Cir. 1987) (“In a class action suit, commonly known as a ‘pattern or practice’ case,
21 plaintiffs typically assert claims both of disparate treatment occasioned by an employer's practices
22 and of disparate impact produced by those practices.”) (emphasis added). To be sure, the absence
23 of a charging party from the litigation may inhibit the EEOC’s ability to offer relevant evidence,
24 and may affect the specific relief that a court may award to these individuals. See Section I.B.,
25 *infra*). However, it does not otherwise affect the EEOC’s authority to bring the suit, nor the
26 Court’s jurisdiction to hear the case).

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1 The same holds true for Defendants’ argument that the case is “jurisdictionally barred” due
2 to the EEOC’s alleged failure to conciliate in good faith. Under *Mach Mining, LLC v. E.E.O.C.*,
3 the Court may to conduct fact-finding to resolve a dispute concerning conciliation, but the scope
4 of such an inquiry is narrow. 135 S. Ct. 1645, 1656 (2015); 42 U.S.C. § 2000e–5(f)(1). If the
5 Court finds the EEOC has not performed its duty to conciliate, the appropriate remedy would be
6 for the Court to stay the proceedings to permit another attempt at settlement, and not, as
7 Defendants argue, to dismiss the claims with prejudice. *Horne*, 816 F.3d at 1198.

8 However, the Court does not find such a failure here. The facts, in a light most favorable
9 to the EEOC, demonstrate that the Agency was unaware of Mr. Davis’s death until the parties had
10 reached the end of the conciliation process. See Doc. No. 59-3, ¶ 34; Doc. No. 49-2, pp. 5-6.
11 Further, after Mr. Davis’s conciliation failed, the EEOC again attempted settle this issue by
12 engaging in conciliation procedures under Mr. Moon’s charge (whom all believed to be alive at
13 during those negotiations). See *Id.* Since the parties’ filings and exhibits clearly demonstrate that
14 conciliation was unsuccessful, it is difficult to imagine that knowledge of the Charging Parties’
15 deaths would have made Defendants more likely to settle.³ The Court is not willing to impute bad
16 faith to the EEOC for the month overlap at the end of Mr. Davis’s conciliation, regardless of the
17 EEOC’s internal rules regarding case management; this especially where the parties then spent
18 almost another year conciliating Mr. Moon’s charge. *Horne*, 816 F.3d at 1198 (“So long as the
19 Commission has been unable to secure from the respondent a conciliation agreement acceptable to
20 the Commission itself, the EEOC may sue the employer.”); *EEOC v. Timeless Investments, Inc.*
21 732 F.Supp.2d 1035, 1052 (E.D. Cal. Aug 13, 2010) (“If an employer is unwilling to engage in
22 any discussion regarding a charge following invitations to conciliate, the obligation to attempt a
23 good faith conciliation will be satisfied.”).

24 Defendants’ motion for summary judgment on the issue of whether this case is
25 “jurisdictionally barred” is therefore denied.

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27 _____
28 ³ The Court notes that, prior to Defendants’ filing of this summary judgment motion, the parties appeared to be in
settlement posture. See Doc. No. 32 (Joint Stipulation to Schedule Settlement Conference). Nothing the Court has
said here prohibits the parties from resuming this posture, whether under the umbrella of this suit or in a “remanded”
conciliation.

1 **B. Laches is applicable to Mr. Davis and Mr. Moon, but does not end the case**

2 Parties' Arguments

3 Defendants argue summary judgment on their defense of laches is proper due to the
4 Charging Parties' deaths. Defendants point to the fact that six years passed from when Mr. Davis
5 filed his charge to when the EEOC filed suit in federal court, that both Charging Parties died more
6 than a year prior to the filing of the suit, and that for two years the EEOC hid their deaths from
7 Defendants (and the Court).

8 The EEOC counters that because Defendants obstructed the Agency's investigation, they
9 are partially responsible for any delay. The EEOC recognizes that certain relief is unavailable due
10 to the Charging Parties' deaths, and has offered to amend their complaint to remove the prayer for
11 monetary relief for these two, thereby removing any prejudice Defendants might have suffered.
12 However, the EEOC maintains that a full dismissal of this case would deny just relief to those
13 similarly-harmed "class" members, would prevent the Agency from protecting others in the future
14 if left unaddressed, and would ultimately amount to an unjust windfall for Defendants.

15 Analysis

16 "A defendant may raise the affirmative defense of laches in defense to suits brought by the
17 EEOC." EEOC v. Alioto Fish Co. Ltd., 623 F.2d 86 (9th Cir.1980); see also Occidental Life Ins.
18 Co. of California v. EEOC, 432 U.S. 355, 373 (1977). To successfully establish laches, a party
19 must show that (1) there was inexcusable delay in the assertion of a known right and (2) the party
20 asserting laches has been prejudiced. O'Donnell v. Vencor Inc., 466 F.3d 1104, 1112 (9th Cir.
21 2006). Courts look to the cause of the delay to determine whether it is inexcusable. Danjaq LLC
22 v. Sony Corp., 263 F.3d 942, 954 (9th Cir. 2001); see also United States v. Gibson Wine Co., 2016
23 WL 1626988, *6 (E.D. Cal. Apr. 25, 2016) (affirmative misconduct supports laches).

24 "Traditionally, laches is invoked when witnesses have died or evidence has gone stale."

25 Melendres v. Arpaio, 154 F. Supp. 3d 845, 850 (D. Ariz. 2016) (citing Trustees for Alaska
26 Laborers-Constr. Indus. Health & Sec. Fund v. Ferrell, 812 F.2d 512, 518 (9th Cir. 1987)).

27 "Because laches is an equitable remedy, it will not apply if the public has a strong interest in
28 having the suit proceed." Jarrow Formulas, Inc. v. Nutrition Now, Inc., 304 F.3d 829, 840 (9th

1 Cir. 2002). “If the elements of a laches defense are met, a court may dismiss the entire case,
2 dismiss certain claims, or restrict the damages available to the plaintiff.” *Morgan Hill Concerned*
3 *Parents Ass'n v. California Dep't of Educ.*, 258 F. Supp. 3d 1114, 1132 (E.D. Cal. 2017); see also
4 *Derek & Constance Lee Corp. v. Kim Seng Co.*, 467 Fed. Appx. 696, 697–98 (9th Cir. 2012)
5 (affirming the district court’s use of laches to deny a request for sanctions).

6 In *EEOC v. Timeless Investments, Inc.*, this Court considered a summary judgment motion
7 on the issue of laches, where the defendant argued for dismissal of all claims brought by the
8 EEOC due to prejudicial delay. 734 F. Supp. 2d 1035, 1066 (E.D. Cal. 2010). There, the EEOC
9 brought an age-discrimination suit, in its own name, based on complaints made by two charging
10 parties. *Id.* at 1068. A four-year gap existed between the time the two charging parties made their
11 initial complaint and the EEOC’s filing of the suit. *Id.* The EEOC offered no reasons for the
12 delay, and this Court found that these four years, which included “approximately 26 months of
13 inactivity, were inexcusable.” *Id.* at 1068-69. As to prejudice, the Court found the death of one of
14 the charging parties was “highly prejudicial,” considering that the deceased’s testimony regarding
15 liability and damages, especially mitigation, was “highly important,” and the substitute evidence
16 offered by the EEOC (partial W-2 statements, testimony of a witness somewhat familiar with the
17 deceased’s work history) was an insufficient replacement. *Id.* at 1072. Thus, finding laches
18 applicable to the deceased-charging-party’s claims, the Court precluded all compensatory relief for
19 the deceased. *Id.* However, the Court declined to dismiss the entirety of the EEOC’s claim,
20 finding that the evidence from the other charging-party—who was still alive and still available—
21 indicated a question of fact on the age discrimination claim. *Id.* “The public interest is best served
22 by allowing the claim . . . to continue,” and so the EEOC could still seek monetary relief for the
23 living charging-party as well as injunctive relief against the defendant. *Id.*

24 Here, the Court finds the doctrine of laches should similarly apply to certain aspects of the
25 EEOC’s claim, as the length of the delay, deaths of Mr. Davis and Mr. Moon, and the EEOC’s
26 two-year omission of these facts have highly prejudiced Defendants. As to delay, the record
27 indicates Mr. Davis filed his charge almost eight years ago, and Mr. Moon, seven. See Doc. No.
28 59-3. At first, the EEOC diligently pursued investigating the charges, requesting documents and

1 interviews with Defendants’ employees, only to be met with delay by Defendants. See *Id.*
2 However, a subsequent two-year gap exists where the EEOC virtually ignored this case, until June
3 of 2015 when the Agency issued a determination letter in Mr. Davis’s case. See Doc. No. 56-6,
4 59-3. Once conciliation began, the EEOC appears to have diligently sought resolution of the
5 issue, concluding after nine months that no settlement was to be had. See Doc. No. 49-2, p. 14.
6 At the conclusion of Mr. Davis’s conciliation, the EEOC became aware of his death. See Doc. No.
7 49-2, pp. 5-6. Suffice to say, had the EEOC not waited those two years to begin conciliation (even
8 respecting Defendants’ initial procrastination), it could have filed this case sooner and,
9 importantly, could have been well into discovery prior to Mr. Davis’s death. The same logic
10 applies to Mr. Moon, perhaps even more egregiously so, for Mr. Moon died around the time the
11 EEOC began conciliation for Mr. Davis. The Court finds this two-year inactivity inexcusable, and
12 finds prejudice in Defendants’ inability to depose the Charging Parties—or truly examine any of
13 the evidence from these two. All compensatory relief for Mr. Davis and Mr. Moon is precluded,
14 and all evidence from these two is excluded. *Timeless*, 734 F. Supp. 2d at 1072; see also *Alioto*
15 *Fish Co.*, 623 F.2d at 89 (finding the district court did not err in granting summary judgment on
16 laches grounds where the delay of 5 years from charge-to-suit was unreasonable, and where
17 defendant was highly prejudiced because many of the witnesses were either unavailable or unable
18 to recall facts about the case).

19 Similar to *Timeless*, however, the Court will not grant dismiss the case in toto. 734 F.
20 Supp. 2d at 1072. The 1AC clearly indicates the EEOC has brought this case on behalf of
21 “[n]umerous non-Hispanic applicants [who] were denied employment based on race,” and lists
22 eleven such individuals as other “class” members. See Doc. No. 5, at ¶ 14. It appears the
23 testimony from any of these individuals can be used to support the EEOC’s claims, and if the
24 EEOC’s case is proven, each “class” member would be eligible for monetary relief. *Id.* at ¶ 20.
25 Thus, the appropriate remedy under the Court’s laches decision is to preclude all monetary relief
26 solely as to Mr. Davis and Mr. Moon, and exclude all evidence concerning these two, but allow
27 the “class” allegations for the remaining participants (as well as the injunctive relief requested by
28 the EEOC) to proceed. See *Alioto*, 623 F.2d at 89; *Timeless*, 734 F. Supp.2d at 1072.

1 **C. Summary judgment on unclean hands is unwarranted**

2 Parties' Arguments

3 Defendants also argue summary judgment on their defense of unclean hands is proper due
4 to the EEOC's choice to hide the Charging Parties' deaths "for years," its choice to pursue
5 remedies "known to be precluded by law," and the Agency's actions misleading "Defendants and
6 this Court into believing the Charging Parties were still alive." Defendants contend this deception
7 has deprived them of "critical information they needed to settle and adequately prepare their
8 defense to this suit," thereby depriving them of their due process right to a fair trial.

9 The EEOC counters by first asserting that since this is an action brought "in the public
10 interest" in order to "seek relief for a class of non-Hispanics who were subjected to hiring
11 discrimination by Defendants," the defense of unclean hands should not be applied since it would
12 amount to a windfall for Defendants. The Agency further denies any attempt to deceive
13 Defendants, contending that its failure to disclose the Charging Parties' deaths was simply a
14 "mistake." Finally, the EEOC avers that Defendants are not prejudiced by any such mistake,
15 simply because the EEOC has other claimants that support its claim of discriminatory hiring, and
16 since the Agency has asked to withdraw its request for monetary damages on behalf of the two
17 Charging Parties, summary judgment on unclean hands is inappropriate.

18 Analysis

19 The doctrine of unclean hands "insists that one who seeks equity must come to the court
20 without blemish." EEOC v. Recruit U.S.A., Inc., 939 F.2d 746, 752 (9th Cir. 1991). "The doctrine
21 bars relief to a plaintiff who has violated conscience, good faith or other equitable principles in his
22 prior conduct, as well as to a plaintiff who has dirtied his hands in acquiring the right presently
23 asserted." Dollar Sys., Inc. v. Avcar Leasing Sys., Inc., 890 F.2d 165, 173 (9th Cir. 1989); see also
24 Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co., 324 U.S. 806, 814 (1945) ("[Unclean
25 hands] is a self-imposed ordinance that closes the doors of a court of equity to one tainted with
26 inequitableness or bad faith relative to the matter in which he seeks relief, however improper may
27 have been the behavior of the defendant."). The application of the unclean hands doctrine "raises
28 primarily a question of fact." Dollar Sys., 890 F.2d at 173. However, the unclean hands doctrine

1 is not strictly enforced when “to do so would frustrate a substantial public interest.” *Recruit*, 939
2 F.2d at 753, cf. *United States v. Philip Morris Inc.*, 300 F. Supp. 2d 61, 75 (D.D.C. 2004) (“When,
3 as here, the Government acts in the public interest the unclean hands doctrine is unavailable as a
4 matter of law.”).

5 In *Recruit*, the defendants asserted the EEOC violated its duty to keep confidential
6 information divulged during conciliation, and sought dismissal under the unclean-hands doctrine.
7 939 F.2d at 753. The district court declined, due in large part to its recognition that the EEOC has
8 a duty to serve the public interest—via its administration, interpretation and enforcement of
9 Federal anti-discrimination laws. *Waffle House*, 534 U.S. at 291 (“[Title VII] confers upon the
10 EEOC the authority to determine whether the public interest is served to commit public resources
11 to seek victim-specific relief.”); *Gen. Tel.*, 446 U.S. at 326 (“When the EEOC acts, albeit at the
12 behest of and for the benefit of specific individuals, it acts also to vindicate the public interest in
13 preventing employment discrimination.”). On appeal, the Ninth Circuit found no abuse of
14 discretion, stating that “even assuming the EEOC proceeded to court with unclean hands,” the
15 district court’s refusal to apply the defense “did not offend traditional canons of equitable
16 jurisprudence.” *Recruit*, 939 F.2d at 753. “Indeed, a contrary decision holding that the public
17 interest can never override the clean hands doctrine would permit employers to continue unlawful
18 discrimination and leave their victims uncompensated solely because of governmental misconduct
19 unrelated to the validity or substantiality of the discrimination charges.” *Id.* at 754.

20 Here, the Court is indeed troubled by some of the representations made by the EEOC
21 concerning the Charging Parties. However, it is clear that the EEOC has brought this case on
22 behalf of “[n]umerous non-Hispanic applicants [who] were denied employment based on race[.]”
23 and so to grant summary judgment on unclean hands would “punish the innocent victims of
24 discrimination for the errors of the EEOC.” *Recruit*, 939 F.2d at 754. The Court has already
25 decided that certain relief for Mr. Davis and Mr. Moon will be precluded (see Section I.B. *Laches*,
26 *supra*), and alongside the Court’s grant of fees (Section III, *infra*), the balance of equities in this
27 case will be served without providing Defendants with the windfall they seek. *Recruit*, 939 F.2d
28 at 754. Thus, Defendants’ motion for summary judgment on the issue of unclean hands is denied.

1 Analysis

2 It is no coincidence that the EEOC’s motion to amend overlaps with Defendants’ motion
3 for summary judgment, for each stems from the deaths of the two Charging Parties. However, the
4 Court notes that all interested parties are now aware of the Charging Parties’ deaths, and the Court
5 has precluded monetary relief for these two in its order on Defendants’ motion for summary
6 judgment. See Section I.B., supra. The Court is also under the impression that, moving forward,
7 the EEOC may intend to rely on evidence obtained from the other “class” members, each of whom
8 the Court assumes is still alive and available. The only remaining issue, therefore, appears to be
9 the EEOC’s intent to simply match the pleadings to the reality of the unavailable Charging Parties,
10 and to make other stylistic changes to the pleadings. These minor changes will not prejudice
11 Defendants, and so leave to amend is granted. Zucco, 552 F.3d at 1007.

12 **III. The EEOC acted in bad faith by recklessly filing frivolous pleadings, which**
13 **needlessly multiplied subsequent proceedings, warranting sanctions**

14 Parties’ Arguments

15 Defendants have moved for sanctions under Rule 11, 28 U.S.C. § 1927, and the Court’s
16 inherent powers, each tied to the EEOC’s actions in light of the Charging Parties’ deaths.
17 Defendants contend the EEOC was irresponsibly unaware of Mr. Davis’s and Mr. Moon’s deaths
18 prior to filing suit, “after waiting six years to file,” and the Agency concealed its knowledge of
19 their deaths from Defendants once it became aware. Defendants maintain this was done in bad
20 faith—a “willful abuse of judicial process”—so the Agency could “pursue damages it knew could
21 not be recovered.” Defendants aver they were prejudiced in having to independently research
22 these facts and file the instant motions, and thus argue sanctions should lie.

23 The EEOC counters that it did not act in bad faith or otherwise intended to deceive or
24 harass Defendants. Instead, the EEOC argues its failure to disclose the Charging Parties’ deaths
25 was a mere mistake, one that has not resulted in any prejudice to Defendants. The EEOC has
26 offered to correct its pleadings to conform to the reality of the deceased Charging Parties, which
27 the EEOC contends are still viable on a “class-wide” basis, and maintains it informed Defendants
28 as much prior to the filing of the motions for summary judgment and for sanctions.

1 misrepresent[s] facts”). When invoking its inherent power, a court must exercise discretion in
2 fashioning an appropriate sanction. *Erickson v. Newmar Corp.*, 87 F.3d 298, 303 (9th Cir. 1996).

3 An attorney who unreasonably and vexatiously “multiplies the proceedings in any case”
4 may also be ordered “to satisfy personally the excess costs, expenses, and attorneys’ fees
5 reasonably incurred because of such conduct” under 28 U.S.C § 1927. Section 1927 sanctions are
6 appropriate upon a finding that an attorney “recklessly or intentionally misled the court.” *Gibson*
7 *v. Credit Suisse Grp. Sec. (USA) LLC*, 2018 WL 1958727, at *1 (9th Cir. Apr. 26, 2018) (quoting
8 *Girardi*, 611 F.3d at 1061 (“[W]hat is clear from our case law is that a finding that the attorney
9 recklessly or intentionally misled the court is sufficient to impose sanctions under § 1927, [as is] a
10 finding that the attorneys recklessly raised a frivolous argument which resulted in the
11 multiplication of the proceedings.”); cf. *Moore v. Keegan Mgmt. Co.*, 78 F.3d 431, 436 (9th Cir.
12 1996) (“[S]ection 1927 sanctions must be supported by a finding of subjective bad faith, [which]
13 is present when an attorney knowingly or recklessly raises a frivolous argument[.]”). The filing of
14 a complaint may be sanctioned pursuant to Rule 11 or a court’s inherent power, but not under
15 § 1927. *Id.* at 435. “[T]he statute . . . is concerned only with limiting the abuse of court
16 processes.” *Levine v. Millennium Tr. Co., LLC*, 2013 WL 12157580, at *1 (S.D. Cal. Mar. 20,
17 2013) (quoting *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 762 (1980)).

18 Analysis

19 First, Defendants present a compelling argument as to whether the EEOC filed a legally
20 and factually baseless pleading, without first conducting a reasonable and competent inquiry, as
21 required under Rule 11. *Holgate*, 425 F.3d at 676. Without elaborating further, however, the
22 Court finds Rule 11 sanctions cannot stand here for one simple reason: after Defendants served
23 the Agency with notice of its intent to seek sanctions, the EEOC filed a motion to amend the 1AC
24 to rectify any issues with the pleading. See Doc. No. 46; *Sneller*, 606 F.3d at 639 (finding the
25 “safe harbor” provision of Rule 11 protected offending party from sanctions where the party filed
26 a motion to amend the pleadings within 21 days of service of the sanctions motion).

27 As to whether sanctions may lie under the Court’s inherent power and 28 U.S.C. § 1927,
28 the Court disagrees with the EEOC’s assertions that its failure to disclose the Charging Parties’

1 deaths was a simple mistake. See Doc. No. 55. The key indication that a much more culpable
2 intent is at work here lies in this simple fact: in February 2016, the EEOC became aware that Mr.
3 Davis had died, but has otherwise litigated this case as if he were alive. See Doc. No. 's 5 (1AC);
4 20 (EEOC's Opposition to Def's Mot. to Dismiss); 55-2, at ¶¶ 4-5 (Decl. Li).

5 In the 1AC, filed a year after the Agency's discovery of Mr. Davis's death, the EEOC
6 sought specific relief for Mr. Davis that the Agency should have known was legally unavailable
7 due to his death. See 1AC, at p.14-15. Therein, the EEOC prayed the Court order Defendants to
8 make Mr. Davis whole "by providing compensation for past and future pecuniary losses, including
9 but not limited to back pay, **hiring**, and where appropriate, **front pay**[,] non-pecuniary losses[,
10 and] **punitive damages**"). See *Id.* (emphasis added).⁴ However, punitive damages are penal
11 and do not survive a claimant's death. See *Timeless*, 734 F. Supp.2d at 1057 (citing *Smith v.*
12 *Department of Human Servs.*, 876 F.2d 832, 834 (10th Cir. 1989)); see also *Fulk v. Norfolk S. Ry.*
13 *Co.*, 35 F. Supp. 3d 749, 764 (M.D.N.C. 2014) (collecting cases and dismissing punitive damages
14 under anti-retaliation statute after claimant's death because punitive damages are "plainly penal.");
15 *Hanson v. Atl. Research Corp.*, 2003 WL 430484, at *4 (E.D. Ark. Feb. 14, 2003) ("[Following]
16 federal common law[,] Hanson's claim for punitive damages under the ADA is penal in nature and
17 did not survive his death[, and so] Plaintiff's claims for punitive damages under the ADA will be
18 dismissed with prejudice."); *Equal Employment Opportunity Comm'n v. Deloitte & Touche, LLP*,
19 2000 WL 1024700, at *7 (S.D.N.Y. July 25, 2000) ("The claim for compensatory damages [under
20 the ADA] survives Mr. Krolak's death; the claim for punitive damages, however, does not.");
21 *Estwick v. U.S. Air Shuttle*, 950 F. Supp. 493, 498 (E.D.N.Y. 1996) ("The punitive damages are
22 plainly penal and must be dismissed under either federal or state law [due to the claimant's
23 death]."); compare also *Small v. Am. Tel. & Tel. Co.*, 759 F. Supp. 1427, 1431 (W.D. Mo. 1991)

24
25 ⁴ Title VII generally provides for each these remedies, but is silent as to their availability upon a claimant's death. See
26 42 U.S.C. § 2000e-5. Therefore, "federal common law determines whether a federal claim/cause of action survives
27 the death of a claimant." *Timeless*, 734 F. Supp.2d at 1056 (citing *United States v. NEC Corp.*, 11 F.3d 136, 137 (11th
28 Cir. 1993)). Under federal common law, claims that are remedial in nature survive the claimant's death, while claims
that are penal in nature do not. *Id.* at 1057; see also *U.S. ex rel. Harrington v. Sisters of Providence in Oregon*, 209 F.
Supp. 2d 1085, 1087 (D. Or. 2002) ("In general, an action is remedial if the recovery compensates an individual for
specific harm suffered, and penal if the recovery imposes damages on the defendant for a general wrong to the
public.") (citing *U.S. v. Land, Winston County*, 221 F.3d 1194, 1197 (11th Cir. 2000)).

1 (finding both punitive and compensatory damages under 42 U.S.C. § 1981 survive Plaintiff’s
2 death, per Missouri’s survivor statute); with *Earvin v. Warner-Jenkinson Co.*, 1995 WL 137437, at
3 *2 (E.D. Mo. Mar. 10, 1995) (finding punitive damages claim abated upon the plaintiff’s death,
4 and disagreeing with *Small* on the application of Missouri’s survivor statute “because an award of
5 such damages would be inconsistent with federal common law.”). Further, the idea that Mr. Davis
6 could be reinstated (i.e. hired) or awarded front pay—after he has died—is absurd on its face. See
7 *Traxler v. Multnomah County*, 596 F.3d 1007, 1009–10 & n. 1 (9th Cir.2010)) (“Front pay is
8 ‘money awarded for lost compensation during the period between judgment and reinstatement or
9 in lieu of reinstatement.’”) (quoting *Pollard v. E.I. du Pont de Nemours & Co.*, 532 U.S. 843, 846
10 (2001); see also *Fogg v. Gonzales*, 407 F. Supp. 2d 79, 92 (D.D.C. 2005), reversed on other
11 grounds (finding it “highly unlikely” that discharged employee could be reinstated due to his
12 physical inability to work). The outrageousness of the EEOC’s prayer in this case is further
13 exacerbated by the fact that the attorney responsible for filing the pleadings, Ms. Anna Park, is the
14 very same attorney who represented the EEOC in *Timeless*—where this very Court held that a
15 charging party’s death “makes the remedies of **reinstatement and front pay unavailable.**” 734
16 F.Supp.2d at 1072 (emphasis added) (citing *Traxler*, 596 F.3d at 1009–10 & n. 1).

17 Set against this frivolous request for legally-unavailable relief in the 1AC, the EEOC’s
18 other actions paint a picture that demonstrate a continuing recklessness in the EEOC’s handling of
19 this case. First, the EEOC admits that its request for this relief was an “oversight due to using
20 similar standard language” in its other complaints, which itself further indicates recklessness in
21 pleading. See *Stone Creek, Inc. v. Omnia Italian Design, Inc.*, 875 F.3d 426, 443 (9th Cir. 2017)
22 (affirming district court’s sanctions under § 1927 where the offending party had no evidence to
23 support one of its claims and knew the claim was meritless, yet proceeded with litigating it
24 anyway); *Goldmanis v. Insinger*, 679 F. App’x 605, 606 (9th Cir. 2017) (“The court properly
25 concluded that plaintiff knowingly brought a frivolous, time-barred suit in bad faith,” justifying
26 inherent-power sanctions). Second, had the Court been aware of Mr. Davis’s death during its
27 consideration of Defendants’ laches argument in the earlier motion-to-dismiss proceedings, see
28 Doc. No. 28, the order denying Defendants’ laches averments would have concluded differently.

1 Simply, the EEOC’s reckless omission has caused Defendants to have to reargue its laches
2 argument in its summary judgment motion, which the Court previously denied but has now
3 granted. See Section I.B., supra; see also *Credit Suisse Grp.*, 2018 WL 1958727, at *1 (upholding
4 sanctions under § 1927 based on the offending party’s delay in correcting the record, because this
5 omission unnecessarily multiplied the proceedings by causing opposing counsel to present a
6 flawed and misleading record to the court, which affected the briefing in the case and the court’s
7 consideration of the evidence); *Indiezone*, 720 F. App’x at 338 (upholding district court’s
8 institution of sanctions per the court’s inherent power, where offending attorney had notice his
9 client did not enjoy corporate status—a fact easily verifiable in the public record—but continued
10 to file declarations and motions asserting his client was in fact a corporation). Third, the EEOC’s
11 knowledge of Mr. Davis’s death at the beginning of this lawsuit colors other of the Agency’s
12 choices in this case, including:

- 13 - The fact that the 1AC discusses Mr. Davis in the present tense, despite the
- 14 Agency’s knowledge that he was deceased at the time of filing;
- 15 - The failure to inform Defendants of Mr. Davis’s death—either at the end of
- 16 the conciliation process for his charge, throughout conciliation under Mr.
- 17 Moon’s charge, or during the Rule 26(f) conference in August 2016;
- 18 - The failure to keep apprised of Mr. Moon’s status for a two-year period
- 19 between his death and the EEOC’s discovery of this fact in October 2017;
- 20 - The fact that the Agency attempted to obtain a settlement on behalf of the
- 21 Charging Parties without fully apprising Defendants of their deaths.

22 See *Hubbard v. Plaza Bonita, LP*, 630 F. App’x 681, 683 (9th Cir. 2015) (“Any rational attorney
23 representing a plaintiff in an ADA access case would know that if his client died, the defendants
24 would want to know about it, especially before signing a settlement agreement that promised
25 prospective relief.”).

26 For these reasons, the Court finds Ms. Park’s and Mr. Li’s reckless assertions of frivolous
27 arguments and reckless misrepresentations of the facts to be done in bad faith—sanctionable under
28 the Court’s inherent powers. *Indiezone*, 720 F. App’x at 338. The Court also deems their failure
to divulge the fact of Mr. Davis’s death during the motion-to-dismiss proceedings needlessly
multiplied the number of times the Court needed to consider the laches issue, supporting an award
of fees and costs against Mr. Li under 28 U.S.C. § 1927. In *re Girardi*, 611 F.3d at 1061 (“[W]hat

1 is clear from our case law is that a finding that the attorney recklessly or intentionally misled the
2 court is sufficient to impose sanctions under § 1927, [as is] a finding that the attorneys recklessly
3 raised a frivolous argument which resulted in the multiplication of the proceedings.”).

4 The Court will not, however, grant Defendants request to fully dismiss of this case. As the
5 Court has discussed in Section I, supra, the issues raised by the Charging Parties and alleged by
6 the EEOC affect more than just Mr. Davis and Mr. Moon. See *Thompson v. Jamaica Hosp.*, 2015
7 WL 3824254, at *4 (S.D.N.Y. June 19, 2015) (“[I]f the disciplined party had a valid claim,
8 dismissal results in injustice to that party and a windfall to its adversary.”) Further, the extended
9 delay present in this dispute does not fall solely on the EEOC’s shoulders, for Defendants’ early
10 recalcitrance in disclosing information demonstrates an attempt to delay resolution of the EEOC’s
11 conciliation and settlement efforts. See *Kessler v. Superior Care, Inc.*, 127 F.R.D. 513, 524 (N.D.
12 Ill. 1989) (refusing to grant sanctions based on responding party’s bad acts where the moving
13 party was guilty of similar conduct). Finally, the Court accepts the EEOC’s representations that
14 the conciliation under Mr. Davis’s charge was functionally unsuccessful at the time the Agency
15 discovered his death—as adequately demonstrated by the parties’ inability to resolve the same
16 issue during Mr. Moon’s conciliation. See *Id.* Simply, Defendants seek an undeserved windfall
17 unwarranted at this time. See *Erickson*, 87 F.3d at 303 (sanction must be appropriately fashioned);
18 see also *Thompson*, 2015 WL 3824254, at *4 (sanction should avoid granting a windfall).

19 Therefore, in order to compensate Defendants for their time spent arguing a frivolous
20 issue, the Court is inclined to institute monetary sanctions. 28 U.S.C. § 1927; *Keegan Mgmt. Co.*,
21 78 F.3d at 436. The Court will not do so at this time, as Defendants have expressly sought
22 monetary sanctions against a government agency, the EEOC, which the Court cannot grant.⁵

23 _____
24 ⁵ Defendants requested sanctions against the EEOC, including monetary sanctions under § 1927. However, the plain
25 language of § 1927 explicitly allows for an award against attorneys, not parties. See 28 U.S.C. § 1927. Further, the
26 Court is concerned that since the Government has not waived its sovereign immunity under § 1927 (nor, of course
27 under the Court’s inherent power), monetary sanctions against the EEOC cannot lie. See *Perez v. Blue Mountain*
28 *Farms*, 2015 WL 4723630, at *3 (E.D. Wash. Aug. 10, 2015) (“Blue Mountain concedes that, due to sovereign
immunity, it may not seek attorney fees against the Government pursuant to 28 U.S.C. § 1927.”); *Alexander v. F.B.I.*,
541 F. Supp. 2d 274, 300 (D.D.C. 2008) (finding no ability to award sanctions against the government agency under
§ 1927 or the court’s inherent authority due to the lack of waiver of sovereign immunity) (citing *In re Graham*, 981
F.2d 1135, 1140 (10th Cir. 1992) (“Even if we were to read the [bankruptcy] statute as encompassing awards against
the party, we would still require some independent waiver of sovereign immunity in order to apply it against the
United States.” (internal citations omitted))).

1 Defendants may submit arguments as to why sanctions should lie against each attorney of record
2 in this case. Defendants should include with this supplemental filing a bill of costs and attorney's
3 fees connected to its needlessly-multiplied efforts: those concerning investigation into the
4 Charging Parties' deaths, as well as to its motions for summary judgment (Doc. No. 49), motion
5 for sanctions (Doc. No. 48), and motion opposing the EEOC's request to amend the petition (Doc.
6 No. 54). See Blixseth v. Yellowstone Mountain Club, LLC, 854 F.3d 626, 631 (9th Cir. 2017)
7 ("[T]he costs of obtaining sanctions may be included in a sanctions award under § 1927."). The
8 attorneys named in Defendants' supplemental filing will be granted an opportunity to respond to
9 this submission. Redding v. ProSight Specialty Mgmt. Co., Inc., 692 F. App'x 447 (9th Cir. 2017)
10 ("Appellants received notice from the district court's summary judgment order and NYM's motion
11 for fees and costs. The district court also provided Appellants an opportunity to be heard,
12 permitting briefing on the motion for attorneys' fees and costs and the submission of affidavits.").

13 **ORDER**

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Defendants' summary judgment motion (Doc. No. 49) is GRANTED IN PART AND
16 DENIED IN PART;
- 17 2. Plaintiff EEOC's motion to amend (Doc. No. 46) is GRANTED;
- 18 3. Within 14 days of service of this Order, Defendants shall submit to the Court
19 supplemental briefing on the issue of sanctions (Doc. No. 48) against the individual
20 attorney(s) representing Plaintiff;
- 21 4. Plaintiff's counsel shall then be granted 7 days from the date of Defendant's
22 supplemental briefing to respond to the sanctions issue; and
- 23 5. This case is referred to the Magistrate Judge for further proceedings (aside from the
24 issue of sanctions, which this Court will resolve).

25
26 IT IS SO ORDERED.

27 Dated: June 26, 2018

28 

SENIOR DISTRICT JUDGE