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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK LEMIEUX AND DEBRA
LEMIEUX,

Plaintiffs,

v.

LITTON LOAN SERVICING, LP, et
al.,
Defendants.

Case No. 09-02816-JAM-EFB
ORDER GRANTING DEFENDANT'S
MOTION FOR FEES

This matter is before the Court on Defendants' Litton Loan Servicing, LP and Bank of America, N.A. as Successor by Merger to LaSalle Bank N.A., Trustee, Mortgage Asset-Backed Pass-Through Certificates Series 2007-RP ("Defendants'") Motion to Expunge Plaintiffs' Patrick and Debra Lemieux's ("Plaintiffs'") lis pendens. Defendants also move for an award of attorney's

1 fees pursuant to California Code of Civil Procedure Section
2 405.38. Plaintiffs oppose the motions.¹

3 On December 18, 2009, Defendants filed a Motion to Expunge
4 the Lis Pendens on Plaintiffs' property located at 708 Ponte
5 Delgado Court, El Dorado Hills, California ("the Property"). On
6 January 8, 2010, Plaintiffs voluntarily dismissed their suit
7 against Defendants, without prejudice, and withdrew the lis
8 pendens. Plaintiff's have now re-filed the suit in state court
9 and recorded a new lis pendens.
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12 At this time, the motion to expunge the lis pendens is moot,
13 as the lis pendens has already been withdrawn. However, the lis
14 pendens was not withdrawn until after Defendants' filed the
15 motion to expunge and incurred the costs associated with the
16 motion. For the reasons set forth in Defendants' Reply brief,
17 the Court has jurisdiction to award fees. California Code of
18 Civil Procedure Section 405.38 states that, "The Court shall
19 direct that the party prevailing on any motion under this
20 chapter be awarded the reasonable attorney's fees and costs of
21 making or opposing the motion unless the court finds that the
22 other party acted with substantial justification or that other
23 circumstances make the imposition of attorney's fees and costs
24 unjust." The Court finds that Plaintiff has not acted with
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28 ¹ These motions were determined suitable for decision without
oral argument. E.D. Cal. L.R. 230(g).

1 substantial justification or that other circumstances make the
2 imposition of attorney's fees unjust. Indeed, the Court finds
3 that Plaintiff's counsel created unnecessary work for both this
4 Court and opposing counsel.
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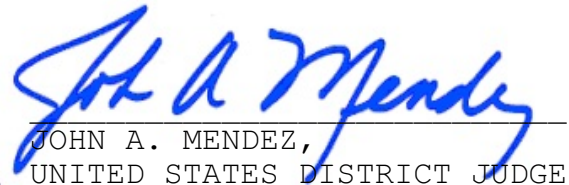
6 Accordingly, given the underlying facts of this case and
7 Plaintiffs' apparent financial hardship, the Court orders that
8 the award of attorney's fees shall be paid by Plaintiff's
9 attorney. See Justo v. Indymac Bancorp, 2010 WL 623715, at *12
10 (C.D. Cal. Feb. 19, 2010)(requiring plaintiffs' attorney to pay
11 the fee award under California Code of Civil Procedure section
12 128.6, on the grounds that the filing of the lis pendens was
13 frivolous and made solely for the purpose of delaying
14 disposition of the property).
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18 ORDER

19 For the foregoing reasons, the Court hereby awards Defendants
20 \$3,025.00 in attorney's fees. This award is to be paid by
21 Plaintiffs' attorney Brian Katz, within 20 days.
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24 IT IS SO ORDERED.

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26 Dated: March 31, 2010

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE