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9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

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12 DONNA L. PHILLIPS,  
13 Plaintiff,

NO. CIV. S-09-3112 FCD/EFB

14 v.

MEMORANDUM AND ORDER

15 IMS LOANS, INC., a California  
16 corporation, WELLS FARGO BANK,  
17 as successor by acquisition to  
18 Wachovia Bank and World  
19 Savings Bank, a California  
20 corporation; and DOES 1  
21 through 10, inclusive,

Defendants.

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23 This matter is before the court on defendant Wachovia  
24 Mortgage, a division of Wells Fargo Bank's<sup>1</sup> ("defendant") motion  
25 for sanctions in the amount of attorneys' fees and costs against  
26 plaintiff Donna L. Phillips' ("plaintiff") former counsel,  
27 Stephen P. Collette ("Collette"). The court directed Collette to

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28 <sup>1</sup> Wachovia Mortgage is erroneously named in this action as  
"Wells Fargo Bank as successor by acquisition to Wachovia Bank  
and World Savings Bank."

1 appear at the hearing on October 8, 2010, but he failed to do so.  
2 For the reasons set forth below, defendant's motion for sanctions  
3 is GRANTED.

4 **BACKGROUND**

5 Defendant originally removed this case to this court on  
6 November 6, 2009. Subsequently, on November 13, 2009, it moved  
7 to dismiss the case. (Docket #6.) Plaintiff failed to respond  
8 to the motion, and the court issued an OSC to plaintiff's counsel  
9 on February 1, 2010. (Docket #9.) Again, plaintiff failed to  
10 respond, and on March 29, 2010, the court issued an order  
11 sanctioning counsel \$150.00. The court also issued a further OSC  
12 to plaintiff's counsel regarding the imposition of additional  
13 monetary sanctions, and dismissal of the case for failure to  
14 prosecute. (Docket #10.) Counsel did not respond, and the court  
15 issued its May 11, 2010 Order dismissing the case and imposing  
16 sanctions on counsel in the amount of \$450.00. (Docket #11.)  
17 Counsel did not timely pay the sanctions, and on June 4, 2010,  
18 the court set the matter for hearing on July 23, 2010. (Docket  
19 #14.)

20 Counsel additionally did not respond to defendant's motion  
21 for attorneys' fees, which sought an award of \$7,907.50 against  
22 plaintiff, personally, pursuant to the terms of the Promissory  
23 Note and Deed of Trust plaintiff executed with defendant.  
24 (Docket #18.) As a result of counsel's failure to respond to  
25 that motion, the court issued another OSC on June 28, 2010  
26 (Docket #20), setting the matter for hearing on July 23, 2010.  
27 Again, plaintiff's counsel did not respond to the OSC pertaining  
28 to defendant's attorneys' fees motion.

1           Because of plaintiff's counsel's continued failure to comply  
2 with the court's orders, the court reviewed counsel's state bar  
3 records. On April 9, 2010, a Notice of Disciplinary Charges was  
4 issued to counsel by the State Bar of California, charging  
5 counsel with 29 offenses, including: failure to maintain client  
6 funds in a trust account, moral turpitude, misappropriation of  
7 funds, failure to cooperate in State Bar investigations,  
8 formation of a partnership with a non-lawyer, failure to refund  
9 unearned fees, sharing legal fees with a non-lawyer, unauthorized  
10 practice of law in another jurisdiction, and failure to perform  
11 with competence. (In the Matter of: Stephen Paul Collette, No.  
12 186439, Case Nos. 09-O-10385, 09-O-12389, 09-O-12430, 09-O-12656,  
13 09-O-13415, 09-O-13532, 09-O-14457.)

14           Counsel failed to respond to the charges, and on June 21,  
15 2010, the State Bar Court issued an order, entering default  
16 against counsel. The order deemed the factual allegations of the  
17 charges admitted, and suspended counsel from the practice of law.  
18 (In the Matter of Stephen P. Collette, Member No. 186439, Case  
19 No. 09-O-10385-RAH.) His suspension remains in effect until  
20 counsel requests, and the Bar Court grants, a motion for  
21 termination of actual suspension. Until then, counsel remains  
22 ineligible to practice law. (Id.)

23           Due to Collette's ineligible status, the court vacated the  
24 sanction orders against him on July 15, 2010. Noting that  
25 plaintiff may not have been aware of the status of her counsel or  
26 the pending motion against her, the court directed defendant to  
27 personally serve plaintiff with its motion for attorneys' fees.

28           On September 24, 2010 plaintiff filed an opposition to

1 defendant's motion stating that she did not provide authorization  
2 for Collette to file this lawsuit, and, in fact, was unaware of  
3 the lawsuit until she was personally served in August of 2010.  
4 Subsequently, defendant replied, stating that they would withdraw  
5 their motion for attorneys' fees against plaintiff personally, if  
6 the fee award were imposed against Collette.

## 7 ANALYSIS

### 8 A. Imposition of Sanctions

9 Section 1927 allows the court to award fees against "any  
10 attorney . . . who so multiplies the proceedings in any case  
11 unreasonably and vexatiously." 28 U.S.C. § 1927. This section  
12 is not specific to any statute, but applies to any civil suit in  
13 federal court. Hyde v. Midland Credit Mgmt., Inc., 567 F.3d  
14 1137, 1141 (9th Cir. 2009). Further, the statute "explicitly  
15 provides for remedies against offending attorneys." Id.; F.T.C.  
16 v. Alaska Land Leasing, Inc., 799 F.2d 507, 510 (9th Cir. 1986).

17 The court also has the inherent power to issue sanctions in  
18 order "to protect the due and orderly administration of justice  
19 and maintain the authority and dignity of the court."  
20 Primus Auto. Fin. Servs., Inc. v. Batarse, 115 F.3d 644, 648 (9th  
21 Cir. 1997) (internal quotations and citation omitted). These  
22 sanctions may be issued when the party has acted "in bad faith,  
23 vexatiously, wantonly, or for oppressive reasons" and may take  
24 the form of attorneys' fees. Id. Before awarding such sanctions  
25 however, "the court must make an explicit finding that counsel's  
26 conduct 'constituted or was tantamount to bad faith.'" Id.  
27 (quoting Roadway Express, Inc. v. Piper, 447 U.S. 752, 767  
28 (1980)).

1 Collette's actions as detailed above, including filing a  
2 lawsuit on behalf of a plaintiff without plaintiff's knowledge or  
3 authorization, abandoning a client, and abandoning a lawsuit,  
4 constitute bad faith. Further, the judicial resources that the  
5 court was forced to expend in an effort to get Collette to  
6 respond to defendant's motions and multiple OSCs warrants the  
7 imposition of sanctions. Therefore, in the interest of  
8 protecting the due and orderly administration of justice, the  
9 court imposes sanctions against Collette in the form of  
10 attorneys' fees and costs, pursuant to both § 1927 and the  
11 court's inherent power to issue sanctions.<sup>2</sup>

12 **B. Amount of Sanctions**

13 **1. Reasonable Hourly Rate**

14 In order to determine what rate is "reasonable," courts look  
15 at "prevailing market rates in the relevant community." Blum v.  
16 Stenson, 465 U.S. 886, 895 (1984); Davis v. City of San  
17 Francisco, 976 F.2d 1536, 1545 (9th Cir. 1992) (a reasonable  
18 hourly rate should be determined "by reference to the fees that  
19 private attorneys of an ability and reputation comparable to that  
20 of prevailing counsel charge their paying clients for legal work  
21 of similar complexity"). Determination of a reasonable hourly  
22 rate is not made merely by reference to rates actually charged by  
23 the prevailing party. Chalmers v. City of Los Angeles, 796 F.2d  
24 1205, 1210 (9th Cir. 1986). Rather, the rate assessed is based  
25 on the prevailing rate in the relevant community *for similar*

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27 <sup>2</sup> In light of Collette's conduct, and the fact that  
28 plaintiff was an unwitting and unwilling participant in this  
lawsuit, defendant has agreed to withdraw its motion for  
attorneys' fees against plaintiff personally.

1 work. Id. at 1211; Blum, 465 U.S. at 895 n. 11. Generally, the  
2 relevant community is the forum in which the district court sits.  
3 Davis v. Mason County, 927 F.2d 1473, 1488 (9th Cir. 1991).

4 In this case, defendant's counsel seeks the court's approval  
5 of a rate of: \$320 per hour for Mark T. Flewelling, an attorney  
6 with 29 years of litigation experience; \$300 per hour for Fred J.  
7 Hickman, an attorney who graduated 24 years ago; \$250 per hour  
8 for Jeremy E. Shulman, an attorney with 8 years of litigation  
9 experience; and \$155 per hour for Dorothy Pandy, a paralegal.  
10 These figures reflect the prevailing rate for similar work in the  
11 relevant legal community of Sacramento in the Eastern District of  
12 California. Therefore, the court approves these rates.

## 13 **2. Reasonable Hours Expended**

14 In determining the reasonable hours expended, the party  
15 seeking attorneys' fees bears the burden of submitting detailed  
16 time records which justify the hours spent working on the claims.  
17 Hensley v. Eckerhart, 461 U.S. 424, 434 (1983) (district court  
18 should exclude hours not "reasonably expended").

19 The court considers the amount of hours requested in this  
20 case reasonable, but reduces the hours slightly in light of the  
21 brief telephonic hearing on October 8, 2010. Thus, after  
22 reducing counsel's hours from 1.5 to .5 for the October 8, 2010  
23 hearing, the court determines that counsel is entitled to  
24 \$9,371.50 in attorneys' fees and costs.

## 25 **CONCLUSION**

26 For the foregoing reasons, the court grants defendant's  
27 motion for sanctions in the form of attorneys' fees and costs  
28 against Stephen P. Collette in the amount of \$9,371.50.

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IT IS SO ORDERED.  
DATED: October 8, 2010



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FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE