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

JOSE MANUEL SOTO and ALICIA
SOTO,

Case No. 09-cv-03429-JAM-KJM

ORDER DENYING DEFENDANTS'
MOTION FOR RULE 11 SANCTIONS

Plaintiffs,

v.

BANK OF AMERICA, fka
COUNTRYWIDE HOME LOANS, INC.;
COUNTRYWIDE HOME LOANS, INC.;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
COUNTRYWIDE FULL SPECTRUM
LENDING; PETER SCHWARTZ and
DOES 1-20 inclusive,

Defendants.

This matter comes before the Court on Defendants
Countrywide Home Loans, Inc. (for itself and erroneously sued
herein as Countrywide Full Spectrum Lending), BAC Home Loans
(erroneously sued herein as Bank of America Home Loans f/k/a
Countrywide home Loans), and Mortgage Electronic Registration

1 System, Inc., (collectively "Defendants") Motion for Attorney's
2 Fees and Costs, pursuant to Federal Rule of Civil Procedure
3 11(c). Defendants seek Rule 11 sanctions regarding Plaintiffs'
4 Jose and Alicia Soto's ("Plaintiffs'") Complaint.¹
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7 I. BACKGROUND

8 Plaintiffs' Complaint arose from a loan transaction for the
9 residential property located at 9686 Early Light Way, Elk Grove,
10 California. The Complaint alleged a cause of action for
11 violation of the Real Estate Settlement Procedures Act
12 ("RESPA"), 12 U.S.C. §2605 et seq., and seven state law claims
13 for violation of the California Rosenthal Act, violation of the
14 Business and Professions Code, negligence, fraud, breach of
15 contract, breach of fiduciary duty, and breach of the implied
16 covenant of good faith and fair dealing.
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19 In addition to the Motion for Rule 11 sanctions, Defendants
20 also brought a motion to dismiss the complaint and a motion to
21 strike. Plaintiffs did not respond to any of the motions with an
22 opposition or statement of non-opposition as required by Local
23 Rule 230(c).
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25 In light of Plaintiffs' failure to respond to the motion to
26 dismiss, the motion to strike, or the motion for Rule 11
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¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g).

1 sanctions, the Court issued an Order to Show. The Order to Show
2 Cause required Plaintiffs to show cause why the Court should not
3 dismiss the Complaint and issue Rule 11 sanctions against
4 Plaintiffs attorney. Plaintiffs had previously filed two
5 substantially identical complaints in federal court before Judge
6 Burrell, voluntarily dismissed their action under threat of a
7 Rule 11 sanction motion by Defendants, and then filed the
8 present Complaint in state court. The Complaint, which is
9 substantially identical to the previous complaints, was removed
10 from state court by Defendants on the basis of federal question
11 jurisdiction, as it contains a federal claim.
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15 II. OPINION

16 A. Motion to Dismiss

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18 Shortly before the Court was preparing to issue its order
19 regarding the motion to dismiss and the motion for Rule 11
20 sanctions, Plaintiffs filed a Notice of Voluntary Dismissal
21 pursuant to Federal Rule of Civil Procedure 41(a)(1)(i).
22 Plaintiffs voluntarily dismissed, without prejudice, all of
23 their claims against all the defendants in the case. The notice
24 stated that Plaintiffs have not dismissed an action based on or
25 including the same claims as those presented in this suit.
26 However, as Defendants pointed out in their objections to the
27 notice, Plaintiffs have dismissed a previous action that was
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1 based on and included nearly all of the same claims as those
2 presented in this suit. The previous action was 2:09-cv-01546
3 before Judge Burrell. In that case, Plaintiffs brought claims
4 against Defendants for violations of the Truth in Lending Act,
5 the Real Estate Settlement Procedure Act, the California
6 Rosenthal Act, violation of the California Business and
7 Professions Code, negligence, fraud, breach of contract, breach
8 of fiduciary duty, breach of the implied covenant of good faith
9 and fair dealing, and California Civil Code §1632. Thus, after
10 voluntarily dismissing the previous complaint before Judge
11 Burrell, Plaintiffs merely took out their Truth in Lending Act
12 claim and their California Civil Code §1632 claim, and then re-
13 filed the present Complaint.

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17 "If a plaintiff invokes Rule 41(a)(1) a second time for an
18 action based on or including the same claim, the action must be
19 dismissed with prejudice." Cooter & Gell v. Hartmarx
20 Corporation, 110 S.Ct. 2447, 2455 (1990). Accordingly,
21 Plaintiffs' Complaint is dismissed with prejudice. In light of
22 the notice of voluntary dismissal, Defendants motion to dismiss
23 and motion to strike are moot.

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26 B. Rule 11 Sanctions

27 The day before their response to the Order to Show Cause
28 was due, Plaintiffs filed an ex parte motion for more time to

1 respond. Plaintiffs then filed an untimely response to the Order
2 to Show Cause, as the Court had not yet had the opportunity to
3 rule on the ex parte motion. Nonetheless, the Court will
4 consider the response.
5

6 Despite Plaintiffs voluntary dismissal of the case, the
7 Court still has jurisdiction to decide the motion for Rule 11
8 sanctions. Cooter, 110 S.Ct. at 2455. Based on the arguments set
9 forth in Plaintiffs' response to the order to show cause, the
10 Court will not issue Rule 11 sanctions against Plaintiffs'
11 attorney Michael J.M. Brooks. The Court does not condone Mr.
12 Brooks' conduct in this matter, and notes the time and expense
13 that his repeated filings of substantially identical complaints
14 has caused the Defendants and the Federal Court. However, the
15 Court concludes that his actions before this Court do not rise
16 to a level permitting this Court to issue sanctions on its own
17 initiative pursuant to Rule 11(c)(3).
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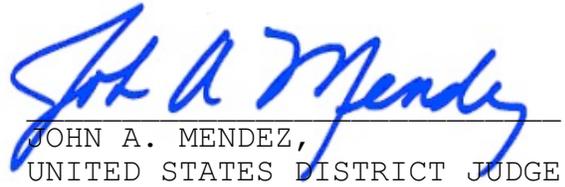
20 Additionally, the Court cannot grant Defendants' motion for
21 Rule 11 sanctions, as Defendants failed to comply with the 'safe
22 harbor' procedures set forth in Rule 11(c)(2). They complied
23 with the procedures in the previous case before Judge Burrell,
24 but failed to do so in the case before this Court. Thus,
25 Defendants motion for Rule 11 sanctions is denied.
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1 III. ORDER

2 For the reasons set forth above, Plaintiffs' voluntary
3 dismissal of the case is WITH PREJUDICE. Defendants' Motion for
4 Attorney's Fees and Costs pursuant to Rule 11 is DENIED.
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7 IT IS SO ORDERED.

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9 Dated: April 28, 2010

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11 JOHN A. MENDEZ,
12 UNITED STATES DISTRICT JUDGE
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