



1 Plaintiff Phillip Parker ("Parker") sued EthosEnergy  
2 Power Plant Service, LLC ("EthosEnergy"), his former employer,  
3 alleging wrongful discharge in violation of public policy,  
4 harassment, discrimination, and retaliation under the Fair  
5 Employment and Housing Act ("FEHA"). Plaintiff also named John  
6 Wood as a defendant. Summary judgment was granted in favor of  
7 both defendants on October 4, 2017, and the case was dismissed  
8 with prejudice. (Docket No. 49.)

9 II. Discussion

10 Federal courts have the inherent power to impose  
11 sanctions. Zapata v. Flintco, Inc., Civ. No. 2:09-3555, 2012 WL  
12 260027, at \*5 (E.D. Cal. Jan. 25, 2012) citing Chambers v. NASCO,  
13 Inc., 501 U.S. 32, 43-46 (1991). 28 U.S.C. § 1927 provides that  
14 any attorney "who so multiplies the proceedings in any case  
15 unreasonably and vexatiously may be required by the court to  
16 satisfy personally the excess costs, expenses, and attorneys'  
17 fees reasonably incurred because of such conduct." A sanction of  
18 fees is also appropriate where counsel acted in bad faith.  
19 United States v. Blodgett, 709 F.2d 608, 610 (9th Cir. 1983).  
20 "Bad faith is present when an attorney knowingly or recklessly  
21 raises a frivolous argument." Stiglich v. Contra Costa Cty. Bd.  
22 of Sup'rs, 106 F.3d 409 (9th Cir. 1997). Conduct is reckless and  
23 frivolous where a reasonable and competent inquiry into the law  
24 and facts would have revealed that a claim was not well-founded.  
25 Great Dynasty Int'l Fin. Holdings Ltd. v. Haiting Li, No. C-13-  
26 1734 EMC, 2014 WL 3381416, at \*7 (N.D. Cal. July 10, 2014).  
27 Further, in response to a FEHA claim, a prevailing defendant may  
28 recover attorney's fees when "the plaintiff's action was

1 frivolous, unreasonable, without foundation, or brought in bad  
2 faith.” Chavez v. City of Los Angeles, 47 Cal. 4th 970, 985  
3 (2010); Rezaipour v. County of Los Angeles, Civ. No. 12-5005 MWF,  
4 2014 WL 12687111, at \*2 (C.D. Cal. Aug. 26, 2014).

5 Here, plaintiff named John Wood as a defendant without  
6 presenting any evidence to support his decision to do so. In  
7 fact, while plaintiff admitted that EthosEnergy was his employer,  
8 not once did he point to any evidence indicating that John Wood  
9 was his employer as well. Plaintiff conceded that he had no  
10 knowledge regarding the corporate structure of John Wood, and  
11 admittedly never researched the corporate structure or ownership  
12 of EthosEnergy, despite the fact that this information is a  
13 matter of public record. (Decl. of Heather Crow in Supp. of  
14 Def.’s Mot. for Atty’s Fees (“Crow Decl.”) ¶ 13, Ex. 6 (Parker  
15 Dep. at 39-40).) As this court has previously recognized,  
16 plaintiff offered absolutely no evidence to support the inclusion  
17 of John Wood in this lawsuit. (Docket No. 49 at 23.)

18 Additionally, John Wood’s counsel conferred with  
19 plaintiff’s counsel on numerous occasions and explained that John  
20 Wood was a separate entity from EthosEnergy and that John Wood  
21 had not been plaintiff’s employer at any point. (Crow Decl. ¶  
22 4.) Specifically, on July 12, 2016, John Wood’s counsel notified  
23 plaintiff’s counsel that John Wood was a separate entity and thus  
24 an improperly named party. (Id. at ¶ 5.) On July 13, John Wood  
25 emailed plaintiff’s counsel to again explain these facts, and  
26 even included the public filings of each company to demonstrate  
27 that they were in fact separate entities. (Id. at ¶ 6, Ex. 1.)  
28 Days later, on July 18, 2016, John Wood reached out to

1 plaintiff's counsel yet again, this time regarding voluntary non-  
2 suit of John Wood. (Id. at ¶ 7, Ex. 2.) On July 27, John Wood  
3 explicitly asked plaintiff's counsel to voluntarily dismiss John  
4 Wood to avoid the expense of filing a motion to dismiss. (Id. at  
5 ¶ 8, Ex. 3.) A month later, counsel for John Wood again  
6 contacted plaintiff's counsel to explain that John Wood never  
7 employed plaintiff and to reiterate its request of nonsuit and  
8 the avoidance of incurring additional expenses. (Id. at ¶ 10,  
9 Ex. 4.) Despite all of John Wood's attempts, plaintiff  
10 continually refused to dismiss this defendant.

11           The court finds that plaintiff's naming of John Wood as  
12 a defendant, despite the fact that John Wood was clearly not  
13 plaintiff's employer, was unreasonable and without foundation,  
14 and yet plaintiff "continued to litigate after it clearly became  
15 so." Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 421-22  
16 (1978). Although plaintiff argues that he did not act in bad  
17 faith in bringing this lawsuit, the court need not address  
18 whether plaintiff acted in bad faith because that is not the  
19 test. Rather, a court may grant attorney's fees to a prevailing  
20 defendant if it finds that the plaintiff's action was frivolous,  
21 unreasonable, or without foundation, even if it was not brought  
22 in subjective bad faith. Id. at 421. Accordingly, the court  
23 finds that defendant is entitled to the \$17,612.01 it expended on  
24 attorney's fees and costs during the defense of this lawsuit,  
25 plus the additional fees incurred in the preparation of this  
26 motion.<sup>1</sup>

---

27           <sup>1</sup> Defense counsel represented both John Wood and  
28 EthosEnergy. However, the court has reviewed the attorney's fees

1           IT IS THEREFORE ORDERED that defendant's Motion for  
2 Attorney's Fees (Docket No. 55) be, and the same hereby is,  
3 GRANTED. Plaintiff is ordered to pay defendant \$17,612.01, plus  
4 the additional fees incurred in the preparation of this motion.  
5 Dated: January 10, 2018



6 **WILLIAM B. SHUBB**  
7 **UNITED STATES DISTRICT JUDGE**

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

---

26 and expenses (Crow Decl. ¶ 18, Ex. 8) and is satisfied that the  
27 services for which the fees have been charged relate only to the  
28 defense of John Wood and were not for the benefit of co-defendant  
EthosEnergy. Additionally, plaintiff has not argued that the  
fees have not been sufficiently separated between the defendants.