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

ANTONIO P. SANCHEZ,)	Case No. 09-5574 SC
)	
Plaintiff,)	ORDER GRANTING IN PART AND
)	DENYING IN PART DEFENDANT
v.)	ALCA CORPORATION'S
)	<u>MOTION FOR ATTORNEY'S FEES</u>
BANK OF AMERICA F/K/A COUNTRYWIDE)	
HOME LOANS; NATIONS FIRST LENDING,)	
INC.; ALCA CORPORATION D/B/A HOME)	
FUNDERS FINANCIAL; ROMEO FELISCO)	
ALVIDERA; GI HUANG LI; and DOES 1-)	
20 inclusive,)	
)	
Defendants.)	
)	

I. INTRODUCTION

Now before the Court is a Motion for Attorney's Fees filed by Defendants Alca Corporation DBA Home Funders Financial and Romeo Felisco Alivedera (collectively, "Defendants") against Plaintiff Antonio Sanchez ("Plaintiff"). Docket No. 42 ("Motion"). Plaintiff filed an untimely Opposition; Defendants filed a Reply. Docket Nos. 46, 44.¹ Based on the papers submitted by the parties, and for the reasons described below, the Court hereby GRANTS IN PART AND DENIES IN PART Defendants' Motion for Attorney's Fees.²

¹ No other Defendant participated in this Motion.

² Because the Court has already issued an order in this case granting attorney's fees to a Defendant, See Sanchez v. Bank of America, No. 09-5574, 2010 WL 2382347 (N.D. Cal. June 12, 2010), much of this Order mirrors the text of that earlier order.

1 **II. BACKGROUND**

2 In his initial Complaint, filed November 24, 2009, Plaintiff
3 challenged alleged misconduct that took place during the
4 origination of a housing loan. See Docket No. 1 ("Compl."). Among
5 the eleven causes of action named in the Complaint were two federal
6 causes of action: violation of the Truth in Lending Act, 15 U.S.C.
7 § 1601 ("TILA"), and the Real Estate Settlement Procedures Act, 12
8 U.S.C. § 2605 ("RESPA"). See id.

9 Various Defendants filed motions to dismiss or otherwise
10 responded to the Complaint. Docket Nos. 16, 20, 22-24. In
11 response, Plaintiff filed an untimely Statement of Non-Opposition,
12 Docket No. 30 ("SNO"), stating that he did not oppose dismissal of
13 the two federal causes of action. Plaintiff argued that because
14 "Plaintiff's federal claims against all the defendants are now
15 dismissed," the Complaint failed "to state a basis for the Court's
16 jurisdiction and this Court should dismiss the complaint without
17 prejudice." SNO at 2 n. 1. On the following day, February 26,
18 2010, Plaintiff filed an Amended Complaint, Docket No. 31 ("Am.
19 Compl."), in violation of Federal Rule of Civil Procedure
20 15(a)(1)(B), which requires amended pleadings to be filed within
21 twenty-one days of service of a Rule 12(b) motion. Plaintiff's
22 Amended Complaint included seven state law causes of action and no
23 federal causes of action. See Am. Compl.

24 The Court issued an Order to Show Cause why the case should
25 not be dismissed. Docket No. 36 ("OSC"). In Plaintiff's Response,
26 Plaintiff's counsel, Sharon Lapin ("Lapin"), admitted that the
27 Statement of Non-Opposition and Amended Complaint were untimely
28 filed, provided no reasons why the filings were late or incomplete,

1 and requested that any sanctions be imposed on Lapin herself and
2 not on Plaintiff. Docket No. 37 ("OSC Response") at 1-2. At the
3 show cause hearing on April 9, 2010, the Court dismissed the action
4 against all Defendants with prejudice and permitted Defendants to
5 file motions for attorney's fees. Docket No. 39.

6 In the declaration attached to Defendant's Motion, Defendants
7 claim \$17,221 in attorney's fees and \$216 in costs. Roth Decl. ¶
8 4.³ However, the billing records attached as an exhibit to the
9 declaration document \$8,947.50 in attorney's fees and \$96.15 in
10 costs. Roth Decl. Ex. A ("Initial Billing Statement"). In an
11 exhibit attached to a supplemental declaration filed with their
12 Reply, Defendants provide billing records documenting \$17,724.50 in
13 fees and \$216.14 in costs. Roth Supp. Decl. Ex. A ("Supp. Billing
14 Statement"). Defendants have not explained this discrepancy.

15

16 **III. LEGAL STANDARD**

17 **A. Sanctions**

18 In the present action, there are three relevant legal bases on
19 which the Court can rely in awarding attorney's fees as a sanction.
20 Under 28 U.S.C. § 1927, "[a]ny attorney . . . who so multiplies the
21 proceedings in any case unreasonably and vexatiously may be
22 required by the court to satisfy personally the excess costs,
23 expenses, and attorneys' fees reasonably incurred because of such
24 conduct." Second, under Civil Local Rule 11-6, the court may
25 impose "appropriate sanctions" if the court "has cause to believe

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27 ³ Elizabeth Roth ("Roth"), counsel for Defendants, filed a
28 Declaration in support of Defendants' Motion, Docket No. 40, and a
Supplemental Declaration in support of Defendants' Reply, Docket
No. 42.

1 an attorney has engaged in unprofessional conduct." Civ. L.R. 11-
2 6(a)(2)-(3). Third, courts have inherent power to issue sanctions
3 as necessary to "manage their own affairs so as to achieve the
4 orderly and expeditious disposition of cases." Chambers v. NASCO,
5 Inc., 501 U.S. 32, 43 (1992) (citation and quotation marks
6 omitted). The court may impose sanctions sua sponte under this
7 authority. Roadway Exp., Inc. v. Piper, 447 U.S. 752, 765 (1980).

8 **B. Calculation of Attorney Fees**

9 "The determination of attorney fees is within the sound
10 discretion of the trial court." Zuniga v. United Can Co., 812 F.2d
11 443, 454 (9th Cir. 1987). To determine a reasonable fee, the court
12 should first "calculate the 'lodestar figure' by taking the number
13 of hours reasonably expended on the litigation and multiplying it
14 by a reasonable hourly rate." Fischer v. SJB-P.D. Inc., 214 F.3d
15 1115, 1119 (9th Cir. 2000) (citing Hensley v. Eckerhart, 461 U.S.
16 424, 433 (1983)). "Second, the court must decide whether to
17 enhance or reduce the lodestar figure based on an evaluation of the
18 Kerr factors that are not already subsumed in the initial lodestar
19 calculation." Fischer, 214 F.3d at 1119 (citing Kerr v. Screen
20 Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975). The Kerr
21 factors are include the time and labor required, the novelty and
22 difficulty of the questions involved, the skill requisite to
23 perform the legal service properly, and awards in similar cases.
24 Quesada v. Thomason, 850 F.2d 537, 539 n.1 (9th Cir. 1988).

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1 **IV. DISCUSSION**

2 **A. Sanctions**

3 A specific finding of subjective bad faith by a counsel before
4 the court will support a sanction of attorney's fees under 28
5 U.S.C. § 1927. Salstrom v. Citicorp Credit Servs., Inc., 74 F.3d
6 183, 184-85 (9th Cir. 1996). The same finding supports sanctions
7 under the court's local rules, Zambrano v. City of Tustin, 885 F.2d
8 1473, 1482 (9th Cir. 1989), and under the court's inherent power,
9 Primus Auto. Fin. Servs., Inc. v. Batarse, 115 F.3d 644, 648-49
10 (9th Cir. 1997).

11 Under 28 U.S.C. § 1927, the court may find bad faith "when an
12 attorney knowingly or recklessly raises a frivolous argument or
13 argues a meritorious claim for the purpose of harassing an
14 opponent," Estate of Blas ex rel. Chargualaf v. Winkler, 792 F.2d
15 858, 860 (9th Cir. 1986), or when litigation conduct is "undertaken
16 to increase expenses or delay," New Alaska Dev. Corp. v. Guetschow,
17 869 F.2d 1298, 1306 (9th Cir. 1989). Under Civil Local Rule 11-6,
18 in addition to a finding of bad faith or abusive litigation, the
19 sanction should be "relatively mild" and (1) consistent with higher
20 authority, (2) necessary for the conduct of the court's business,
21 (3) consistent with "principles of right and justice," and (4)
22 "proportionate to the offense and commensurate with principles of
23 restraint and dignity in judicial power." Zambrano, 885 F.2d at
24 1479-80. Monetary sanctions imposed under the court's inherent
25 power are appropriate if the court makes an explicit finding that
26 the underlying conduct constitutes bad faith, Primus, 115 F.3d at
27 648-49, or if bad faith is patent from the record, Optyl Eyewear
28 Fashion Intern. v. Style Co., 760 F.2d 1045, 1050 (9th Cir. 1985).

1 The Court finds Lapin acted in bad faith in the present
2 action. Lapin filed a baseless Complaint for an improper purpose
3 against Defendants, she failed to comply with court rules, and she
4 unreasonably and vexatiously multiplied proceedings in the
5 present action by filing an untimely Statement of Non-Opposition
6 and an Amended Complaint. Over the last year, Lapin has filed more
7 than thirty nearly identical actions in the Northern District of
8 California on behalf of mortgage holders against their brokers and
9 others in the mortgage business.⁴ Each of these actions has been
10 dismissed. The majority of them follow the exact pattern found in
11 the present case -- Lapin files a complaint with federal and state
12 causes of action, defendant files a motion to dismiss the federal
13 causes of action, Lapin files a statement of non-opposition, and
14 the court grants defendant's motion to dismiss.⁵ Those that do not

15 ⁴ E.g., Gonzalez v. GMAC Mortgage, LLC, No. 09-4571; Hall v. PLM
16 Lender Servs., No. 09-4760; Acevedo v. JP Morgan Chase, No. 09-
17 4765; Garlick v. Am. Home Mortgage Serv. Inc., No. 09-5015; Pasco
18 v. Chase Home Finance, No. 09-5017; Johansen v. First Franklin Loan
19 Servs., No. 09-5018; Turchie v. EMC Mortgage Corp., No. 09-5019;
20 Leiva v. PennyMac Loan Servs., LLC, No. 09-5566; Morales v. Bank of
21 America, No. 09-5566; Becerra v. Ocwen Loan Servicing, No. 09-5568;
22 Almaraz v. JP Morgan Chase, No. 09-5569; Leiva v. Citi Mortgage,
23 Inc., No. 09-5571; Soto v. Indymac Mortgage Servs., No. 09-5572;
24 Saucedo v. First Franklin Loan Servs., No. 09-5573; Jimenez v. Bank
25 of America, No. 09-5575; Leiva v. Bank of America, No. 09-5576;
26 Martinez v. GMAC Mortgage, LLC, No. 09-05577; Ramos v. Aurora Loan
27 Servs., No. 09-5579; Kaleb v. Bank of America Home Loans, No. 09-
28 5958; Wright v. Saxon Mortgage Servs., No. 09-5960; Mendez v. EMC
Mortgage Corp., No. 09-5961; Sanchez v. Citi Mortgage, No. 10-0006;
Robinson v. Bank of America, No. 10-0050; Lobato v. Citibank NA,
No. 10-0106; Aragon v. Bank of America, No. 09-5016; Ulloa v.
Wachovia Mortgage, No. 09-5570; Ramirez v. Countrywide Home Loans,
No. 09-0578; Chuakay v. IndyMac Mortgage Servicing, No. 10-0051; Vo
v. Downey Savings and Loan Assoc., No. 09-3985; O'Hearn v. Wells
Fargo Bank NA, No. 09-4762.

26 ⁵ E.g., Gonzalez v. GMAC Mortgage, LLC, No. 09-4571; Garlick v. Am.
27 Home Mortgage Serv. Inc., No. 09-5015; Johansen v. First Franklin
28 Loan Servs., No. 09-5018; Turchie v. EMC Mortgage Corp., No. 09-
5019; Morales v. Bank of America, No. 09-5566; Becerra v. Ocwen
Loan Servicing, No. 09-5568; Almaraz v. JP Morgan Chase, No. 09-

1 follow this precise pattern have been dismissed after Lapin failed
2 to appear for a show cause hearing, e.g., Argon v. Bank of America,
3 No. 09-5016, or upon Lapin's stipulation to dismissal at a motion
4 hearing, e.g., O'Hearn v. Wells Fargo Bank, No. 09-04762. Motions
5 for sanctions have been filed in several actions. E.g., Jimenez,
6 No. 09-5575, Lobato, No. 10-0106. Sanctions have been imposed in
7 at least one action. Swanson v. EMC Mortgage Corp., No. 09-1507,
8 2010 WL 1173089 (E.D. Cal. Mar. 23, 2010).

9 Furthermore, the facts show that Lapin knew at the time she
10 filed Plaintiff's Complaint that this behavior was improper. On
11 October 29, 2009, Judge O'Neill in the Eastern District of
12 California dismissed with prejudice an action brought by Lapin on
13 behalf of another plaintiff. Swanson, No. 09-1507, 2009 WL
14 3627925, *1 (E.D. Cal. Oct. 29, 2009). The order stated, "this
15 Court is concerned that Ms. Swanson has brought this action in
16 absence of good faith and that Ms. Swanson exploits the court
17 system solely for delay or to vex." Id. at *13. The court held
18 that "attempt to vex or delay provides further grounds to dismiss
19 this action." Id. Both this dismissal with prejudice and a
20 related order to show cause predate Lapin's November 29, 2009
21 filing of the Complaint in the present action. While Lapin claims
22 that her "significant and regrettable" errors "fall far short of

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24 5569; Leiva v. Citi Mortgage, Inc., No. 09-5571; Saucedo v. First
25 Franklin Loan Servs., No. 09-5573; Leiva v. Bank of America, No.
26 09-5576; Martinez v. GMAC Mortgage, LLC, No. 09-5577; Kaleb v. Bank
27 of America Home Loans, No. 09-5958; Wright v. Saxon Mortgage
28 Servs., No. 09-5960; Mendez v. EMC Mortgage Corp., No. 09-5961;
Sanchez v. Citi Mortgage, No. 10-0006; Robinson v. Bank of America,
No. 10-0050; Ulloa v. Wachovia Mortgage, No. 09-5570; Ramirez v.
Countrywide Home Loans, No. 09-5578; Chuakay v. IndyMac Mortgage
Servicing, No. 10-0051; Vo v. Downey Savings and Loan Assoc., No.
09-3985.

1 the subjective intentional bad faith and willful vexation and
2 harassment," Opp'n at 5, this timing suggests otherwise.

3 The Court identifies with particularity Lapin's bad-faith
4 conduct in this action. Lapin brought an action in federal court
5 and failed to make a timely response to Defendants' motions to
6 dismiss. She filed an untimely Statement of Non-Opposition in
7 which she did not oppose dismissal of the federal causes of action
8 -- the only basis for the Court's subject matter jurisdiction.
9 Then she filed an untimely Amended Complaint with no federal causes
10 of action and no other basis for subject matter jurisdiction. She
11 has employed similar tactics in dozens of other actions filed
12 throughout California. The only reasonable explanation is that
13 Lapin is seeking to prolong lawsuits that appear to have no merit.
14 At the show cause hearing and in her Opposition to this Motion,
15 Lapin did not provide an alternative explanation for her conduct.

16 The Court finds an award of attorney's fees is both necessary
17 for the conduct of the Court's business and proportionate to the
18 offense. As requested, the Court will sanction Lapin, rather than
19 her client. An award of attorney's fees will serve to deter Lapin
20 and others from filing actions that they have no intent of
21 litigating. An award of fees to Defendants is the appropriate and
22 proportionate sanction, as it will compensate Defendants for the
23 costs incurred due to Lapin's abusive conduct. In sanctioning
24 Lapin, the Court relies on 28 U.S.C. § 1927, Civil Local Rule 11-6,
25 and the Court's inherent power.⁶

26 _____
27 ⁶ In their Motion, Defendants advance additional novel theories
28 supporting their Motion, including malicious prosecution under
Andrus v. Estrada, 39 Cal. App. 4th 1030, 1041 (1995). The Court
declines Defendants' invitation to extend Andrus, instead relying
on the above sources of authority.

1 **B. Calculation of Attorney Fees**

2 "The party seeking an award of fees should submit evidence
3 supporting the hours worked and rates claimed," and if the evidence
4 is lacking, "the district court may reduce the award accordingly."
5 Hensley, 461 U.S. at 433. In their Motion and accompanying
6 declaration, Defendants claim \$17,221 in attorney's fees and
7 \$216.14 in costs. See Roth Decl. ¶ 4. As evidence offered in
8 support, Defendants attach four pages of billing records evincing
9 \$8,947 in attorney's fees and \$96.15 in costs. See Initial Billing
10 Records. In their Reply, Defendants claim an additional \$503.50 in
11 fees "incurred since the filing of this Motion" and \$795 in fees in
12 filing their reply. Reply at 2. Defendants attach to their Reply
13 six pages of billing records totaling \$17,724.50. See Supp.
14 Billing Records.

15 The Court will not consider costs alleged for the first time
16 in Defendants' reply; nor will it consider the Supplemental Billing
17 Records attached to Defendants' Reply. Defendants had the
18 opportunity to document their billing on this matter in support of
19 their Motion, and they did so. They now claim a greater amount of
20 damages, without explaining the difference between their original
21 documentation and the later documentation. Nor did they seek leave
22 from the Court to file supplemental materials, as required by Civil
23 Local Rule 7-3(d). Furthermore, because Defendants provide no
24 evidentiary support for the \$17,221 claimed in their Motion, the
25 Court will use the \$8,947.50 figure Defendants support with their
26 Initial Billing Records as a starting point in determining the
27 appropriate sanction.

28 With respect to Defendants' Initial Billing Records, the Court

1 finds them to be detailed, and helpful in determining both the
2 reasonable number of hours worked and the reasonable rate.
3 Defendants claim 31.5 hours of attorney time was spent on this
4 matter. Initial Billing Records at 3. Defendants identify each
5 discrete action taken, the amount of time dedicated to that action,
6 and the billing rate for the person who performed that action.
7 E.g., id. at 2 (identifying actions such as "Draft Motion for More
8 Definite Statement" and "Draft Proposed Orders"). The rate for
9 each attorney varies from \$265 per hour to \$325 per hour. Id.

10 The Court finds the hourly rates provided by Defendants to be
11 reasonable. Other courts have found similar rates for attorneys
12 practicing in San Francisco to be reasonable. E.g., Asis Internet
13 Servs. v. Optin Global, Inc., No. 05-05124, 2010 WL 2035327, *6
14 (N.D. Cal. May 19, 2010) (finding hourly rates of \$180-\$220 for
15 junior attorneys, \$240-\$280 for temporary attorneys, and \$350-\$425
16 for senior attorneys to be reasonable based on the court's
17 "familiarity with the prevailing rates in this district"); Meyer v.
18 ARS Nat. Servs., Inc., No. 07-6422, 2008 WL 3979466, *2 (N.D. Cal.
19 Aug. 26, 2008) (finding \$300 to be a reasonable hourly rate for
20 attorneys practicing in the San Francisco Bay Area).

21 The Court also finds the number of hours claimed to be
22 reasonable. The 31.5 hours documented by Defendants is comparable
23 to the number sought by movants in similar cases. In Swanson, the
24 defendant claimed 28.75 hours of services rendered in responding to
25 a similar action filed by Lapin. 2010 WL 1173089 at *8.

26 The Court also finds the \$96.15 in costs detailed in the
27 Initial Billing Records to be reasonable and appropriately
28 documented. In light of these considerations, the Court finds

1 \$8,947 to be a reasonable calculation of attorney's fees, and a
2 "relatively mild" sanction in light of Lapin's bad-faith
3 misconduct. Because the Court considered a number of the Kerr
4 factors in determining the reasonable hourly rate and reasonable
5 number of hours worked, the Court opts against enhancing or
6 reducing this amount based on a consideration of the other factors.

7

8 **V. CONCLUSION**

9 For the reasons stated above, the Motion for Attorney's Fees
10 brought by Defendants Alca Corporation DBA Home Funders Financial
11 and Romeo Felisco Alivedera is GRANTED IN PART AND DENIED IN PART.
12 Plaintiff Antonio P. Sanchez's counsel, Sharon Lapin, is hereby
13 ordered to pay Defendants Alca Corporation DBA Home Funders
14 Financial and Romeo Felisco Alivedera Eight Thousand Nine Hundred
15 Forty-Seven Dollars and Fifty Cents (\$8,947.50) in attorney's
16 fees, and Ninety-Six Dollars and Fifteen Cents (\$96.15) in costs,
17 as a sanction for her misconduct in this case.

18

19 IT IS SO ORDERED.

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21 Dated: July 22, 2010

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UNITED STATES DISTRICT JUDGE

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