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

KATRINA ANDERSON, on behalf of herself
and all others similarly situated,

No. C 11-245 SI

Plaintiffs,

**ORDER DENYING CBE'S MOTION FOR
SANCTIONS**

v.

IQOR HOLDINGS US, INC., *et al.*,

Defendants.

CBE Group, Inc. and CBE Group SW, Inc.'s motion for sanctions is scheduled for a hearing on December 9, 2011. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matter is appropriate for resolution without oral argument, and VACATES the hearing. For the reasons set forth below, the Court DENIES the motion.

DISCUSSION

CBE seeks monetary sanctions pursuant to 28 U.S.C. § 1927 and the Court's inherent power. CBE contends that plaintiff's counsel performed an inadequate pre-filing investigation regarding whether CBE was involved in the alleged debt-collection activity on behalf of DirectTV. CBE asserts that if counsel had conducted an adequate investigation, they would have learned that CBE did not call plaintiff's cell phone on behalf of DirectTV. CBE also contends that plaintiff's counsel vexatiously multiplied proceedings by initially refusing to provide plaintiff's cell phone number to CBE's counsel

1 so that CBE could verify whether CBE had called plaintiff, by requesting several declarations from CBE
2 to confirm that CBE did not call plaintiff's cell phone, and by requesting various conditions, such as the
3 conditions that each party bear its own costs and that dismissal be without prejudice to the putative
4 class, in connection with plaintiff's dismissal of CBE from this lawsuit. Plaintiff filed this lawsuit on
5 January 18, 2011, the parties filed a stipulation for dismissal of CBE on May 19, 2011, and the Court
6 filed the order dismissing CBE on May 24, 2011. CBE seeks \$32,973.00 in sanctions.

7 28 U.S.C. § 1927 authorizes the award of attorneys' fees under certain circumstances:

8 Any attorney or other person admitted to conduct cases in any court of the United States
9 or any Territory thereof who so multiplies the proceedings in any case as to increase
10 costs unreasonably and vexatiously may be required by the court to satisfy personally
such excess costs, expenses, and attorneys' fees reasonably incurred because of such
conduct.

11 28 U.S.C. § 1927. The Ninth Circuit has elaborated on the meaning of "unreasonable and vexatious"
12 conduct :

13 [S]ection 1927 sanctions must be supported by a finding of subjective bad faith. Bad
14 faith is present when an attorney knowingly or recklessly raises a frivolous argument,
15 or argues a meritorious claim for the purpose of harassing an opponent. For sanctions
16 to apply, if a filing is submitted recklessly, it must be frivolous, while if it is not
frivolous, it must be intended to harass. Thus, while it is true that reckless filings may
be sanctioned, and nonfrivolous filings may also be sanctioned, reckless nonfrivolous
filings, without more, may not be sanctioned.

17 *Id.* at 436 (citations and internal quotation marks omitted); *accord Pacific Harbor Capital, Inc. v.*
18 *Carnival Air Lines, Inc.*, 210 F.3d 1112, 1118 (9th Cir. 2000); *Trulis v. Barton*, 107 F.3d 685, 694 (9th
19 Cir. 1995); *Estate of Blas v. Winkler*, 792 F.2d 858, 860 (9th Cir. 1986). A finding of subjective bad
20 faith is also required for the imposition of sanctions pursuant to the Court's inherent power. *Salstrom*
21 *v. Citicorp Credit Servs., Inc.*, 74 F.3d 183, 185 (9th Cir. 1996). When awarding sanctions under § 1927
22 or pursuant to the Court's inherent authority, district courts have discretion in determining whether
23 sanctions are appropriate and, if so, in what amount. *Trulis*, 107 F.3d at 694; *F.J. Hanshaw Enterprises,*
24 *Inc. v. Emerald River Development, Inc.*, 244 F.3d 1128, 1135 (9th Cir. 2001).

25 The Court finds that sanctions are not appropriate because CBE has not demonstrated subjective
26 bad faith on the part of plaintiff's counsel. With regard to counsel's pre-filing investigation, plaintiff's
27 counsel has submitted a declaration explaining the steps that he took prior to filing the original
28 complaint to determine who called plaintiff's cell phone. *See generally* Matthews Declaration. Mr.

1 Matthews explains why he was unable to determine who called plaintiff’s cell phone, and why counsel
2 decided to name CBE as a defendant “on information and belief” that CBE had placed the call to
3 plaintiff. Although the Court understands CBE’s frustration at being named in this lawsuit, the Court
4 cannot find subjective bad faith on this record. More importantly, “[b]ecause [28 U.S.C. § 1927]
5 authorizes sanctions only for the multiplication of proceedings, it applies only to unnecessary filings
6 and tactics once a lawsuit has begun. We have twice expressly held that § 1927 cannot be applied to
7 an initial pleading.” *In re Keegan Management Co., Sec. Litig.*, 78 F.3d 431, 435 (9th Cir. 1996)
8 (citations and internal quotation marks omitted). Contrary to CBE’s arguments in its reply, *Salstrom*
9 *v. Citicorp Credit Services, Inc.*, 74 F.3d 183 (9th Cir. 1996), which predated *In re Keegan*, does not
10 hold that § 1927 sanctions can be imposed based on the initial pleading. In *Salstrom*, the Ninth Circuit
11 held that a district court’s denial of Rule 11 sanctions does not preclude an award of § 1927 sanctions.
12 In affirming the district court’s award of § 1927 sanctions, the Ninth Circuit noted that the district court
13 found bad faith “on the basis of three factors: the number and length of the pleadings, the timing
14 involved in many of the filings, and the substance of the claims asserted.” *Id.* at 185. The Ninth
15 Circuit’s reference to “the substance of the claims asserted” is not tantamount to a holding that § 1927
16 sanctions can be applied to an initial pleading.

17 The Court further finds that CBE has not demonstrated subjective bad faith on the part of
18 plaintiff’s counsel after the filing of the complaint. Although CBE complains that counsel did not
19 immediately provide plaintiff’s cell phone number to CBE, counsel did provide that number on April
20 28, 2011, several months after the complaint was filed. Plaintiff’s counsel Mr. Azadian has provided
21 a declaration explaining that he did not provide the cell phone number earlier in part because discovery
22 had not yet commenced. *See* Azadian Decl. ¶ 3. The Court also does find bad faith based on plaintiff’s
23 counsel’s request for several declarations from CBE attesting to the fact that CBE did not call plaintiff
24 on her cell phone, or for negotiating certain terms in connection with the dismissal of CBE. Mr.
25 Azadian explains why counsel took those steps, and the Court finds that they were reasonable measures
26 necessary to the representation of the named plaintiff and the putative class.

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CONCLUSION

For the foregoing reasons, the Court DENIES CBE's motion for sanctions. Docket No. 55.

IT IS SO ORDERED.

Dated: November 30, 2011



SUSAN ILLSTON
United States District Judge