

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 J.D. CHIN,

5 Plaintiff,

6 v.

7 WAL-MART STORES, INC.,

8 Defendant.

Case No. 14-cv-02538-TEH

**ORDER IMPOSING MONETARY
SANCTIONS**

9
10 Finding good cause as provided below, the Court hereby imposes monetary
11 sanctions upon Attorney Arkady Itkin in the amount of \$150 to be paid into the Court on
12 or before November 3, 2014.

13
14 **BACKGROUND**

15 On September 5, 2014, the parties in this case were provided with a Clerk's Notice
16 informing them that the initial Case Management Conference ("CMC") previously
17 scheduled for September 15, 2014, had been continued to September 29, 2014, at 1:30 PM
18 in Courtroom 12. (Docket No. 19). The parties' Joint Case Management Conference
19 Statement was filed on September 19, 2014, and acknowledges this date, time, and
20 location for the Case Management Conference. (Docket No. 20). Nonetheless, without
21 providing any notice or explanation to the Court, Plaintiff's counsel, Arkady Itkin, failed to
22 attend the CMC. Consequently, on September 30, 2014, the Court issued an Order for Mr.
23 Itkin to appear in court and show cause for why sanctions should not issue for his failure to
24 appear. (Docket No. 24). The Order to Show Cause ("OSC") also required Mr. Itkin to
25 file a written response before the Hearing, which he did on October 14. (Docket No. 26).

26 On October 16, Mr. Itkin requested this Court to continue the OSC Hearing set for
27 October 27, citing a scheduling conflict with a mandatory settlement conference in another
28 matter. (Docket No. 27). This request was denied. (Docket No. 28). Mr. Itkin

1 subsequently requested permission to appear at the OSC Hearing by telephone, despite the
2 fact that the OSC explicitly stated that telephonic appearances would not be allowed.
3 (Docket No. 29). This request was similarly denied. (Docket No. 30). Since issuing the
4 original OSC, the Court’s Deputy has received multiple phone calls from Mr. Itkin, some
5 explicitly questioning the decisions and authority of the Court and insinuating that Mr.
6 Itkin would not appear at the OSC Hearing despite the Court’s Orders. Nonetheless, on
7 October 27, 2014, Mr. Itkin appeared before the Court to provide an explanation for his
8 behavior.

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10 **LEGAL STANDARD**

11 The Civil Local Rules for the Northern District of California provides for the
12 sanctioning of attorneys for violations of the local rules. Civil L.R. 1-4. In relevant part,
13 the Rules require that, “[u]nless excused by the Judge, lead trial counsel for each party
14 must attend the initial Case Management Conference.” Civil L.R. 16-10(a). Further, the
15 Standards of Professional Conduct section of the Local Rules states that attorneys must
16 comply with the Local Rules, maintain the respect due to the Court and its judicial officers,
17 and practice with the honesty, care, and decorum required for the fair and efficient
18 administration of justice. Civil L.R. 11-4.

19 The Court may also impose monetary sanctions under its inherent power to “police
20 itself.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-46 (1991). To deter abuse of the
21 judicial process, a court may impose monetary sanctions “for the willful disobedience of a
22 court order.” *Id.* at 45 (internal quotation marks omitted). Additionally, “a court may
23 assess attorneys’ fees when a party has acted in bad faith, vexatiously, wantonly, or for
24 oppressive reasons.” *Id.* at 45-46 (internal quotation marks omitted). “As long as a party
25 receives an appropriate hearing . . . the party may be sanctioned for abuses of process
26 occurring beyond the courtroom” *Id.* at 57. To award sanctions under its inherent
27 powers, the court must “specifically find[] bad faith or conduct tantamount to bad faith.
28 Sanctions are available for a variety of types of willful actions, including recklessness

1 when combined with an additional factor such as frivolousness, harassment, or an
2 improper purpose.” *Fink v. Gomez*, 239 F.3d 989, 994 (9th Cir. 2001).

3 Finally, a Court can issue sanctions under Federal Rule of Civil Procedure 11(b)
4 where an attorney has submitted motions or other papers that are submitted for any
5 improper purpose, such as to harass or cause unnecessary delay. Such a sanction can
6 include nonmonetary directives, an order to pay a penalty into the Court, or attorneys’ fees.
7 Fed. R. Civ. P. 11(c)(4). If imposed on the Court’s initiative, the Court must order the
8 attorney to show cause why conduct specifically described in the order has not violated
9 this Rule. Fed. R. Civ. P. 11(c)(3).

10
11 **DISCUSSION**

12 In failing to appear at the initial Case Management Conference held on September
13 29, 2014, Mr. Itkin was in clear violation of the Civil Local Rules for the Northern District
14 of California. *See* Civil L.R. 16-10(a) (requiring lead trial counsel to attend the initial
15 CMC, absent excuse from the Court). Additionally, Mr. Itkin’s subsequent
16 correspondence with this Court, including multiple phone calls and at least one frivolous
17 filing for a telephonic appearance, has fallen below the required Standards of Professional
18 Conduct for practice in this District. *See* Civil L.R. 11-4 (requiring attorneys to maintain
19 the respect due to the Court and its judicial officers, and to practice with the honesty, care,
20 and decorum required for the fair and efficient administration of justice). As such, this
21 Court is within its authority to sanction Mr. Itkin pursuant to the Local Rules. *See* Civil
22 L.R. 1-4 (providing sanctions for failure to comply with the Local Rules).

23 The Court finds additional authority to sanction Mr. Itkin in its inherent authority to
24 police itself, ensure the efficient administration of justice, and deter abuse of the judicial
25 process as provided in *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), and its progeny.
26 Mr. Itkin’s behavior, especially that undertaken during conversations with the Court’s
27 deputy, is tantamount to bad faith. On multiple occasions, Mr. Itkin has questioned this
28 Court’s decisions, asked whether he could speak with someone that has authority over the

1 Court, and insinuated that he would not follow the Court's order to appear and show cause.
2 This reckless, frivolous, and harassing conduct has taxed the Court's time and patience,
3 and justifies the imposition of a modest monetary sanction aimed to deter such impropriety
4 in the future.


5 Finally, the Court has authority to sanction Mr. Itkin under Federal Rule of Civil
6 Procedure 11 for submitting a request to appear by telephone despite the OSC's specific
7 foreclosure of such an appearance, as well as a denial of this request by telephone.
8 Coupled with Mr. Itkin's other behavior, the Court would be reasonable in finding that this
9 request was filed for an improper purpose, such as to harass or cause unnecessary delay.
10 Fed. R. Civ. P. 11(b)(1). As required by this Rule, after receiving Mr. Itkin's written and
11 oral response to the OSC, the Court has provided Mr. Itkin sufficient due process before
12 ordering him to pay a penalty into the Court. Fed. R. Civ. P. 11(c)(3)-(4).

13
14 **CONCLUSION**

15 Having considered Mr. Itkin's written and oral response to the Order to Show
16 Cause, it is hereby ORDERED that Mr. Itkin shall pay into the Court monetary sanctions
17 in the amount of \$150 on or before November 3, 2014.

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19 **IT IS SO ORDERED.**

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21 Dated: 10/27/14



THELTON E. HENDERSON
United States District Judge

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