United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IVETTE RIVERA,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEESS, AFL-CIO, LOCAL 444,

Defendant.

Case No. 3:16-cv-04959-WHO

ORDER GRANTING MOTION TO DISMISS AND DENYING SANCTIONS

Re: Dkt. No. 25, 29, 41

INTRODUCTION

Plaintiff Ivette Rivera was an employee of the East Bay Municipal Utility District ("EBMUD"), a public entity in Alameda County. During her time as an employee with EBMUD, Defendant Local 444 of the American Federation of State, County, and Municipal Employees ("Local 444") was her exclusive bargaining representative. She previously filed a pro se lawsuit in this district against EBMUD, Local 444, and a number of individuals alleging that EBMUD's refusal to reclassify her as a supervisor was tantamount to discrimination on the basis of her sex; as a result, she was underpaid and then retaliated against for protesting that alleged discrimination and unequal pay. In that action, her claims against Local 444, brought under Title VII of the Civil Rights Act of 1964 ("Title VII") and the Equal Pay Act ("EPA"), were dismissed with prejudice. She now brings the same claims, based upon the same facts, against the same party. Because this action is prohibited under the doctrine of claim splitting, Local 444's motion is GRANTED. Rivera's complaint is DISMISSED WITHOUT LEAVE TO AMEND. But because her complaint was not brought in bad faith, she need not be imposed the extreme penalty of sanctions.

BACKGROUND

I. RIVERA'S PRIOR LAWSUIT

In 2015, Rivera brought a pro se action in the Northern District of California against her former employer, East Bay Municipal Utility District ("EBMUD"), Local 444 of the American Federation of State, County, and Municipal Employees ("Local 444"), and a number of individual defendants. *See* 2015 First Am. Compl. ("2015 FAC")(Def.'s Request for Judicial Notice, ¶ 1, Ex. A, Dkt. No. 27-1).[1] She alleged that she complained to the EBMUD Board repeatedly about her improper categorization as a non-supervisor, 2015 FAC ¶ 45, that EBMUD and Local 444 prevented her from joining the supervisors' union, Local 21, *Id.* ¶ 100, that EBMUD informed her that she would have to make any complaints through her union, Local 444, *Id.* ¶ 58, and that when she filed complaints with EBMUD anyway, they retaliated against her by declining to process her complaints. *Id.* ¶ 101. On the basis of these facts, she asserted claims against Local 444 for employment discrimination and retaliation under Title VII and for violation of the Equal Pay Act. *Id.* ¶¶ 99-101.

The EBMUD defendants and the Union defendants separately moved to dismiss Rivera's complaint. *See Rivera v. E. Bay Mun. Util. Dist.*, No. C 15-00380 SBA, 2015 WL 6954988, at *1 (N.D. Cal. Nov. 10, 2015)("Prior Order"). On November 10, 2015, the Honorable Saundra Brown

[1] Local 444 filed two Requests for Judicial Notice ("RJN") of documents filed by Rivera in the 2015 action, *Rivera v. E. Bay Mun. Util. Dist.*, No. C 15-00380 SBA, 2015 WL 6954988 (N.D. Cal. Nov. 10, 2015). The first seeks judicial notice of the following documents: (1) Rivera's First Amended Complaint (filed July 7, 2015) (Ex. A, Dkt. No. 27-1); (2) the "Register of Actions" (Ex. B, Dkt. No. 27-2); (3) the "Notice of Appearance" by counsel for Rivera (filed November 25, 2015) (Ex. C, Dkt. No. 27-3); and (4) the "Order for Pretrial Preparation" (filed April 21, 2016) (Ex. D, Dkt. No. 27-4). Local 444's "Second Request for Judicial Notice," seeks notice of the following documents: (1) "Plaintiff's Opposition to Union Defendants' Motion to Dismiss the First Amended Complaint," (filed September 2, 2015) (Ex. E, Dkt. No. 35 at 4) and (2) the "Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss Plaintiff's First Amended Complain[t] Pursuant to Fed. R. Civ. P[.] 12(b)(6)" (filed August 19, 2015) (Ex. F, Dkt. No. 35 at 11). Under Federal Rule of Evidence 201, a court "may take judicial notice of matters of public record" on a motion to dismiss, provided the fact is not "subject to reasonable dispute." *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001). I may therefore take notice of proceedings in another case, provided I do not do so "for the truth of the facts recited therein" but merely for "the existence" of those proceedings, the authenticity of which is not subject to reasonable dispute. *Id.* at 690. There can be no reasonable dispute as to the authenticity of the above-mentioned documents, or to the fact that the previous action was filed and prosecuted by Rivera. Defendants' requests are GRANTED.

Armstrong dismissed all of Rivera's claims against each of the defendants. Prior Order at *1. Judge Armstrong granted leave to amend only as to EBMUD. *Id*. at *8–9. On November 11, 2015, David Poore entered a notice of appearance as counsel for Rivera. Dkt. No. 27-3. Until this point, Rivera had represented herself. *See* 2015 FAC at 28 (filed by "Ivette Rivera, Pro Se Plaintiff"). Poore represents Rivera in the present action as well.

II. THE PRESENT ACTION

Rivera filed this action on August 29, 2016, alleging the same claims stemming from the same set of facts, against Local 444. *Compare* Compl. (Dkt. No. 1), *with* 2015 FAC (Dkt. No. 27-1). According to Rivera, EBMUD hired her on January 24, 2005, to be a "Gardener Foreman." Compl. ¶ 7. This entailed supervising and managing a large portion of the gardening and grounds maintenance staff in the West Division of EBMUD. *Id*. In December 2013, she spoke to the EBMUD Board about "her concerns of discrimination and unequal pay for females in the workplace." *Id*. ¶ 8. Specifically, she complained that she had been misclassified as a non-supervisory employee and was not paid the same as men who performed similar functions. *Id*. ¶ 9. She asked that she and similar employees be properly classified and allowed to join Local 21, the supervisors' union. *Id*. Rivera informed the Board that when men had previously held "foreman" positions they were classified as supervisors at the request of Local 444 and moved to Local 21. *Id*. She also informed Local 444 of these concerns. *Id*.

Subsequently, Local 444 and EBMUD changed the internal complaint process to require employees to file all equal employment opportunity complaints through Local 444. *Id*. ¶ 10. After that change, Rivera reiterated her concerns to the EBMUD Board on January 14 and January 28, 2014. *Id*. ¶ 12. On January 28, 2014, EBMUD Director Frank Mellon told Rivera that EBMUD would not investigate or process her complaints on the basis that such matters were "owned" by Local 444. *Id*. ¶ 13. Rivera nonetheless filed a discrimination and unequal pay complaint with the Board. *Id*. EBMUD "took the position that they were going to … strip Plaintiff of her supervisory duties." *Id*. Rivera alleges that Local 444 refused to issue any complaints or grievances to EDMUD, refused to properly classify her as a supervisor, interfered with her rights under Title VII, and failed to transfer her to the supervisor's union, Local 21. *Id*. ¶

14. On the basis of these allegations, Rivera brings claims for gender discrimination, *id*. ¶¶ 16–21, and retaliation, *id*. ¶¶ 22–27, under Title VII, and for negotiation of unequal wages under the Equal Pay Act, *id*. ¶¶ 28–31.

LEGAL STANDARD

A motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). While a complaint "need not contain detailed factual allegations" to survive a Rule 12(b)(6) motion, "it must plead enough facts to state a claim to relief that is plausible on its face." *Cousins v. Lockyer*, 568 F.3d 1063, 1067-68 (9th Cir. 2009) (internal quotation marks and citations omitted). A claim is facially plausible when it "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (internal quotation marks omitted). In considering whether a claim satisfies this standard, the court must "accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). However, "conclusory allegations of law and unwarranted inferences are insufficient to avoid a Rule 12(b)(6) dismissal." *Cousins*, 568 F.3d at 1067 (internal quotation marks omitted).

DISCUSSION

Rivera's prior suit was based on the same set of facts, and included the same claims against the same defendant. In that action, her Title VII and EPA claims were dismissed without leave to amend as to Local 444. Prior Order at *8–9. The court also determined that the claims against Local 444 were "objectively baseless." *Id.* at *10. Rivera brings the same claims here.

Local 444 now moves to dismiss Rivera's current action with prejudice on the basis that she has impermissibly split her claims. Mot. to Dismiss ("MTD")(Dkt. No. 25). It also seeks sanctions under Rule 11, 28 U.S.C. §1927, and the court's inherent powers because the current

action is "an unreasonable multiplication of proceedings." MTD at 11; *see also* Mot. for Sanctions (Dkt. No. 29); Mot. for Sanctions Under 28 U.S.C. § 1927 (Dkt. No. 41).

I. MOTION TO DISMISS

The doctrine of claim-splitting bars a party from bringing claims arising from the same set of facts in successive actions, rather than bringing them all at once. *United States v. Haytian Republic*, 154 U.S. 118, 125 (1894) (explaining that a party is "not at liberty to split up his demand, and prosecute it by piecemeal, or present only a portion of the grounds upon which special relief is sought, and leave the rest to be presented in a second suit, if the first fail. There would be no end to litigation if such a practice were permissible."); *see also Adams v. California Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007)("Plaintiffs generally have no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant.") (internal quotation marks omitted), *overruled in part on other grounds by Taylor v. Sturgell*, 553 U.S. 880 (2008).[2] It exists to "protect the Defendant from being harassed by repetitive actions based on the same claim." *Clements v. Airport Auth. of Washoe Cty.*, 69 F.3d 321, 328 (9th Cir. 1995). The doctrine "borrow[s] from the test for claim preclusion[,]" but rather than requiring that the first suit have a final determination on the merits, it "assum[es] that the first suit were already final." *Adams*, 487 F.3d at 688–89 (quoting another source). If a court determines that a party has impermissibly split her claims, it may exercise its discretion to "dismiss [the] duplicative later-filed action, to stay that action pending resolution of the previously filed action, to enjoin the parties from proceeding with it, or to consolidate both actions." *Id.* at 689.

Rivera attempts to avoid the doctrine here by insisting that her "original Title VII action was dismissed for failure to obtain a Right to Sue from the EEOC[.]" Oppo. 2 (Dkt. No. 31). She then argues that because there was no adjudication on the merits, the doctrine of res judicata does

[2] *Adams* was overruled to the extent it relied on a doctrine known as "virtual representation[,]" an "exception to the rule against nonparty preclusion." *See Taylor*, 553 U.S. at 895. That doctrine is not at issue here, and "the *Adams* court's discussion of impermissible claim-splitting remains precedential." *Lennar Mare Island, LLC v. Steadfast Ins. Co.*, 2016 WL 3197390, at *2 (E.D. Cal. June 8, 2016).

not apply. *See id*. 3–6.

There are two problems with Rivera's argument. First, there is no basis to argue that the Prior Order dismissed plaintiff's claims for failure to exhaust administrative remedies. *See infra* section I.A. Second, she offers no authority suggesting that the claim splitting doctrine requires final adjudication on the merits.[3] While she confusingly refers to the doctrines of claim-splitting and res judicata interchangeably, they are not synonymous. *See Curtis v. Citibank N.A.*, 226 F.3d 133, 138 (2d Cir. 2000)("The rule against duplicative litigation is distinct from but related to the doctrine of claim preclusion or *res judicata.*"). The critical difference is that the claim-splitting doctrine does not require a final decision in the first action. *Adams*, 487 F.3d at 688-689 (affirming dismissal of second suit for claim-splitting while first suit was still pending); *see also Single Chip Sys. Corp. v. Intermec IP Corp.*, 495 F. Supp. 2d 1052, 1059 (S.D. Cal. 2007)(interpreting *Adams* as not requiring a final judgment). *Accord Curtis*, 226 F.3d at 139 ("[P]laintiffs have no right to maintain two actions on the same subject in the same court, against the same defendant at the same time."); *Serlin v. Arthur Andersen & Co.*, 3 F.3d 221, 223 (7th Cir.2012) ("[A] suit is duplicative if the claims, parties, and available relief do not significantly differ between the two actions.")(internal quotation marks omitted); *Katz v. Gerardi*, 655 F.3d 1212, 1219 (10th Cir. 2011) ("If the party challenging a second suit on the basis of claim splitting had to wait until the first suit was final, the rule would be meaningless."); *Vanover v. NCO Fin. Servs., Inc.*, 857 F.3d 833, 840 n.3 (11th Cir. May 17, 2017) ("The 'claim splitting doctrine' applies where a second suit has been filed before the first suit has reached a final judgment."). The only way to reach Rivera's conclusion is to ignore the plain language in the Prior Order, creatively interpret Judge Armstrong's analysis, and disregard Ninth Circuit precedent. I can do none of those things, and must conclude that this action is barred by the doctrine against claim-splitting.

[3] In fact, her own cases suggest the contrary. *See* Oppo. 2 (citing *Katz v. Gerardi*, 655 F.3d 1212, 1217–19 (10th Cir. 2011), which states, "[w]hile it is correct that a final judgment is necessary for traditional claim preclusion analysis, it is not required for the purposes of claim splitting.").

A. The Prior Order

Rivera argues that her prior action was dismissed against Local 444 for failure to exhaust by looking through the Prior Order to Local 444's underlying motion and finding that "[t]he ***sole argument*** contained in the motion to support the dismissal of the Title VII claim against Local 444 was that Plaintiff had failed to properly exhaust her administrative remedies." Oppo. 3 (Dkt. No. 31)(emphasis in original). But this analysis ignores the plain language in the Prior Order. In analyzing Rivera's employment claims, Judge Armstrong cited *Miller v. Maxwell's Intern. Inc.*, 991 F.2d 583, 587 (9th Cir. 1993), for the proposition that "[u]nder Title VII, only the plaintiff's employer is a proper party-defendant." Prior Order at *8 n.10. She then concluded that "[s]ince EBMUD is alleged to be Plaintiff's employer, *all other Defendants are improper parties* to Plaintiff's Title VII claim." *Id*. (emphasis added). The court proceeded to dismiss Rivera's Title VII claims for failure to allege sufficient facts,[4] and granted leave to amend "as to EBMUD only." *Id.* at *8–9. As for Rivera's EPA claim, Judge Armstrong found that "[p]laintiff's claims are centered on the fact that she was not reclassified as a supervisor—not that men and women are paid differently for substantially equal work." *Id*. at *9. She dismissed it without leave to amend. *Id.*

The *Miller* court affirmed the rule that "individual defendants [who are not employers] cannot be held liable for damages under Title VII[,]" but it said nothing about the liability of unions. *See Miller*, 991 F.2d at 587. Perhaps this is why Rivera is confused. Other than citing *Miller*, the court provided no additional basis for dismissing all defendants other than EBMUD. Unlike individuals, labor organizations can be held liable for unlawful employment practices under Title VII. *See* 42 U.S.C.A. § 2000e-2(c). However, rather than raise the issue with Judge Armstrong, Rivera apparently assumed that Local 444 was dismissed for failure to exhaust and

[4] In analyzing the Title VII employment discrimination claim, the court found that Rivera "fail[ed] to allege any facts to support her contention that her gender bore any relation to Defendants' handling of her request for reclassification." *Id*. at *8. And it dismissed Rivera's Title VII retaliation claim because she "failed to allege a plausible claim for retaliation under Title VII." *Id*. at *9. The court noted that she "failed to establish that she engaged in a protected activity[,]" and further, "[e]ven if protected activity were alleged, there [were] no facts demonstrating a causal link between her activity and any adverse employment action." *Id*.

proceeded to exhaust her administrative remedies prior to filing this action. Her assumption has no basis in the plain language of the Prior Order. She asks me to accept her assumption without corroboration but I cannot take that leap with her; I must defer to the judgment in the Prior Order. As Local 444 points out, Reply 6 (Dkt. No. 34), to the extent there was any ambiguity as to the Prior Order and Judge Armstrong's basis for dismissing Local 444, Rivera should have raised the issue with Judge Armstrong. *See* Civ. L. R. 7-9(b)(3)(listing grounds for filing a motion for reconsideration).

While Judge Armstrong states the rule for administrative exhaustion near the beginning of the Title VII analysis, there is no indication anywhere in the opinion that she grounded her decision on Rivera's failure to exhaust. But even if Rivera's claims were dismissed for failure to exhaust, the doctrine against claim splitting applies.[5]

B. This Action is Duplicative of the Prior Action

Having disposed of Rivera's arguments that the prohibition against claim-splitting does not apply, the remainder of the analysis is straightforward. "[I]n assessing whether the second action is duplicative of the first, we examine whether the causes of action and relief sought, as well as the parties or privies to the action, are the same." *Adams*, 487 F.3d at 689. "The most important criterion in determining whether the two actions are the 'same' is 'whether the two suits arise out of the same transactional nucleus of facts.'" *Bojorquez v. Abercrombie & Fitch, Co.*, 193 F. Supp. 3d 1117, 1123 (C.D. Cal. 2016). This action is indisputably the same: the causes of action are the same and they are alleged against a defendant who was a party to the Prior Action. While Rivera alleges some additional facts here, she does not even challenge that conclusion.[6]

[5] If Rivera is correct that Judge Armstrong dismissed Local 444 for failure to exhaust, and did so with prejudice, she may be able to raise the issue on appeal. *See Lebron-Rios v. U.S. Marshal Serv.*, 341 F.3d 7, 8–9 (1st Cir. 2003)("We hold that the district court's dismissal should have been without prejudice to any later Title VII action brought by the plaintiffs on properly exhausted claims."). But that does not impact my analysis here.

[6] This case is premised on the same facts as those alleged in Rivera's previous suit: Rivera was improperly classified as a non-supervisor, 2015 FAC ¶¶ 54, 56-58 Compl. ¶ 7, EBMUD and Local 444 attempted to prevent Rivera from filing formal unequal pay and sex discrimination complaints, 2015 FAC ¶¶ 49-50, Compl. ¶¶ 10, 14-15, and Rivera faced retaliation when she filed those complaints anyway. 2015 FAC ¶¶ 49, 100; Compl. ¶ 11.

Because this action is duplicative of the still-pending action before Judge Armstrong, Rivera's claims are barred by the doctrine of claim-splitting, and her complaint cannot be cured by amendment. *See Agha-Khan v. United States*, 2015 WL 5734380, at *6 (E.D. Cal. Sept. 29, 2015) (dismissing claims with prejudice where, among other fatal flaws, suit constituted impermissible claim-splitting). Local 444's motion to dismiss with prejudice is GRANTED.

II. MOTION FOR SANCTIONS

There are three sources of authority under which a court may sanction parties or their counsel: "(1) Federal Rule of Civil Procedure 11, which applies to signed writings filed with the court, (2) 28 U.S.C. § 1927, which is aimed at penalizing conduct that unreasonably and vexatiously multiplies the proceedings, and (3) the court's inherent power." *Fink v. Gomez*, 239 F.3d 989, 991 (9th Cir. 2001).

Local 444 seeks approximately $30,000 in sanctions against Rivera and her attorney, Poore, under all three, for the filing of her complaint in this action. MTD at 6 (requesting $29,295.51 in sanctions under Section 1927 and the court's inherent powers); First Mot. for Sanctions at 7-8 (Dkt. No. 29) (requesting sanctions for "attorneys' fees and costs to Defendant" in the amount of $28,251.76 under Rule 11); Second Mot. for Sanctions at 7 (Dkt. No. 41) (requesting $37,405.98 in sanctions under Section 1927 and the court's inherent powers). Local 444 alleges that the sanctions requested represent the amount that it has sustained in defending this action.

A. Rule 11

Local 444 accuses Rivera of filing her complaint frivolously in violation of Rule 11 of the Federal Rules of Civil Procedure. Rule 11 provides for sanctions where a party has advanced an argument in any signed paper before the court that is (1) presented for "any improper purpose," or (2) not warranted by existing law or "by a nonfrivolous argument" to change, modify, or reverse existing law. Fed. R. Civ. P. 11. Where a complaint is the focus of Rule 11 proceedings, a district court conducts a two-prong inquiry: "(1) whether the complaint is legally or factually baseless from an objective perspective," and "(2) if the attorney has conducted a reasonable and competent inquiry before signing and filing it." *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir.

2002) (internal quotation marks and citation omitted). Imposing sanctions under Rule 11 is "an extraordinary remedy, one to be exercised with extreme caution." *Operating Eng'rs Pension Trust v. A-C Company*, 859 F.2d 1336, 1345 (9th Cir. 1988).

Local 444 urges for Rule 11 sanctions because (1) the filing of the complaint was clearly barred by claim-splitting; and (2) the claims contained in the complaint were plainly meritless given their previous dismissal. Neither rationale provides adequate grounds for imposing sanctions.

Rivera's complaint is not factually baseless,[7] nor is it legally baseless because the grounds for Local 444's dismissal from the Prior Action were arguably ambiguous.[8] Moreover, unlike res judicata, the law surrounding the claim-splitting doctrine is itself unclear. *Compare Single Chip Sys. Corp.*, 495 F. Supp. 2d at 1058 (noting that the defendant's argument that claim-splitting requires a final judgment, then finding the argument "unpersuasive," without imposing sanctions), *with Buster v. Greisen*, 104 F.3d 1186, 1190 (9th Cir. 1997) (affirming district court's award of sanctions against an attorney who brought a suit that "involve[d] the same parties and the same 'transactional nucleus of fact' as the prior suit and it [sought] to relitigate *issues that were conclusively resolved* in the prior suit.")(emphasis added). It is true that "[t]his court has already dismissed with prejudice the *same* causes of action arising out of the *same* transactional nucleus of facts brought by the *same* Plaintiff against the *same* Defendant." Second Mot. for Sanctions at 1 (emphasis in original). But Rivera advances a legitimate, if unpersuasive, argument that renders

[7] Refiling a complaint identical, or substantially similar, to one that has been dismissed is generally sanctionable. *See Wages v. I.R.S.*, 915 F.2d 1230, 1235-36 (9th Cir. 1990) (upholding district court's award of sanctions for filing an amended complaint that "did not materially differ from one which the district court had already concluded did not state a claim"). But Rivera's complaints differed in important ways, most notably, she exhausted her administrative remedies prior to filing this suit. In addition, she included additional allegations substantiating her belief that her misclassification was the product of gender discrimination. *See* Compl. ¶ 9.

[8] Local 444 insists that any competent lawyer would have known that Rivera's argument--that her previous case was dismissed for failure to exhaust administrative remedies--was meritless. Second Mot. for Sanctions at 5. But as explained earlier, the basis for Local 444's dismissal from the Prior Action was not entirely clear. *See supra* section I.A. Moreover, whether a "competent lawyer would have known" is not the appropriate inquiry. What matters is whether the filing of the complaint was non-frivolous from an objective perspective. *See Christian v. Mattel, Inc.*, 286 F.3d 1118, 1128 (9th Cir. 2002) (inquiring as to whether the complaint is "legally or factually 'baseless' from an objective perspective").

the filing of this action non-frivolous. Local 444's motion for Rule 11 sanctions is DENIED.

B. Section 1927 Sanctions

Local 444 also seeks sanctions under 28 U.S.C. section 1927, which provides that "[a]ny attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927.

Local 444 asks me to impose sanctions on Rivera for filing her complaint in this action because it is an "unreasonable multiplication of proceedings." First Mot. for Sanctions at 11. This misconstrues the term "multiplication" in Section 1927; it means "to multiply or prolong" proceedings of a single case. *See In re Yagman*, 803 F.2d 1085, 1187 (9th Cir. 1986) ("It is only possible to multiply or prolong proceedings after the complaint is filed."). Accordingly, Section 1927 sanctions cannot be imposed for the filing of an initial complaint. *See, e.g.*, *In re Keegan Mgmt. Co., Sec. Litig.*, 78 F.3d 431, 435 (9th Cir. 1996) ("We have twice expressly held that [Section] 1927 cannot be applied to an initial pleading.").

Since Rivera's complaint here could not have functioned to delay or unnecessarily complicate the proceedings of this case, section 1927 sanctions are inapplicable. *See id.* ("Because [Section 1927] authorizes sanctions only for the multiplication of proceedings, it applies only to unnecessary filings and tactics once the lawsuit has begun.")(internal quotation marks and brackets omitted)).

C. Inherent Power of the Court

A court may impose sanctions under its inherent power based on a finding of "bad faith or conduct tantamount to bad faith." *Fink v. Gomez*, 239 F.3d 989, 994 (9th Cir. 2001). "Sanctions are available for a variety of types of willful actions, including recklessness when combined with an additional factor such as frivolousness, harassment, or an improper purpose." *Id.*

Local 444 contends that sanctions under the inherent power of the court are warranted because Rivera "recklessly elected to file the present action seeking to re-litigate previously-dismissed claims and continues to prosecute the matter despite repeated urgings to withdraw it." Second Mot. for Sanctions at 6. I am not persuaded. As discussed above, the filing of Rivera's

complaint here was not "reckless" or "frivolous" because she had some objectively reasonable basis to believe that exhausting her administrative remedies would allow her claim to proceed against Local 444. While Rivera's complaint must be dismissed for improper claim-splitting, it does not render her "reckless" in advancing misstatements of law and fact. She put forth a legitimate argument that the filing of her suit was permissible, and she sufficiently changed her complaint to assert colorable claims. Colorable claims are sanctionable under the inherent power of the court only where the litigant is "substantially motivated by vindictiveness, obduracy, or mala fides." *Fink*, 239 F.3d at 992. Local 444 makes no allegation that this suit is so motivated.

Local 444's motion for sanctions under the inherent power of the court is DENIED.

CONCLUSION

For the reasons explained above, Local 444's motion to dismiss with prejudice is GRANTED, and its motions for sanctions are DENIED.

IT IS SO ORDERED.

Dated: July 17, 2017

William H. Orrick
United States District Judge

United States District Court
Northern District of California