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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ZORA ANALYTICS, LLC, a
California Limited Liability Company,

Plaintiff,

v.

SRIKANTH SAKHAMURI, an
individual; CIGNITI, INC., a Texas
corporation; and DOES 1 through 10
inclusive;

Defendants.

CASE NO. 13-cv-00639 JM (WMC)

ORDER: (1) GRANTING
DEFENDANT SAKHAMURI'S EX
PARTE MOTION TO VACATE
PLAINTIFF'S NOTICE OF
VOLUNTARY DISMISSAL
PURSUANT TO RULE 41(a)(1)(A)(i);

(2) VACATING PLAINTIFF'S
NOTICE OF VOLUNTARY
DISMISSAL;

(3) GRANTING DEFENDANT
SAKHAMURI'S UNOPPOSED
MOTION TO DISMISS WITH
PREJUDICE;

(4) DENYING PLAINTIFF'S
VOLUNTARY MOTION TO
DISMISS PURSUANT TO RULE
41(a)(2);

(5) DENYING DEFENDANT
SAKHAMURI'S REQUEST FOR
ATTORNEYS' FEES; AND

(6) GRANTING DEFENDANT
SAKHAMURI'S REQUEST FOR
COSTS UNDER RULE 54(d)(1)

On November 11, 2013, Plaintiff Zora Analytics, LLC ("Zora Analytics")
filed a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure
("Rule") 41(a)(1)(A)(i). Dkt. No. 37. On November 26, 2013, Defendant Srikanth

1 Sakhamuri (“Sakhamuri”) filed an *ex parte* motion to vacate Zora’s notice of
2 voluntary dismissal. Dkt. No. 38. In response, Zora filed an opposition to
3 Sakhamuri’s *ex parte* motion, as well as a motion for voluntary dismissal pursuant
4 to 41(a)(2). Dkt. Nos. 40 and 41, respectively. Sakhamuri then filed an opposition
5 to Zora’s motion and a reply to its own *ex parte* motion. Dkt. Nos. 42 and 43,
6 respectively. Zora did not file a reply to Sakhamuri’s opposition. For the reasons
7 set forth below, (1) Defendant Sakhamuri’s *ex parte* motion to vacate Plaintiff
8 Zora’s notice of voluntary dismissal, Dkt. No. 38, is GRANTED; (2) Plaintiff
9 Zora’s notice of voluntary dismissal pursuant to Rule 41(a)(1)(A)(i), Dkt. No. 37, is
10 VACATED; (3) Defendant Sakhamuri’s unopposed motion to dismiss the third
11 amended complaint, Dkt. No. 35, is GRANTED WITH PREJUDICE; (4) Plaintiff
12 Zora’s motion for voluntary dismissal pursuant to Rule 41(a)(2), Dkt. No. 41, is
13 DENIED AS MOOT; (5) Defendant Sakhamuri’s request for attorneys’ fees is
14 DENIED; and (6) Defendant Sakhamuri’s request for costs is GRANTED in an
15 amount to be taxed by the Clerk of Court.

16 **BACKGROUND**

17 On November 26, 2012, Zora filed a complaint against Sakhamuri in state
18 court. On March 18, 2013, Sakhamuri filed an answer to Zora’s complaint in state
19 court and also removed the matter to this court based upon federal diversity
20 jurisdiction. Zora filed an amended complaint in federal court on April 4, 2013,
21 asserting allegations against Sakhamuri and an additional defendant, Cigniti, Inc.
22 (“Cigniti”) (and together with Sakhamuri, “Defendants”). Zora asserted four causes
23 of action against Defendants: permanent injunction; violations of CUTSA; breach
24 of written contract; and violations of the Lanham Act, 115 U.S.C. § 1125(a). Zora
25 also asserted a fifth cause of action against Cigniti only for negligent
26 hiring/supervision/training.

27 On April 25, 2013, Sakhamuri filed an answer to Zora’s amended complaint.
28 Cigniti then submitted a motion to dismiss Zora’s complaint as it related to Cigniti

1 pursuant to Rule 12(b)(6) for failure to state a claim on May 1, 2013. On June 18,
2 2013, the court granted Cigniti's motion to dismiss with leave to amend.

3 On July 12, 2013, Zora filed a second amended complaint in which Zora
4 asserted three causes of action against Defendants: violations of the Lanham Act,
5 115 U.S.C. § 1125(a); intentional interference with prospective economic
6 advantage; and violations of Unfair Business Practices, Cal. Bus. & Prof. Code
7 § 17200. Zora also asserted two causes of action against Cigniti alone: breach of
8 written contract and negligent supervision. On August 2, 2013, Defendants filed
9 motions to dismiss Zora's claims. On September 9, 2013, the court granted
10 Defendants' motions with leave to amend.

11 Zora filed a third amended complaint on October 15, 2013. That same day,
12 Zora and Cigniti filed a joint motion to dismiss Cigniti from this action with
13 prejudice. The court granted the parties' joint motion on October 23, 2013. In the
14 third amended complaint, Zora re-alleged these causes of action against Sakhamuri:
15 violations of Lanham Act, 115 U.S.C. § 1125(a); intentional interference with
16 prospective economic advantage; and violations of Unfair Business Practices, Cal.
17 Bus. & Prof. Code § 17200. Zora also alleged a breach of fiduciary duty cause of
18 action based on allegations against Sakhamuri, alleging that he was Zora's agent
19 more than a year after Sakhamuri ceased working on any of Zora's projects. On
20 October 30, 2013, Sakhamuri filed a motion to dismiss the third amended complaint
21 for failure to state a claim. Zora did not file a response to Sakhamuri's motion to
22 dismiss, instead filing a notice of voluntary dismissal of the case without prejudice
23 pursuant to Rule 41(a)(1)(A)(i) on November 21, 2013.

24 On November 26, 2013, Sakhamuri filed an *ex parte* motion to vacate Zora's
25 notice of voluntary dismissal. Sakhamuri objected to the dismissal because Rule
26 41(a)(1)(A)(i) only permits a plaintiff to voluntarily dismiss its action without a
27 court order before a defendant serves an answer in the case. As previously noted,
28 Sakhamuri filed an answer to Zora's initial complaint in state court and an answer to

1 Zora's amended complaint in this court. On December 9, 2013, Zora filed a
2 response to Sakhamuri's *ex parte* motion, as well as a motion for voluntary
3 dismissal pursuant to Rule 41(a)(2). Sakhamuri submitted a response to Zora's
4 motion on January 27, 2014, in addition to a reply brief pertaining to its own *ex*
5 *parte* motion on February 3, 2014.

6 **EX PARTE MOTION TO VACATE VOLUNTARY DISMISSAL**

7 In Sakhamuri's *ex parte* motion to vacate Zora's notice of voluntary
8 dismissal pursuant to Rule 41(a)(1)(A)(i), Sakhamuri makes three primary
9 arguments. First, Sakhamuri contends Zora's notice of voluntary dismissal is
10 improper based upon Sakhamuri having already served an answer this case. See
11 Fed. R. Civ. P. 41(a)(1)(A)(i). Second, Sakhamuri argues he is entitled to dismissal
12 of the action with prejudice in light of Zora having had three opportunities to amend
13 its complaint and Sakhamuri's pending motion to dismiss the third amended
14 complaint at the time Zora filed its notice of dismissal. Noting that Zora opted not
15 to file a response to Sakhamuri's motion to dismiss the third amended complaint,
16 Sakhamuri contends he is nevertheless entitled to have the merits of the motion
17 ruled upon by the court because he incurred significant costs and fees in preparing
18 the motion. Third, Sakhamuri argues he should be entitled to file a motion for
19 attorneys' fees and costs pursuant to applicable statutes, regardless of whether the
20 court rules upon Sakhamuri's motion to dismiss the third amended complaint or,
21 alternatively, orders dismissal of the case under Rule 41(a)(2). In either of these
22 circumstances, Sakhamuri contends he is entitled to seek payment of reasonable
23 fees and costs.

24 In light of Sakhamuri's answer to the amended complaint and the lack of a
25 stipulation for dismissal between the parties, Zora concedes that its notice of
26 voluntary dismissal should be vacated. For this reason, Zora now seeks a court
27 order dismissing the case pursuant to Rule 41(a)(2) in a concurrently filed motion to
28 dismiss. Fed. R. Civ. P. 41(a)(2). In its response, Zora agrees with Sakhamuri that

1 the case should be dismissed with prejudice and has requested dismissal with
2 prejudice in its pending motion. However, Zora argues Sakhamuri's argument
3 regarding the attorneys' fees and costs is premature, particularly because Sakhamuri
4 failed to provide any California authority explicitly authorizing the award of
5 attorneys' fees in this instance. For these reasons, Zora argues that Sakhamuri's *ex*
6 *parte* application should be denied, and Zora's concurrently filed motion for
7 voluntary dismissal under Rule 41(a)(2) should be granted.

8 In sum, the parties agree that Zora's notice of dismissal pursuant to Rule
9 41(a)(1)(A)(i) was inappropriate in light of Sakhamuri having filed an answer in
10 this case. Accordingly, the court grants Sakhamuri's request to vacate Zora's notice
11 of dismissal. Dkt. No. 38.

12 **PARTIES' MOTIONS TO DISMISS**

13 Having vacated the Rule 41(a)(1)(A)(i) notice of dismissal, there are two
14 motions before the court: Sakhamuri's motion to dismiss the complaint for failure to
15 state a claim, Dkt. No. 35, and Zora's motion for voluntary dismissal pursuant to
16 Rule 41(a)(2), Dkt. No. 41. Both parties seek dismissal of the action with prejudice.

17 With regard to Sakhamuri's unopposed motion to dismiss for failure to state a
18 claim, the Ninth Circuit has held that a district court may properly grant a motion to
19 dismiss as unopposed pursuant to a local rule where the local rule permits, but does
20 not require the granting of a motion for failure to respond. See, generally, Ghazali
21 v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam) (affirming dismissal for
22 failure to timely file opposition papers). Civil Local Rule 7.1.f.3.c expressly
23 provides that "[i]f an opposing party fails to file the papers in the manner required
24 by Local Rule 7.1.e.2, that failure may constitute a consent to the granting of that
25 motion or other request for ruling by the court."

26 Prior to granting an unopposed motion for dismissal, the court must weigh the
27 following factors: "(1) the public's interest in expeditious resolution of litigation;
28 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants;

1 (4) the public policy favoring disposition of cases on their merits; and (5) the
2 availability of less drastic sanctions.” Ghazali, 46 F.3d at 53 (quoting Henderson v.
3 Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986)). The Ninth Circuit has recognized
4 that the first and fourth factors cut in opposite directions. See Yourish v. California
5 Amplifier, 191 F.3d 983, 990 (9th Cir. 1999) (first factor always weighs in favor of
6 dismissal); Hernandez v. City of El Monte, 138 F.3d 393, 401 (9th Cir. 1998)
7 (fourth factor counsels against dismissal).

8 In this instance, as in most, the first two factors weigh in favor of dismissal.
9 The third factor considering the risk of prejudice to the defendant also weighs in
10 favor of dismissal as both parties seek dismissal of this action with prejudice.
11 While public policy favors disposition of cases on their merits, the fourth factor is
12 less significant where, as here, both parties seek dismissal of the case. Similarly,
13 while less drastic sanctions might be available, the parties agree that their
14 preference is for dismissal of the case with prejudice, making this factor largely
15 irrelevant to the court’s analysis here.

16 Based on these considerations, the court grants Sakhamuri’s unopposed
17 motion to dismiss this action with prejudice and denies Zora’s motion for voluntary
18 dismissal as moot. Ordinarily, “a dismissal of the action, whether on the merits or
19 not, generally means that defendant is the prevailing party.” See 10 Fed. Prac. &
20 Proc. Civ. §2667, Award of Costs to the Prevailing Party; see also Miles v. State of
21 Cal., 320 F.3d 986, (9th Cir. 2003)(noting there is a “prevailing party” when there
22 has been a “material alteration of the legal relationship of the parties”)(quoting
23 Buckhannon Bd. and Care Home, Inc. v. W. Va. Dep’t of Health and Human Res.,
24 532 U.S. 598, 603 (2001)). See also Zenith Ins. Co. v. Breslaw, 108 F.3d 205, (9th
25 Cir. 1997) (finding voluntary dismissal with prejudice is sufficient to confer
26 prevailing party status on the defendant because “a dismissal with prejudice is
27 tantamount to a judgment on the merits”) *abrogated on other grounds by* Ass’n of
28 Mex.-Am. Educators v. State of Cal., 231 F.3d 572, 592 (9th Cir. 2000). As a

1 result, Sakhamuri is the prevailing party in this action, and the sole remaining issue
2 between the parties is whether Sakhamuri is entitled to attorneys' fees and costs.

3 **ATTORNEYS' FEES**

4 In both Sakhamuri's *ex parte* motion to vacate Zora's notice of voluntary
5 dismissal and his opposition to Zora's motion for voluntary dismissal, Sakhamuri
6 argues he is entitled to attorneys' fees.¹ "In the United States, the prevailing litigant
7 is ordinarily not entitled to collect a reasonable attorneys' fee from the loser."
8 Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 412 U.S. 240, 247 (1975).
9 However, there are a number of exceptions to the so-called "American Rule" which
10 Sakhamuri argues apply in this instance. Id. at 258-59.

11 First, Sakhamuri argues he is entitled to attorneys' fees under the bad faith
12 exception to the American Rule. Among other reasons, courts may assess attorneys'
13 fees when the losing party has acted in bad faith, vexatiously, wantonly, or for
14 oppressive reasons. Id. (citations omitted). Attorneys' fees awarded as sanctions
15 may be warranted under this exception if the court specifically finds bad faith or
16 conduct tantamount to bad faith. Fink v. Gomez, 239 F.3d 989, 994 (9th Cir. 2001).
17 This may include various types of willful actions, such as recklessness when
18 combined with an additional factor like frivolousness, harassment, or an improper
19 purpose. Id.

22 ¹ Zora objects to Sakhamuri having included its request for attorneys' fees in its
23 *ex parte* motion and its opposition to Zora's motion to dismiss rather than in a motion
24 for attorneys' fees as described in Federal Rule of Civil Procedure 54(d)(2). As noted
25 by Sakhamuri in his opposition brief, the court's law clerk discussed the attorneys' fees
26 issue with counsel for the parties in a teleconference held December 11, 2013. See
27 Def. Opp. at 7 (Dkt. No. 42). In that discussion, the parties and the law clerk agreed
28 that the issue of attorneys' fees would be raised by the parties in the briefing regarding
Zora's motion to voluntarily dismiss pursuant to Rule 41(a)(2). Based upon their
arguments, the court would determine whether attorneys' fees were warranted under
the circumstances. In the event that the court found Sakhamuri entitled to attorneys'
fees, the parties agreed Sakhamuri would then file a motion addressing the appropriate
amount of the award with Zora having the opportunity to oppose the requested amount.
In light of this agreement, as well as the court's denial of attorneys' fees herein, Zora's
objection is overruled.

1 Sakhamuri offers several bases for finding bad faith sanctions warranted
2 based on Zora's conduct in this case. Sakhamuri objects to Zora having brought
3 this action in state court when it was clearly subject to federal diversity jurisdiction.
4 Zora is a California corporation and Sakhamuri resides in Texas, which not only
5 was known to Zora at the time the lawsuit was filed, but was expressly alleged in
6 the complaint. Compl. at ¶ 5. As a result, Sakhamuri argues he was forced to incur
7 attorneys' fees and legal costs associated with removing this case to federal court.
8 He further contends Zora recklessly filed this case in state court and did so for an
9 improper purpose.

10 Sakhamuri also objects to Zora having filed a notice of voluntary dismissal
11 pursuant to Rule 41(a)(1)(A)(i), which Zora now concedes was improper. As a
12 result, Sakhamuri incurred additional fees and costs to file his *ex parte* motion to
13 vacate the notice and to oppose Zora's motion to dismiss pursuant to Rule 41(a)(2)
14 because Zora attempted to mandate conditions on the dismissal to avoid an attorney
15 fee award. Sakhamuri argues the original notice of dismissal and Zora's subsequent
16 motion for voluntary dismissal are both improper, suggesting both were brought in
17 bad faith to avoid an adverse decision on Sakhamuri's Rule 12(b)(6) motion to
18 dismiss and to avoid a motion for attorneys' fees.

19 Additionally, Sakhamuri contends he has incurred substantial fees and costs
20 associated with preparing two answers and two motions to dismiss pursuant to Rule
21 12(b)(6). Sakhamuri contends Zora failed to correct defects in the complaint as
22 identified by the court, but instead simply removed and added different causes of
23 action in an attempt to find a successful cause of action. Despite having amended
24 the complaint three times, Sakhamuri emphasizes Zora has yet to cure the defects,
25 prompting Sakhamuri to bring its unopposed motion to dismiss the third amended
26 complaint at significant expense.

27 Moreover, Sakhamuri argues Zora's complaint was at all times frivolous.
28 Sakhamuri contends Zora's allegations of unfair competition, intentional

1 interference, misappropriation of trade secrets, Lanham Act violations, and breaches
2 of duties owed have lacked legal and factual support. In his opposition to Zora's
3 motion to voluntarily dismiss the third amended complaint, Sakhamuri details
4 Zora's repeated failures to state a claim upon which relief could be granted in its
5 amended complaints. Sakhamuri further alleges Zora greatly exaggerated its
6 purported damages to meet the diversity requirements in federal court. As such,
7 Sakhamuri contends Zora's lawsuit is, and was at all times, without merit and
8 brought in bad faith to harass and cause as much financial pain to Sakhamuri as
9 possible. Therefore, Sakhamuri argues he is entitled to an award of
10 attorneys' fees pursuant to the court's inherent authority and the bad faith exception
11 to the American Rule.

12 Having considered Sakhamuri's contentions along with the court's previous
13 orders granting Defendants' motions to dismiss, the court finds sanctions are not
14 warranted under the circumstances. As an initial matter, the court notes state courts
15 and federal courts share concurrent jurisdiction over diverse actions. Jones v.
16 Sheehan, Young & Culp, P.C., 82 F.3d 1334, 1338 n. 3 (citing Colorado River
17 Conservation Dist. v. United States, 424 U.S. 800, 809 (1976)). As a result,
18 plaintiffs are not required to file cases in federal court simply because diversity
19 exists; rather, federal law grants defendants the option to remove an action
20 originally filed in state court to federal court if the case could have been originally
21 filed in federal court. See 28 U.S.C. § 1441(b). Therefore, Zora's decision to file in
22 state court does not suggest bad faith or improper purpose as Zora had no obligation
23 to file its case in federal court, and it was Sakhamuri's decision to incur the costs
24 associated with removal.² See 13 Fed. Prac. & Proc. Juris. § 3527, Exclusive
25 Federal Court Jurisdiction.

27 ² Moreover, the court notes Sakhamuri indicated the amount in controversy
28 requirement was satisfied in order to remove the case on diversity grounds, but now
suggests that Zora greatly exaggerated its purported damages to meet the diversity
requirements in federal court.

1 Additionally, while Zora’s claims were not ultimately successful, the court
2 does not find they were sufficiently frivolous or recklessly filed to justify the
3 imposition of sanctions in the form of attorneys’ fees. Notably, despite granting
4 Cigniti, Inc.’s motion to dismiss the amended complaint and Sakhamuri’s motion to
5 dismiss the second amended complaint, the court afforded Zora the opportunity to
6 further amend its complaint, suggesting the court found it possible that Zora could
7 sufficiently articulate a claim against the Defendants. Additionally, there is no
8 indication in either of the court’s orders granting Zora leave to amend that Zora’s
9 claims so obviously lacked merit or a reasonable basis in fact or law that the
10 allegations appeared frivolous or filed for improper purpose. Sakhamuri suggests
11 Zora filed its voluntary notice of dismissal in bad faith; however, the court finds it
12 preferable that a plaintiff seek to voluntarily dismiss its claims in the face of a
13 convincing motion to dismiss rather than require a continuation of the briefing by
14 both parties and a written disposition by the court that would likely reach the same
15 result. Under the circumstances, the court declines to award Sakhamuri attorneys’
16 fees as a sanction under the bad faith exception.

17 Similarly, the court declines to award attorneys’ fees to Sakhamuri pursuant
18 to Federal Rule of Civil Procedure 11. Rule 11 requires documents filed by a
19 represented party to be signed by an attorney and authorizes the court to sanction an
20 attorney for filing documents that are frivolous, legally unreasonable, or without
21 factual foundation, even though the document was not filed in subjective bad faith.
22 See Fed. R. Civ. P. 11(a); Zaldivar v. City of Los Angeles, 780 F.2d 823, 829 (9th
23 Cir. 1986). Sakhamuri seeks Rule 11 sanctions based upon Zora’s counsel having
24 originally filed the complaint in state court despite the existence of diversity, having
25 filed an improper Rule 41(a)(1)(A)(i) notice of dismissal despite Sakhamuri having
26 filed an answer to the complaint, and having signed each of the four complaints that
27 Sakhamuri contends contained meritless claims and were frivolously filed. As
28 noted above with regard to the bad faith exception, the court disagrees with

1 Sakhamuri’s characterization of the actions taken by Zora and its counsel. Under
2 the circumstances, the court finds Rule 11 sanctions are unwarranted.

3 Sakhamuri also asserts three statutory bases for awarding attorneys’ fees: 28
4 U.S.C. § 1927; 15 U.S.C. § 1117(a); and Cal. Civ. Code § 3426.4. Under 28 U.S.C.
5 § 1927, an attorney who unreasonably and vexatiously “multiplies the proceedings”
6 may be required to pay the excess fees and costs caused by his conduct without
7 requiring a finding of bad faith by the court; recklessness suffices for section 1927
8 sanctions. See Lahiri v. Universal Music and Video Distribution Corp., 606 F.3d
9 1216, 1218-19 (9th Cir. 2010). Pursuant to 15 U.S.C. § 1117(a), the Lanham Act
10 permits an award of attorneys’ fees to the prevailing party in “exceptional cases”
11 when the trademark infringement is willful, deliberate, knowing or malicious. See
12 Lahoti v. Vericheck, Inc., 636 F.3d 501, 510 (9th Cir. 2011). Alternatively, when
13 “a plaintiff’s case is groundless, unreasonable, vexatious, or pursued in bad faith, it
14 is exceptional, and the district court may award attorney’s fees to the defendant.”
15 Stephen W. Boney, Inc. v. Boney Servs., 127 F.3d 821, 827 (9th Cir. 1997)(quoting
16 Scott Fetzer Co. v. Williamson, 101 F.3d 549, 555 (8th Cir. 1996)). Under section
17 3426.4 of the California Uniform Trade Secret Act (“CUTSA”), courts may award
18 reasonable attorneys’ fees to the prevailing party if a claim of misappropriation is
19 made in bad faith. Because CUTSA does not provide a definition of “bad faith” to
20 be used in the context of trade secret misappropriation, California courts have
21 developed a two-pronged standard for the evaluation of such claims. See SASCO v.
22 Rosendin Elec., Inc., 207 Cal. App. 4th 837, 834 (2012).³ The party seeking an
23 award of attorneys’ fees under section 3426.4 must show: (1) the objective
24 speciousness of opposing party’s claim, and (2) the subjective bad faith of the
25 opposing party in bringing or maintaining the action, that is, for an improper
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28 ³ See also Smith v. Selma Cmty. Hosp., 188 Cal. App. 4th 1, 34 (Cal. Ct. App.
2010); Gemini Aluminum Corp. v. CA Custom Shapes, Inc., 95 Cal. App. 4th 1249,
1261 (Cal. Ct. App. 2002).

1 purpose. Gemini Aluminum Corp. v. CA Custom Shapes, Inc., 95 Cal. App. 4th
2 1249, 1261 (Cal. Ct. App. 2002).

3 In essence, each of the three statutory provisions relied upon by Sakhamuri
4 permit a court, in its discretion, to grant attorneys' fees in situations involving bad
5 faith, frivolous claims, unreasonableness, recklessness, or gross negligence.
6 However, for the same reasons set forth above with regard to the bad faith exception
7 and Rule 11, the court does not find the circumstances here justify the award of
8 attorneys' fees. Sakhamuri describes in great detail all of the failings it finds in
9 Zora's claims; however, the court does not find that any of these examples,
10 individually or taken together, suggest bad faith or frivolousness such that it would
11 make an award of attorneys' fees under these provisions.

12 COSTS

13 Sakhamuri also contends he is entitled to costs as the prevailing party in this
14 action. Under Federal Rule of Civil Procedure 54(d)(1), costs should be allowed to
15 the prevailing party unless a federal statute, a court order, or the Federal Rules of
16 Civil Procedure provide otherwise. "Rule 54(d)(1) codifies a venerable
17 presumption that prevailing parties are entitled to costs." Marx v. General Revenue
18 Corp., 133 S. Ct. 1166, 1172 (2013)(footnote omitted). "Notwithstanding this
19 presumption, the word "should" makes clear that the decision whether to award
20 costs ultimately lies within the sound discretion of the district court." Id. (citing
21 Taniguchi v. Kan Pacific Saipan, Ltd., 132 S. Ct. 1997, 2001 (2012)). Here, the
22 court finds no reason that Sakhamuri should not be entitled to costs under Rule
23 54(d)(1) as the prevailing party following the dismissal of Zora's claims with
24 prejudice. Accordingly, the court award costs to Sakhamuri in an amount to be
25 taxed by the Clerk of Court. See Fed. R. Civ. P. 54(d)(1).

26 CONCLUSION

27 For the foregoing reasons, the court orders as follows:

28 (1) Defendant Sakhamuri's *ex parte* motion to vacate Plaintiff Zora's notice

1 of voluntary dismissal, Dkt. No. 38, is GRANTED;

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(2) Plaintiff Zora’s notice of voluntary dismissal pursuant to Rule 41(a)(1)(A)(i), Dkt. No. 37, is VACATED;

(3) Defendant Sakhamuri’s unopposed motion to dismiss the third amended complaint, Dkt. No. 35, is GRANTED WITH PREJUDICE;


(4) Plaintiff Zora’s motion for voluntary dismissal pursuant to Rule 41(a)(2), Dkt. No. 41, is DENIED AS MOOT;

(5) Defendant Sakhamuri’s request for attorneys’ fees is DENIED; and

(6) Defendant Sakhamuri’s request for costs is GRANTED in an amount to be taxed by the Clerk of Court.

IT IS SO ORDERED.

DATED: March 27, 2014



Hon. Jeffrey T. Miller
United States District Judge