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

CHRIS LANGER,

Plaintiff,

v.

JEFF A. KACHA, in his individual  
and representative capacity as trustee  
of the Kacha Family Trust, *et al.*,

Defendants.

Case No. 14-cv-2610-BAS(KSC)

**ORDER DENYING  
DEFENDANTS’ MOTION FOR  
ATTORNEYS’ FEES**

**[ECF No. 32]**

On November 3, 2014, Plaintiff commenced this Americans with Disabilities Act (“ADA”) action against Defendants for alleged ADA violations related to parking availability at the Hob Nob Restaurant. On February 10, 2016, the Court granted Defendants’ motion to dismiss as to Plaintiff’s ADA claim because it lacked subject matter jurisdiction. The Court also dismissed all of the state-law claims because it lacked the discretionary power to exercise supplemental jurisdiction.

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1 Defendants now move for attorneys’ fees under California’s Disabled Persons  
2 Act, California Civil Code § 55, or, in the alternative, as a sanction under 28 U.S.C.  
3 § 1927 and Federal Rules of Civil Procedure 11 and 26(g). Plaintiff opposes. For the  
4 following reasons, the Court **DENIES** Defendants’ motion.

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6 **I. ANALYSIS<sup>1</sup>**

7 “Three primary sources of authority enable courts to sanction parties or their  
8 lawyers for improper conduct: (1) Federal Rule of Civil Procedure 11, which applies  
9 to signed writings filed with the court, (2) 28 U.S.C. § 1927, which is aimed at  
10 penalizing conduct that unreasonably and vexatiously multiplies the proceedings, and  
11 (3) the court’s inherent power.” *Fink v. Gomez*, 239 F.3d 989, 991 (9th Cir. 2001).

12 “The standard for determining the propriety of Rule 11 sanctions is one of  
13 objective reasonableness for determinations of frivolousness as well as of improper  
14 purpose.” *Conn v. Borjorquez*, 967 F.2d 1418, 1421 (9th Cir. 1992) (citing *Woodrum*  
15 *v. Woodward Cnty., Okla.*, 866 F.2d 1121, 1127 (9th Cir. 1989)). Courts are  
16 cautioned that sanctions are reserved “for the rare and exceptional case where the  
17 action is clearly frivolous, legally unreasonable or without legal foundation, or  
18 brought for an improper purpose.” *Operating Eng’rs Pension Trust v. A–C Co.*, 859  
19 F.2d 1336, 1344 (9th Cir. 1988). “Rule 11 must not be construed so as to conflict  
20 with the primary duty of an attorney to represent his or her client zealously.” *Id.*  
21 “When the sanctions award is based upon attorney’s fees and related expenses, an  
22 essential part of determining the reasonableness of the award is inquiring into the  
23 reasonableness of the claimed fees. Recovery should never exceed those expenses  
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25 <sup>1</sup> Defendants state that they “concede that Plaintiff may have artfully limited his prayer here  
26 to free him from any risk that he might have to face an attorney fee claim under Civil Code § 55.”  
27 (Defs.’ Reply 3:6-22.) That appears to mean that they have abandoned their argument that they are  
28 entitled to attorneys’ fees under California Civil Code § 55. In the event that the Court has  
misinterpreted Defendants’ position, it finds that Defendants are not entitled to attorneys’ fees under  
California Civil Code § 55 because the merits of the state-law claims—including any claim arising  
from California’s Disabled Persons Act—were not litigated by this Court.

1 and fees that were reasonably necessary to resist the offending action.” *In re Matter*  
2 *of Yagman*, 796 F.2d 1165, 1184-85 (9th Cir. 1986).

3 Under 28 U.S.C. § 1927, any attorney “who so multiplies the proceedings in  
4 any case unreasonably and vexatiously may be required by the court to satisfy  
5 personally the excess costs, expenses, and attorneys’ fees reasonably incurred  
6 because of such conduct.” “Sanctions pursuant to section 1927 must be supported by  
7 a finding of subjective bad faith.” *Blixseth v. Yellowstone Mountain Club, LLC*, 796  
8 F.3d 1004, 1007 (9th Cir. 2015) (quoting *New Alaska Dev. Corp v. Guetschow*, 869  
9 F.2d 1298, 1306 (9th Cir. 1989)). “Bad faith is present when an attorney knowingly  
10 or recklessly raises a frivolous argument or argues a meritorious claim for the purpose  
11 of harassing an opponent.” *New Alaska*, 869 F.2d at 1306. “Tactics undertaken with  
12 the intent to increase expenses or delay may also support a finding of bad faith.” *Id.*  
13 (internal citations omitted).

14 A court’s “inherent powers [to assess sanctions] must be exercised with  
15 restraint and discretion.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). This  
16 power is “governed not by rule or statute but by the control necessarily vested in  
17 courts to manage their own affairs so as to achieve the orderly and expeditious  
18 disposition of cases.” *Id.* at 43 (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-  
19 631 (1962)). A court may assess attorney’s fees as a sanction “when a party has acted  
20 in bad faith, vexatiously, wantonly, or for oppressive reasons, delaying or disrupting  
21 litigation, or has taken actions in the litigation for an improper purpose.” *Fink*, 239  
22 F.3d at 992 (citing *Chambers*, 501 U.S. at 45-46 & n.10). To justify sanctions under  
23 a district court’s inherent authority, the court must find that a party or lawyer acted  
24 in bad faith, or at least engaged in “conduct tantamount to bad faith,” which can  
25 include “a variety of types of willful actions, including recklessness when combined  
26 with an additional factor such as frivolousness, harassment, or an improper purpose.”  
27 *Id.* at 993-94; *accord Gomez v. Vernon*, 255 F.3d 1118, 1133-34 (9th Cir. 2001).

28 Defendants contend that “there is ample evidence to support a finding that

1 Plaintiff engaged in bad faith by failing to investigate his claims and making false  
2 allegations in his Complaint and subsequent pleadings, that he was improperly  
3 motivated by a desire for attorney fees rather than a vindication of any rights, and  
4 that he recklessly and repeatedly disregarded his duty owed to the Court by failing to  
5 comply with his discovery obligations and misrepresenting his right to present  
6 witnesses and documents at trial.” (Defs.’ Reply 4:23-5:6.) Based on these  
7 considerations, Defendants argue that “all the fees incurred should be awarded as a  
8 sanction since they were incurred after Plaintiff failed to reasonably investigate his  
9 claims and included false allegations in his Complaint.” (*Id.* at 5:7-16.) Though  
10 Defendants’ frustration is understandable, the Court finds the circumstances  
11 described does not rise to the level of sanctionable conduct.

12 Defendants direct the Court to several events they contend demonstrate  
13 sanctionable conduct: (1) Plaintiff’s failure to reasonably investigate his claims; (2)  
14 Plaintiff’s false allegations in the complaint; (3) Plaintiff’s rejection of repeated  
15 settlement offers; (4) Plaintiff’s “substantial discovery” which revealed no  
16 information that demonstrated standing; and (5) Plaintiff’s discovery infractions.  
17 (Defs.’ Mot. 5:14-9:26.) All of these occurrences present a challenge to anyone  
18 defending a lawsuit. And with the court-ordered dismissal of this action, certainly  
19 Defendants feel some level of vindication. However, the circumstances described do  
20 not convincingly establish bad faith, clear frivolousness, or an improper purpose. The  
21 level of intent needed for the Court to find sanctionable conduct is simply not present.  
22 As a result, Defendants fail to demonstrate that imposing sanctions is warranted.


23 Consequently, in exercising its discretion, the Court declines to impose a  
24 sanction on Plaintiff under Rule 11, § 1927, or its inherent powers in the form of  
25 attorneys’ fees. *See Chambers*, 501 U.S at 44; *Trulis v. Barton*, 107 F.3d 685, 694  
26 (9th Cir. 1995); *Gotro v. R & B Realty Grp.*, 69 F.3d 1485, 1488 (9th Cir. 1995)  
27 (noting that district courts have “wide discretion in determining whether Rule 11  
28 sanctions are appropriate”).

1 **II. CONCLUSION & ORDER**

2 In light of the foregoing, the Court **DENIES** Defendants' motion for attorneys'  
3 fees. (ECF No. 32.)

4 **IT IS SO ORDERED.**

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6 **DATED: September 2, 2016**

  
**Hon. Cynthia Bashant**  
**United States District Judge**

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