



1 Court on the basis of federal question jurisdiction. On April 28, 2014, Defendant filed  
2 a motion to dismiss for failure to state a claim upon which relief may be granted.  
3 Plaintiff did not file a response to Defendant’s motion to dismiss. On July 11, 2014, the  
4 Court granted Defendant’s motion to dismiss due to Plaintiff’s “failure to file an  
5 opposition.” *Id.*

6 On July 21, 2014, Plaintiff, proceeding *pro se*, commenced Southern District of  
7 California Case Number 14-cv-2287-WQH-JLB by filing a complaint in San Diego  
8 County Superior Court, Small Claims Court, against Defendant. *See Rogers v. EOS*  
9 *CCA*, No. 14-cv-2287-WQH-JLB (S.D. Cal.) (“*Rogers II*”). The Complaint contained  
10 a single allegation: “[Defendant] failed to notify consumer of my right to dispute and  
11 obtain verification of my debt, and to obtain the name of the original creditor. 809.  
12 Validation of debts {15 USC 1692g} and Rosenthal Fair Debt Collection Practices Act.”  
13 (ECF No. 4-4 at 2). The complaint indicated that this event took place on February 9,  
14 2014. The complaint requested \$10,000. On September 26, 2014, Defendant removed  
15 the action to this court on the basis of federal question jurisdiction. On October 3, 2014,  
16 Defendant filed a motion to dismiss and request for attorneys’ fees, accompanied by a  
17 request for judicial notice. Like *Rogers I*, Plaintiff did not file a response to Defendant’s  
18 motion to dismiss. On December 5, 2014, the Court issued an Order granting the motion  
19 to dismiss because, like *Rogers I*, Plaintiff failed to file an opposition. *Id.* The Court  
20 denied the request for attorneys’ fees but cautioned Plaintiff that “repeated filings of  
21 cases against Defendant, if Plaintiff’s intention of doing so is ‘vindictive,’ rather than for  
22 the proper purpose of prosecuting a case, may be grounds for sanctions.” *Id.* at 4 (citing  
23 *Fink v. Gomez*, 239 F.3d 989, 992-93 (9th Cir. 2001)).<sup>1</sup>

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25 <sup>1</sup> Defendant submitted evidence of a voice message Plaintiff left Defendant’s  
26 counsel on October 1, 2014, shortly after Defendant removed *Rogers II* to this Court:

27 Hi, this is Wanda Rogers. I’m excited about you doing this notice of  
28 removal ... I won’t respond to anything because it’ll have the same outcome  
and I’ll keep doing the same thing and then we’ll end up with a different  
judge at every turn ... So, I’m excited because they (unclear) keep spending

(continued...)

1 On January 30, 2015, Plaintiff commenced this action by filing the Complaint in  
2 San Diego County Superior Court, Small Claims Court, against Defendant. (ECF No. 1-2  
3 at 2). Like *Rogers I and II*, the Complaint contains a single allegation: “EOS CCA failed  
4 to notify consumer of my right to dispute and obtain verification of my debt, and to  
5 obtain the name of the original creditor 809 Validation of debts (15USC1692) and  
6 Rosenthal Fair Debt Collection Practices Act.” *Id.* at 4. Like *Rogers I and II*, the  
7 Complaint indicates that the event took place on February 9, 2014, and requests \$10,000.  
8 On March 24, 2015, Defendant removed the action to this Court on the basis of federal  
9 question jurisdiction. (ECF No. 1). On March 31, 2015, Defendant filed the Motion to  
10 Dismiss and Request for Order Awarding Monetary Sanctions. (ECF No. 3),  
11 accompanied by a request for judicial notice. (ECF No. 4).

12 On July 17, 2015, this Court held a hearing on the motion to dismiss. Plaintiff and  
13 Defendant appeared. Subsequent to the hearing, Plaintiff filed an opposition to the  
14 motion to dismiss. Plaintiff states that she has filed in small claims court because she has  
15 no resources to hire a lawyer. Plaintiff requests that any dismissal allow her the  
16 opportunity to seek legal advice and file according to the court rule. Plaintiff opposes any  
17 grant of sanctions. (ECF No. 17).

18 In reply, Defendant asserts that the this third lawsuit is barred by the doctrine of  
19 *res judicata*; and that this complaint continues to fail to state a claim. (ECF No. 20).

## 20 **II. Discussion**

21 Defendant requests dismissal of the Complaint on the grounds that it is barred by  
22 *res judicata* and that it fails to state a claim. Defendant requests attorneys’ fees of \$3,160  
23 as a sanction against Plaintiff for “continuing to prosecute claims that she knows fail as  
24 a matter of law” and prosecuting this action in bad faith. (ECF No. 3-1 at 6). Defendant  
25 submits the Declaration of Tamar Gabriel in order to demonstrate Plaintiff’s bad faith and  
26

27 <sup>1</sup>(...continued)  
28 their money with you and that’s just a wonderful thing. So, I’m excited...

ECF No. 4-4 at 4.

1 the amount of attorneys' fees incurred in defending this matter.

2 **A. Request for Judicial Notice**

3 "A district court ruling on a motion to dismiss may consider documents whose  
4 contents are alleged in a complaint and whose authenticity no party questions, but which  
5 are not physically attached to the plaintiff's pleading." *Parrino v. FHP, Inc.*, 146 F.3d  
6 699, 705-06 (9th Cir. 1998) (quotation omitted). See Rule 201 Federal Rules of  
7 Evidence.

8 Defendant's Request for Judicial Notice includes documents from small claims  
9 court and prior orders issued by this court. The Court finds that judicial notice is  
10 appropriate.

11 **B. Motion to Dismiss**

12 Rule 41(b) of the Federal Rules of Civil Procedure provides:

13 If the plaintiff fails to prosecute or to comply with these rules or a court  
14 order, a defendant may move to dismiss the action or any claim against it.  
15 Unless the dismissal order states otherwise, a dismissal under this  
16 subdivision (b) and any dismissal not under this rule -except one for lack of  
jurisdiction, improper venue, or failure to join a party under Rule 19 -  
operates as an adjudication on the merits.

17 Fed. R. Civ. P. 41(b). In this case, the prior order of this Court dismissing *Rogers I* and  
18 *Rogers II* were not entered pursuant to Rule 41 and do not operate as an adjudication on  
19 the merits.

20 The Complaint contains a single allegation: "EOS CCA failed to notify consumer  
21 of my right to dispute and obtain verification of my debt, and to obtain the name of the  
22 original creditor 809 Validation of debts (15USC1692) and Rosenthal Fair Debt  
23 Collection Practices Act." *Id.* at 4. In order to state a claim, Plaintiff must allege facts  
24 that could plausible support the claim. See Rule 12(b)(6) of the Federal Rules of Civil  
25 Procedure. The Complaint in this case fails to state a claim.

26 **C. Request for Monetary Sanctions**

27 Defendant moves for attorneys' fees and costs as a sanction pursuant to the Court's  
28 inherent authority, 28 U.S.C. section 1927, and 15 U.S.C. section 1692k(a)(3).  
Defendant contends that Plaintiff is prosecuting this action in bad faith after failing to

1 prosecute her prior two lawsuits. Defendant contends that Plaintiff’s October 1, 2014  
2 voice mail evinces Plaintiff’s bad faith and intent to harass by repeatedly filing  
3 duplicative cases.

4 “[A] court may assess attorney’s fees when a party has acted in bad faith,  
5 vexatiously, wantonly, or for oppressive reasons. . . .” *Chambers v. NASCO, Inc.*, 501  
6 U.S. 32, 45 (1991) (citing *Alyeska Pipeline Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240,  
7 258-59 (1975) and *Hutto v. Finney*, 437 U.S. 678, 689 (1978)) (internal quotations  
8 omitted). In the Ninth Circuit, “conduct must constitute or be tantamount to bad faith”  
9 for inherent power sanctions to be imposed. *Fink v. Gomez*, 239 F.3d 989, 993 (9th Cir.  
10 2001). Bad faith includes a “broad range of willful improper conduct.” *Id.* at 992.

11 28 U.S.C. section 1927 provides that “[a]ny attorney or other person admitted to  
12 conduct cases in any court of the United States or any Territory thereof who so multiplies  
13 the proceedings in any case unreasonably and vexatiously may be required by the court  
14 to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred  
15 because of such conduct.” 28 U.S.C. § 1927. Sanctions under section 1927 requires “a  
16 finding of recklessness or bad faith.” *Gomez v. Vernon*, 255 F.3d 1118, 1134-35 (9th Cir.  
17 2001) (citing 28 U.S.C. § 1927). Recklessness suffices for frivolous filings and  
18 arguments, while intent to harass is required for non-frivolous filings. *In re Girardi*, 611  
19 F.3d at 1061. “Section 1927 sanctions may be imposed upon a pro se plaintiff....” *Wages*  
20 *v. I.R.S.*, 915 F.2d 1230, 1235-36 (9th Cir. 1990).

21 15 U.S.C. section 1692k(a)(3) provides: “On a finding by the court that an action  
22 under this section was brought in bad faith and for the purpose of harassment, the court  
23 may award to the defendant attorney’s fees reasonable in relation to the work expended  
24 and costs.” 15 U.S.C. § 1692k(a)(3).


25 The Court declines to impose sanctions at this stage of the proceedings pursuant  
26 to 28 U.S.C. section 1927, 15 U.S.C. section 1692k(a)(3), and the Court’s inherent  
27 powers.

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1 **IV. Conclusion**

2 IT IS HEREBY ORDERED that the Motion to Dismiss is granted and Request for  
3 Order Awarding Monetary Sanctions is denied. (ECF No. 3). The Clerk of the Court  
4 shall close the case.

5 DATED: January 13, 2016

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7 **WILLIAM Q. HAYES**  
8 United States District Judge

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