

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01398-PAB-KLM

GENERAL STEEL DOMESTIC SALES, LLC, d/b/a GENERAL STEEL CORPORATION,
a Colorado limited liability company,

Plaintiff,

v.

ETHAN DANIEL CHUMLEY, individually, and
ATLANTIC BUILDING SYSTEMS, LLC, a Delaware corporation, d/b/a ARMSTRONG
STEEL CORPORATION,

Defendants.

ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on **Plaintiff's [Oral] Motion for Sanctions Due to Spoliation of Evidence and Discovery Abuse** [see Docket No. 165; Filed March 30, 2012] (the "Motion"). The Court held a hearing on the Motion on April 10, 2012 [#185], and Defendants filed a Response to the Motion on April 17, 2012 [#202]. The Motion is thus ripe for resolution.

In the Motion, Plaintiff avers that Defendants violated the Colorado Consumer Protection Act "by their misleading the public and their customers in regard to virtually every aspect of the sales process." *Motion* [#165] at 2. In connection with that claim, Plaintiff therefore sought production of pre- and post-contract communications between Defendants and their customers. *Id.* at 2-3. Plaintiff avers that Defendants engaged in spoliation of such evidence and discovery abuse. *Id.* In the Motion, Plaintiff seeks sanctions in the form

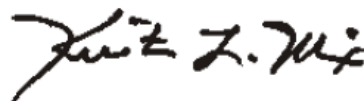
of entry of a default judgment against Defendants, dismissal with prejudice of Defendants' counterclaims, entry of an injunction, and entry of a judgment for damages. Plaintiff also seeks an award of attorneys' fees and costs. *Id.* at 26.

The relief sought by Plaintiff is either precluded by the Court's previous adjudication of Plaintiff's claims and Defendants' counterclaims on their merits, or unwarranted under the circumstances. On April 26, 2012, the District Judge entered summary judgment in favor of Defendants with respect to Plaintiff's claim pursuant to the Colorado Consumer Protection Act. See *Order* [#233] at 1-2. The request for entry of default judgment, injunctive relief, dismissal of counterclaims and damages has been mooted by the Court's summary judgment and other rulings. See *Gen. Protecht Grp., Inc. v. Leviton Mfg. Co., Inc.*, No. CIV 10-1020 JB/LFG, 2012 WL 1684573, at *27-28 (D.N.M. May 12, 2012). The request for an award of costs and attorneys' fees is inappropriate here, where Plaintiff's underlying claim was unsuccessful and resulted in no monetary award. See *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983) (stating that a court "should award only that amount of fees that is reasonable in relation to the results obtained"). Accordingly,

IT IS HEREBY **ORDERED** that Plaintiff's oral Motion is **DENIED** in part and **DENIED as moot** in part.

DATED: July 5, 2012

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kristen L. Mix".

Kristen L. Mix
United States Magistrate Judge