

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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VICTORIA GIAMPA,

Plaintiff,

v.

MIDFIRST BANK; FANNIE MAE, FANNIE
MAE AS TRUSTEE FOR SECURITIZED
TRUST, FANNIE MAE REMIC
PASSTHROUGH CERTIFICATES 2006-
123 TRUST; COUNTRYWIDE
SERVICING CORP., BANK OF AMERICA
CORPORATION; BANK OF
AMERICA.N.A., BAC HOME LOANS
SERVICING, LP; RECONTRUST
COMPANY, N.A.; GREEN TREE
SERVICING, LLC; DITECH FINANCIAL,
LLC; MORTGAGE ELECTRONIC
REGISTRATION SYSTEM, ("MERS");
NATIONAL DEFAULT SERVICING
CORPORATION; AND DOES 1
THROUGH 100 INCLUSIVE, *et al.*,

Defendants.

Case No. 2:17-cv-1208-MMD-CWH

ORDER

I. SUMMARY

Pending in this closed action is Defendants Green Tree Servicing LLC,¹ Ditech Financial LLC and Mortgage Electronic Registration System's ("MERS") (collectively "Judgment Defendants") motion for an award of attorneys' fees and costs alleged to have been incurred in this action ("Motion").² (ECF No. 69.) Plaintiff Victoria Giampa has not

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¹Green Tree Servicing LLC's name was changed to Ditech Financial LLC prior to the initiation of this litigation. The latter is the only company now existing. (ECF No. 69 at 1 n.1.)

²Parts of the Motion erroneously refers to U.S. Bank as the represented party seeking to recover attorneys' fees and costs. (ECF No. 69 at 7, 10.)

1 filed a response. For the reasons stated below, the Court will grant the Motion in part and
2 deny it in part.

3 **II. BACKGROUND**

4 This action concerned the foreclosure of real property located at 1848 Wellington
5 Court, Henderson, Nevada 89014 (“Property”). (ECF No. 1.) Plaintiff brought a total of
6 fifteen federal and state law claims—including claims for quiet title, breach of contract,
7 violations of Nevada statutes, civil conspiracy, fraud, and claims under the Racketeer
8 Influenced and Corrupt Organizations Act (“RICO”). (*Id.*) Plaintiff’s complaint totaled 73
9 pages. (*Id.*)

10 On November 9, 2017, the Court entered its order and judgment in favor of
11 Judgment Defendants and other named defendants on Plaintiff’s claims. (ECF Nos. 67,
12 68.) The complaint was dismissed with prejudice in its entirety and the Court particularly
13 found that “the primary legal theories advanced by Plaintiff are not cognizable . . . [and]
14 that the complaint fails to state claims upon which relief may be granted.”³ (ECF No. 67 at
15 4–5.)

16 Judgment Defendants bring the Motion as prevailing parties under Fed. R. Civ. P.
17 54(d)(1)-(2), LR 54-14⁴, 28 U.S.C. § 1927, NRS §§ 18.005, 18.010 and 18.020. (ECF No.
18 69 at 3, 7–8.)

19 **III. DISCUSSION**

20 Judgment Defendants contend they are entitled to attorneys’ fees totaling
21 \$11,086.81 and costs in the amount of \$167.04. (*See, e.g.*, ECF No. 69 at 12.)⁵ In its

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24 ³Additional facts and rulings may be found in the Court’s dismissal order (ECF No
25 67).

26 ⁴Judgment Defendants erroneously cited LR II 54-14, instead of LR 54-14. (ECF
27 No. 69 at 3.)

28 ⁵Judgment Defendants appear to have included a reference to an amount of
\$16,041.00 in fees in error in connection to U.S. Bank who is not among Judgment
Defendants in this case. (ECF No. 69 at 7.)

1 discretion, the Court will award fees in an amount to be determined and costs in the
2 amount sought.

3 **A. Fees and Costs under 28 U.S.C. § 1927**

4 Judgment Defendants indicate that fees and costs are justifiable pursuant to 28
5 U.S.C. § 1927. (ECF No. 69 at 3.) The Court disagrees. Section 1927 applies to situations
6 where “[a]ny attorney . . . multiplies the proceedings in any case unreasonably and
7 vexatiously” and requires the attorney to personally pay the excess fees and costs. See
8 28 U.S.C. § 1927. Judgment Defendants provide no evidence to support a vexatious
9 finding. The Court therefore declines to order an award of fees and/or costs pursuant to §
10 1927.

11 **B. Award of Fees**

12 Fed. R. Civ. P. 54(d)(2) permits a prevailing party to move for attorneys’ fees by
13 providing the statute entitling the movant to the award. “[A]bsent statute or enforceable
14 contract, litigants pay their own attorneys’ fees.” *Alyeska Pipeline Serv. Co v. Wilderness*
15 *Soc’y*, 421 U.S. 240, 257 (1975) (citations omitted). Aside from § 1927 under which the
16 Court declines to award fees, Judgment Defendants cite no federal statute authorizing
17 fees for their federal law claims. Accordingly, to the extent the Court awards fees—as
18 found warranted below, the award pertains only to Judgment Defendants’ state law
19 claims.⁶

20 “In an action where a district court is exercising its subject matter jurisdiction over
21 a state law claim, so long as ‘state law does not run counter to a valid federal statute or
22 rule of court, and usually it will not, state law . . . giving a right [to attorney’s fees], which
23 reflects a substantial policy of the state, should be followed.’” *MRO Commc’ns, Inc. v. Am.*
24 *Telephone & Telegraph Co.*, 197 F.3d 1276, 1281 (9th Cir. 1999) (quoting *Alyeska*
25 *Pipeline Serv. Co.*, 421 U.S. at 259 n.3).

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27 ⁶ “[F]ederal courts apply state law for attorneys’ fees to state claims because of the
28 *Erie* doctrine . . . and *Erie*[*R. Co. v. Tompkins*, 304 U.S. 64 (1938)] does not compel federal
courts to apply state law to a federal claim.” *Klein v. City of Laguna Beach*, 810 F.3d 693,
701 (9th Cir. 2016) (citations omitted).

1 Of the state statutes Judgment Defendants rely on, NRS § 18.010 particularly
2 applies to fees. Section 18.010(2)(b) of the Nevada Revised Statutes gives the court
3 discretion to award attorneys' fees to a prevailing party where the claim "was brought or
4 maintained without reasonable ground or to harass the prevailing party." NRS §
5 18.010(2)(b).⁷ The court must determine if evidence in the record exists to support "the
6 proposition that the complaint was brought without reasonable grounds or to harass the
7 other party." *Kahn v. Morse & Mowbray*, 117 P.3d 227, 238 (Nev. 2005) (quoting *Semenza*
8 *v. Caughlin Crafted Homes*, 901 P.2d 684, 687 (Nev. 1995)).

9 The records here compel a finding that Plaintiff's claims were brought without
10 reasonable grounds. The law applicable to Plaintiff's claims was clear and Plaintiff's
11 allegations were either not legally cognizable under the relevant standards or legally
12 deficient based on the facts Plaintiff alleged. (ECF No. 67.) Plaintiff's claims were so
13 deficient that the Court dismissed them without leave to amend and with prejudice. (*Id.*)
14 The Court's order has been affirmed on appeal (ECF No. 73), albeit the appeal remains
15 administratively closed as to Ditech (ECF Nos. 78, 80). Additionally, Judgment Defendants
16 submit itemized records and affidavit supporting the requested fees based on a fixed
17 hourly billing rate of \$255. (ECF No. 69 at 3–4, 11; ECF No. 69-1 at 2–10.)

18 In light of the fifteen claims Plaintiff asserted, her emergency motions (ECF Nos.
19 11, 12 (duplicative)), and the amount of work inherent in responding and defending against
20 such matters, the Court finds Judgment Defendants' request for attorneys' fees as to
21 Plaintiff's state law claims is reasonable. However, because Judgment Defendants did not
22 delineate fees particularly relating to the state law claims, the Court directs Judgment
23 Defendants to file a reasonable itemization and description of the work performed and

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26 ⁷Judgment Defendants also cite to NRS § 18.010(1) as supporting their recovery
27 of fees, however, the Court is not convinced the provision is applicable as against another
28 party. See NRS § 18.010(1) ("The compensation of an attorney and counselor for his or
her services is governed by agreement, express or implied, which is not restrained by
law.") In any event, the Court finds Judgment Defendants' general recovery of fees is
adequately supported.

1 associated costs for defending against Plaintiff's state law claims in accordance with LR
2 54-14.

3 **C. Award of Costs**

4 Under Fed. R. Civ. P. 54(d)(1) costs are available to a prevailing party, unless a
5 federal statute, rule, or court order provides otherwise. See Fed. R. Civ. P. 54(d)(1). The
6 Court may also award costs under section 18.020 of the Nevada Revised Statutes. See
7 NRS § 18.020; *Village Builders 96 v. U.S. Labs*, 112 P.3d 1082, 1092 (Nev. 2005)
8 (explaining that a "court's decision regarding an award of costs will not be overturned
9 absent a finding that the district court abused its discretion"). Under NRS § 18.020, "[c]osts
10 must be allowed of course to the prevailing party against any adverse party against whom
11 judgment is rendered . . . [i]n an action for the recovery of real property a possessory right
12 thereto" and "[i]n an action which involves the title or boundaries of real estate, or the
13 legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued
14 in the action if originally commenced in a Justice Court." NRS § 18.020(1),(5). Section
15 18.005 of the statutes sets forth the categories and types of costs that the prevailing party
16 may recover, including the catch-all of "[a]ny other reasonable and necessary expense
17 incurred in connection with the action . . .". See NRS § 18.005(1)–(17). Costs must be
18 "actual and reasonable, rather than a reasonable estimate or calculation of such costs . .
19 .." *Bobby Berosini, Ltd. v. PETA*, 971 P.2d 383,385–86 (Nev. 1998) (internal quotations
20 and citation omitted).

21 Judgment Defendants' affidavit and records support that permissible, actual, and
22 reasonable costs were expended in this litigation in the amount of \$167.04. (ECF No. 69
23 at 3–4; ECF No. 69-1 at 12.) The Court will therefore grant costs in that amount.

24 **IV. CONCLUSION**

25 The Court notes that the parties made several arguments and cited to several cases
26 not discussed above. The Court has reviewed these arguments and cases and determines
27 that they do not warrant discussion as they do not affect the outcome of the motion before
28 the Court.

1 It is therefore ordered that Defendants Green Tree Servicing LLC, Ditech Financial
2 LLC and Mortgage Electronic Registration System's motion for an award of attorneys' fees
3 and costs (ECF No. 69) is granted in part and denied in part pursuant to Fed. R. Civ. P.
4 54(d)(1),(2) and NRS §§ 18.010(2)(b), 18.020 and 18.005 as follows:

5 (1) Judgment Defendants' motion is denied as to their request for fees relating to
6 the federal claims and is granted with respect to the state law claims—but in an
7 amount to be determined. Within 10 days of this order, Judgment Defendants
8 must file a reasonable itemization and description of the work performed and
9 associated costs for defending against Plaintiff's state law claims in accordance
10 with LR 54-14. At that time, the Court will enter the amount of fees to which
11 Judgment Defendants are entitled.

12 (2) Judgment Defendants are awarded their costs in the amount of \$167.04.

13 DATED THIS 18th day of June 2019.

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16 MIRANDA M. DU
17 UNITED STATES DISTRICT JUDGE
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