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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 GARY DEAN MAXFIELD,

9 Plaintiff,

10 v.

11 INDYMAC MORTGAGE SERVICES, *et*
12 *al.*,

13 Defendants.

Case No. C16-0564 RSM

ORDER REGARDING SANCTIONS

14 **I. INTRODUCTION**

15 On December 28, 2016, this Court entered an Order dismissing this case and directing
16 Plaintiff's counsel to show cause why she should not be monetarily sanctioned pursuant to Rule
17 11(c)(1). Dkt. #14. Plaintiff's counsel has responded to the Order, primarily arguing that she
18 should not be sanctioned because she has raised a new and novel legal theory in good faith in
19 this case, and has not asserted frivolous claims. Dkt. #18. Having considered counsel's
20 response, the Court will not impose monetary sanctions in this matter for the following reasons.
21

22 **II. BACKGROUND**

23 On or about April 11, 2006, Plaintiff borrowed \$156,000 from LoanCity to purchase a
24 home in Burlington, WA. *See* Dkt. #7-1, Ex. 1. The loan was secured by a Deed of Trust
25 recorded against the property. *Id.* The beneficial interest in the Deed of Trust was assigned to
26 OneWest on or about September 23, 2009. *See* Dkt. #7-1, Ex. 2. On May 10, 2011, OneWest
27 assigned the beneficial interest in the Deed of Trust to Deutsche Bank. *See* Dkt. #7-1, Ex. 3.
28

ORDER
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1 On December 16, 2015, a Notice of Trustee's Sale was recorded, providing notice that Plaintiff
2 was in default under the terms of the Loan and that the property would be auctioned. *See* Dkt.
3 #7-1, Ex. 4.

4 According to Plaintiff, on January 6, 2011, he sent a letter to Deutsche Bank National
5 Trust Company indicating that if Deutsche Bank did not provide the statutorily required copy
6 of his note within 20 days, it would have no further rights to the loan pursuant to TILA. Dkt.
7 #3, ¶ III.3. and Ex. A thereto. Further, on September 22, 2012, Plaintiff sent a letter to Indymac
8 Mortgage Services, a Division of Onewest Bank, indicating that if Indymac/Onewest Bank did
9 not provide the statutorily required copy of his note within 20 days, it would have no further
10 rights to the loan pursuant to TILA. Dkt. #3, ¶ III.2. and Ex. A thereto. On October 24, 2013,
11 Plaintiff sent a letter to Ocwen Loan Servicing, indicating that if Ocwen did not provide the
12 statutorily required copy of his note within 20 days, it would have no further rights to the loan
13 pursuant to the Truth In Lending Act ("TILA"). Dkt. #3, ¶ III.1. and Ex. A thereto. Plaintiff then
14 brought the instant lawsuit seeking to enjoin Defendants from collecting, forcing, reporting, or
15 taking any affirmative action or seeking any relief with respect to the loan contract. Dkt. #3.
16 Plaintiff alleged that more than twenty days had expired since the letters had been sent to
17 Defendants and, therefore, as set forth in TILA and the applicable extension as provided in
18 Regulation Z, the loan contract and mortgage note were cancelled upon mailing of the Notices
19 of Rescission. Dkt. #3, ¶ ¶ III.5-9. and Ex. B thereto. Plaintiff further alleged that, upon
20 information and belief, the subject loan was never consummated. Dkt. #3, ¶ III.10.

21 In response, Defendants filed a Motion to Dismiss, arguing that Plaintiff's claims were
22 time-barred. Dkt. #7. Plaintiff answered that his loan agreement was immediately rescinded
23 upon the mailing of the letters advising Defendants that he was exercising his right to rescind
24

1 under TILA. Dkt. # 3 at ¶¶ 6-9, 11 and 13. Plaintiff also argued that his loan had never been
2 consummated because he could not verify that Loan City ever funded the loan, and therefore
3 the statute of limitations never began to run and his rescission claim was not time-barred. *Id.* at
4 6-8. The Court ultimately disagreed and dismissed Plaintiff's claims. *Id.*

5 The Court then noted:

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7 Plaintiff's counsel is no stranger to this Court, having litigated at least
8 28 other mortgage-related matters. . . . What concerns the Court is that
9 Attorney Smith has brought nearly identical arguments in her previous
10 cases, under nearly identical circumstances, and has been sanctioned for the
11 frivolous nature of those claims. . . . Such sanctions have apparently had no
12 deterrent effect, as Ms. Smith has forged ahead with the same arguments
13 and claims in the instant matter. Accordingly, the Court now ORDERS
14 Plaintiff's counsel . . . to show cause . . . why she should not be sanctioned
pursuant to Rule 11(c)(1) Plaintiff's counsel shall explain why the
plain text of 15 U.S.C. § 1635(f) and the Supreme Court's ruling in
Jesinoski, supra, that "so long as the borrower notifies within three years
after the transaction is consummated, his rescission is timely," does not
squarely foreclose this lawsuit.

15 Dkt. #14 at 6-7 (citations and footnote omitted). Plaintiff's counsel responded to the Court's
16 Order on January 17, 2017. Dkt. #18.

17 III. DISCUSSION

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19 Rule 11(b)(2) requires counsel to certify that "the claims, defenses, and other legal
20 contentions are warranted by existing law or by a nonfrivolous argument for extending,
21 modifying, or reversing existing law or for establishing new law." Plaintiff's counsel argues that
22 she should not be sanctioned because she has, and had at the time of filing, a "good faith belief"
23 that Plaintiff's Notice of Rescission was been made in the applicable time period to rescind the
24 loan. Dkt. #18 at 2. Further, counsel asserts that she

25
26 made a good faith argument that if one of the parties to the loan contract,
27 specifically the lender, is unknown at the time of the signing of the note and
28 deed of trust, or if the lender named on those documents is falsely named as

1 the "lender," then the loan has not been consummated, and the three-year
2 period has not expired.

3 *Id.* Plaintiff then compares her situation to that of the attorneys litigating decades of tobacco
4 cases, and asserts that she should not be sanctioned for making a new and novel legal argument.

5 *Id.* at 3-5.

6 As an initial matter, the Court noted that Plaintiff's consummation argument is neither
7 new nor novel. Indeed, courts in the Ninth Circuit have considered this type of argument for
8 years, and have rejected it. *See, e.g., Ramos v. U.S. Bank*, 2012 U.S. Dist. LEXIS 131564, *3
9 fn. 1 (rejecting the same argument made by Plaintiff in this case). Further, Plaintiff's counsel
10 has already been informed by this Court that her legal arguments are frivolous, and she was
11 sanctioned by this Court in the amount of \$5,000 as a result. *Johnson v. Mortgage*, Case No.
12 C15-1754TSZ, Dkt. #41 (W.D. Wash. May 20, 2016).

13
14 However, the Court recognizes that there are differences between the legal argument
15 regarding consummation that Plaintiff's counsel made in *Johnson* and the arguments asserted in
16 the instant matter. Moreover, Plaintiff's counsel states that she has heard the message from the
17 Court "loud and clear and will not be filing any further TILA rescission cases until the pending
18 litigation is resolved in cases submitted to the Ninth Circuit Court of Appeals." Dkt. #18 at 5. It
19 appears that the Court's warnings have had the desired deterrent effect. Accordingly, the Court
20 will not impose monetary sanctions at this time.

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22 DATED this 18th day of January 2017.

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27 RICARDO S. MARTINEZ
28 CHIEF UNITED STATES DISTRICT JUDGE