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10 and Panakos Law APC

11 UNITED STATES BANKRUPTCY COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 IN RE:
14 MICHAEL J. PRATT
15 Debtor
16 JANE DOE NOS. 1 - 22,
17 Plaintiffs,
18 v.
19 MICHAEL J. PRATT, et al.,
20 Defendants.
21

Case No. 19-00271-LT13
Chapter 13
Hon. Laura S. Taylor
**RESPONDENTS AARON
SADOCK AND PANAKOS LAW
APC'S RESPONSE TO
PLAINTIFFS' BRIEF IN
RESPONSE TO THIS COURT'S
OSC**
Hearing Date: June 10, 2019
Hearing Time: 10:00 AM
Location: Department 3
Judge Laura S. Taylor

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23 In an effort to fully and completely resolve the claims for fees, costs and
24 sanctions resulting from the removal of the underlying matter to Federal Court, and
25 avoid further burdening the court with this matter, Mr. Pratt and Mr. Sadock served
26 a Rule 68 Offer on May 24, 2019, offering to pay \$110,000 to the State Court
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1 Action Plaintiffs. The Rule 68 offer was intended to resolve the fees and costs
2 Plaintiffs purportedly incurred because of the removal to Federal Court. Although
3 Mr. Sadock believed he had a reasonable basis to remove the State Court Action, in
4 a good faith effort to resolve the dispute, Mr. Sadock and Mr. Pratt offered that
5 judgment be entered against them jointly and severally. On May 30, 2019, Plaintiffs
6 accepted the Rule 68 Offer of Judgment. [Docket No. 24; Adversary No. 19-90022-
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9 LT].

10 Although the fees and costs Plaintiffs initially requested exceed the amount of
11 Mr. Pratt and Mr. Sadock settlement offer, Plaintiffs failed to offer appropriate
12 evidentiary support for the fees and costs they requested in their Motion for
13 Sanctions (as addressed in Docket No. 77) or in Plaintiffs' Brief submitted in
14 response to this Court's OSC Re Sanctions. [Docket Nos. 73, 74]. For the reasons
15 addressed in Mr. Sadock's prior response, the \$110,000 settlement is more than
16 sufficient to meet the purpose of the reimbursement role of 28 U.S.C. §1447(c), or
17 any other available sanctions.
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21 Plaintiffs' reliance on *Gerardange v. Templer*, 418 F.Supp.2d 1169 (N.D. Cal.
22 2006) to state that counsel may be sanctioned for improper removal is misplaced.
23 While the court in that matter sanctioned counsel for an improper removal, there
24 was no discussion about whether such sanctions against counsel were actually
25 permitted. By contrast, the more recent *Pack v. Hoge Fenton Jones & Appel, Inc.*,
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1 2013 U.S.Dist.LEXIS 4241 (N.D. Cal. Jan. 10, 2013) squarely addressed the issue,
2 holding that “the attorney should not be held liable under §1447(c).” *Id.*, at 4 (citing
3 *In re Crescent City Estates, LLC*, 588 F.3d 822, 825 (4th Cir. 2009)).
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5 Finally, the text messages between Mr. Pratt and Ms. Moser that Plaintiffs
6 offered in their response tell a different story than what Plaintiffs suggest. The
7 messages establish that a businessman found himself considering bankruptcy when
8 he had to lay off employees and he lost an advertising stream as consequences of the
9 prosecution of the State Court Action. This predicament would frustrate any
10 defendant, and Mr. Pratt’s private “venting” comments should not serve as a basis
11 for sanctions against his attorney. Plaintiffs’ insinuations with respect to Mr. Pratt’s
12 investment in a marijuana dispensary were likewise meant to inflame the Court.
13 Regardless of the propriety of Mr. Pratt’s text messages and investment decisions,
14 such matters should not serve as the basis to sanction Mr. Sadock.
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19 In sum, Mr. Sadock respectfully requests that the Court refrain from issuing
20 sanctions against him in this instance, in part, because the State Court Action
21 Plaintiffs will be more than compensated for the fees and costs they purportedly
22 incurred due to the removal pursuant to their acceptance of the Rule 68 Offer of
23 Judgment. While, in hindsight, removing the matter may have been a mistake, Mr.
24 Sadock noticed the removal because he reasonably believed there were grounds to
25 do so following consultation with an experienced bankruptcy attorney.
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1 Sanctions against counsel “shall be limited to what is sufficient to deter
2 repetition of such conduct or comparable conduct by others similarly situated.”
3 *Miller v. Cardinale (In re DeVille)* 361 F.3d 539, 544 (9th Cir. 2004) (citing to
4 Federal Rules of Bankruptcy Procedure, Rule 9011(b)). Payment of an opposing
5 party’s fees and costs incurred as a result of a violation is an appropriate way to
6 fulfill this goal. *Id.* The inherent judicial sanction authority does not permit punitive
7 sanction awards. *See, e.g., Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1197
8 (9th Cir. 2003).

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12 The \$110,000 settlement was intended to and ensures that: (1) Plaintiffs are
13 compensated for their fees and costs; (2) the court is no longer burdened with this
14 matter; and, (3) the purpose of the Court’s inherent power to deter future similar
15 conduct is sufficiently fulfilled. *See e.g., In re DeVille, supra*, 361 F.3d at 545
16 (quoting *Chambers v. NASCO*, 501 U.S. 32, 45-46 (1991) [the imposition of
17 sanctions serves “the dual purpose of ‘vindicating judicial authority without resort to
18 the more drastic sanctions available for contempt of court and making the prevailing
19 party whole for expenses caused by his opponent’s obstinacy’”]). Here, Mr.
20 Sadock’s experience of reflecting on the Court’s Order to Show Cause coupled with
21 his joint and several liability for the \$110,000 settlement of Plaintiffs’ fees and costs
22 are valuable lessons learned.

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27 Additionally, in light of the settlement, and in an effort to avoid continuing to
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1 burden this court with the sanction motion, in an email sent to the State Court
2 Plaintiffs' counsel on June 4, 2019, Respondents offered to pay the \$110,000
3 judgment by noon on June 6, 2019, if Plaintiffs' counsel, no later than 1:00 pm, June
4 5, 2019, contacted the court clerk and requested that the court vacate the OSC and
5 the June 10, 2019, hearing given the settlement. [See, Ex. A] After much discussion,
6 Plaintiffs' counsel did agree not make the request.
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9 As a result of the judgment entered in response to Plaintiffs' acceptance of the
10 Rule 68 Offer, and to avoid further burden on the Court, Aaron Sadock and Panakos
11 Law APC respectfully request that the Court vacate its Order to Show Cause and the
12 June 10, 2019, hearing.
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15 Dated June 5, 2019

HINSHAW & CULBERTSON LLP

/s/ Bradley M. Zamczyk
Bradley M. Zamczyk, Esq.
Joanna L. Storey, Esq.
Attorneys for Respondents
Aaron Sadock and
Panakos Law APC

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EXHIBIT “A”

From: Zamczyk, Bradley M.
Sent: Tuesday, June 04, 2019 6:37 PM
To: Ed Chapin
Subject: In Re Michael Pratt

Ed,

Thanks for the email with the wire info.

As mentioned, our responsive brief discusses the parties' settlement and asks the court to vacate the June 10 hearing. However, the court clerk has informed me that the moving party is the only party that can request the court remove a hearing from the court's calendar.

Our Rule 68 offer, and likely Plaintiffs' acceptance of the offer, was motivated by a desire to avoid further fees and costs in the bankruptcy court and to allow counsel to concentrate on trial prep in the underlying action. Our Rule 68 offer was also motivated by a desire to avoid wasting judicial resources and burdening the court with further sanction issues. Plaintiffs' request to vacate the OSC and June 10 hearing will indicate to the court that Plaintiffs, having settled their sanction motion, also wish to avoid wasting judicial resources.

Having to prepare for the June 10 hearing will be costly and distract from trial preparation. Accordingly, if, by 1:00 pm on June 5, 2019, Plaintiffs ask the court, by calling Judge Taylor's law clerk Ole Oleson (with me on the line), to vacate the June 10 hearing and refrain from issuing additional sanctions, we will wire \$110,000 to your trust account no later than noon, June 6, 2019.

Let me know if you have any questions.

Brad

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