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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9
10 Brittany Morris,
11 Plaintiff,

12 v.

13 LVNV Funding, LLC,
14 Defendant.
15

No. CV-21-01643-PHX-DGC

ORDER

16
17 Defendant LVNV Funding has filed a supplemental motion for attorneys’ fees and
18 costs. Doc. 33. The motion is fully briefed and oral argument has not been requested. For
19 reasons stated below, the Court will deny the motion.

20 **I. Background.**

21 Plaintiff Brittany Morris, through counsel, brought this action on September 23,
22 2021. Doc. 1. The complaint alleges that Defendant violated the Fair Debt Collection
23 Practices Act (“FDCPA”), 15 U.S.C. § 1692 et seq., by falsely informing credit reporting
24 agencies that Plaintiff disputed a debt that Defendant had sought to collect. *See id.* Plaintiff
25 initially was represented by attorney Trinette Kent, “of counsel” to Credit Repair Lawyers
26 of America (“CRLA”). *See id.* at 1. On April 4, 2022, the Court granted a request to
27 replace Ms. Kent with attorney Cy Hainey, who also served as of counsel to CRLA.
28 Docs. 18, 20.

1 On September 28, 2022, Mr. Hainey filed a motion to withdraw as counsel due to
2 Plaintiff's failure to respond to his repeated attempts to communicate with her. Doc. 25.
3 Upon receiving the motion, the Court scheduled a hearing and required Plaintiff to be
4 present, but she did not appear. Docs. 26, 27. The Court granted the motion to withdraw
5 and gave Plaintiff until November 21, 2022 to show cause why this action should not be
6 dismissed. Docs. 27, 28. Plaintiff failed to respond to the order to show cause. On
7 November 23, 2022, the Court dismissed this action for failure to prosecute. Doc. 29.

8 Defendant filed a motion for attorneys' fees on December 7, 2022, asserting that it
9 reasonably believes CRLA brought this action without Plaintiff's involvement. Doc. 30.
10 The Court denied the motion without prejudice because the motion did not make clear
11 whether Defendant sought to recover attorneys' fees from Plaintiff or the lawyers involved
12 in representing her, and because it did not appear that the motion had been served on those
13 lawyers. Doc. 32.

14 Defendant filed its supplemental motion on February 21, 2023. Doc. 33. CRLA
15 filed a response in opposition, to which Defendant replied. Docs. 35, 36.

16 **II. Defendant's Supplemental Motion.**

17 Defendant now makes clear that it seeks an award of attorneys' fees and costs
18 against CRLA and not Plaintiff. Doc. 33 at 1. Based on its prior history with CRLA, and
19 the fact that Plaintiff had failed to communicate with counsel, Defendant asserts that it "has
20 a reasonable belief that Plaintiff had little-to-no involvement in bringing this action." *Id.*
21 at 1-2. Defendant contends that if Plaintiff was not involved in bringing this action, then
22 CRLA brought the action in bad faith and Defendant is entitled to an award of fees and
23 costs against CRLA pursuant to 15 U.S.C. § 1692k(a)(3) and 28 U.S.C. § 1927. *Id.* at 1-3.

24 **A. Section 1692k(a)(3).**

25 Under this section of the FDCPA, the court may award a defendant reasonable
26 attorneys' fees and costs if the court finds that the action "was brought in bad faith and for
27 the purpose of harassment[.]" 15 U.S.C. § 1692k(a)(3). Section 1692k(a)(3) is silent as to
28 whose bad faith and purpose to harass triggers an award of attorneys' fees and costs.

1 Defendant contends that § 1692k(a)(3) “relates to the behavior of plaintiff’s counsel when
2 it brings a case without its client’s knowledge or involvement.” Doc. 33 at 3 (quoting
3 *Alcivar v. Enhanced Recovery Co.*, No. 17-CV-2275 (ILG), 2020 WL 2559845, at *4
4 (E.D.N.Y. May 20, 2020)). Defendant requests that the Court order CRLA to pay
5 Defendant the fees and costs it incurred in defending this action. *Id.* at 1-2.

6 But the Ninth Circuit has held that “§ 1692k(a)(3) does not authorize the award of
7 attorney’s fees and costs against a plaintiff’s attorneys.” *Hyde v. Midland Credit Mgmt.*,
8 567 F.3d 1137, 1141 (9th Cir. 2009). Rather, § 1692k(a)(3) “authorizes attorney’s fees and
9 costs only against the offending plaintiff[.]” *Id.*; see *Ceresko v. LVNV Funding, LLC*, No.
10 CV 09-0483-PHX-ECV, 2011 WL 13183223, at *1 (D. Ariz. Jan. 19, 2011) (“The statute
11 authorizes the award of attorney’s fees and costs only against the offending plaintiff, not
12 against the plaintiff’s attorney.”); *Lysyuk v. I.C. Sys., Inc.*, No. 217CV00283JAMCKD,
13 2017 WL 4475962, at *2 (E.D. Cal. Oct. 6, 2017) (“Section 1692k(a)(3) authorizes an
14 award of fees against an unsuccessful plaintiff, but not her counsel.”); *Navarro v. Portfolio*
15 *Recovery Assocs., LLC*, No. CV-18-02333-PHX-JJT, 2020 WL 2199478, at *2 (D. Ariz.
16 May 6, 2020) (“An award of attorneys’ fees is not authorized against a plaintiff’s attorneys
17 – only the plaintiff himself.”).

18 The Ninth Circuit’s decision in *Hyde*, of course, is binding precedent that the Court
19 must follow. The Court accordingly will deny Defendant’s motion to the extent it seeks
20 an award of fees and costs against CRLA under § 1692k(a)(3). See *Chavez v. Northland*
21 *Grp.*, No. CV-09-2521-PHX-LOA, 2011 WL 317482, at *5 (D. Ariz. Feb. 1, 2011)
22 (“Defendant’s motion seeks an order holding ‘K & M and Plaintiff jointly and severally
23 responsible’ for Defendant’s attorney’s fees. To the extent that Defendant relies on
24 § 1692k(a)(3) to recover attorney’s fees and costs from Plaintiff’s counsel, K & M,
25 Defendant’s claim fails because § 1692k(a)(3) does not authorize the award of such
26 expenses against Plaintiff’s counsel.”) (cleaned up); *Kendricks v. Collect Access, LLC*, No.
27 5:19-cv-01134-ODW (SHKx) 2021 WL 2577479, at *2 (C.D. Cal. June 23, 2021)
28 (“§ 1692(k)(a)(3) does not authorize attorneys’ fees against a plaintiff’s attorneys. Thus,

1 to the extent Defendants seek attorneys' fees against Kendricks's attorneys, their Motion
2 is denied.") (cleaned up).¹

3 **B. Section 1927.**

4 Section 1927 provides that reasonable attorney's fees and costs may be awarded
5 against an attorney who "multiplies the proceedings in any case unreasonably and
6 vexatiously[.]" 28 U.S.C. § 1927. CRLA notes, correctly, that because § 1927 authorizes
7 sanctions only for multiplication of proceedings, it "applies only to unnecessary filings and
8 tactics once a lawsuit has begun." Doc. 35 at 10 (quoting *In re Keegan Mgmt. Co., Sec.*
9 *Litig.*, 78 F.3d 431, 435 (9th Cir. 1996)); *see also In re Yagman*, 796 F.2d 1165, 1187 (9th
10 Cir. 1986) ("Section 1927 does not apply to initial pleadings, since it addresses only the
11 multiplication of proceedings"); *Cameron v. Avalon Mobility Inc.*, No. CV-15-00963-
12 PHX-JAT, 2018 WL 704326, at *4 (D. Ariz. Feb. 5, 2018) (same).

13 Defendant does not contend that CRLA has unreasonably and vexatiously
14 multiplied the proceedings in this case. Instead, Defendant asserts only that this action
15 "was brought in bad faith." Doc. 33 at 2. Because § 1927 does not apply to the filing of a
16 complaint, Defendant's motion will be denied to the extent it seeks an award of fees and
17 costs under § 1927. *See Best Odds Corp. v. iBus Media Ltd.*, 657 F. App'x 641, 642 (9th
18 Cir. 2016) ("The district court abused its discretion by imposing sanctions under § 1927,
19 because the act of filing a complaint is not sanctionable under that section.")²

20 **IT IS ORDERED:**

21 1. Defendant's supplemental motion for attorneys' fees and costs (Doc. 33) is
22 **denied.**

23 _____
24 ¹ Given this ruling, the Court need not address Defendant's alternative request for
25 discovery to determine Plaintiff's level of involvement in bringing this action. Doc. 33
at 5-6.

26 ² Defendant also seeks an award of attorneys' fees pursuant to Federal Rule of Civil
27 Procedure 54(d)(2) (Doc. 33 at 1), but this procedural rule "does not create[] an
28 *independent* statutory substantive right for attorney's fees[.]" *Gill v. Kaur*, No. CV 21-
0999, 2021 WL 5631741, at *8 (E.D. Pa. Nov. 30, 2021) (noting that the rule requires the
moving party to "specify the judgment and the statute, rule, or other grounds entitling the
movant to the award").

