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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WISHTOYO FOUNDATION, DELIA DOMINGUEZ, and CENTER FOR BIOLOGICAL DIVERSITY Plaintiffs, **v.** **UNITED STATES FISH AND WILDLIFE SERVICE,** Defendant, **TEJON RANCHCORP and TEJON MOUNTAIN VILLAGE, LLC**, Defendant-Intervenors.	Case No. 2:19-cv-3322-CJC-AS **OPPOSITION TO DEFENDANT-INTERVENORS TEJON RANCHCORP AND TEJON MOUNTAIN VILLAGE, LLC'S MOTION FOR ATTORNEYS' FEES** Hearing: February 8, 2021 Time: 1:30 p.m. Dept.: Courtroom 9B Judge: Hon. Cormac J. Carney

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I. INTRODUCTION

In its Motion for Attorney's Fees ("Motion"), Defendant-Intervenors Tejon Ranchcorp and Tejon Mountain Village ("Tejon") seek attorney's fees against Plaintiffs' legal counsel without any basis in law to do so. The lone statute they cite in support of their Motion, 28 U.S.C. § 1927, allows a court to impose sanctions personally on an attorney that "multiplies the proceedings in any case unreasonably and vexatiously . . . ." Here, Tejon makes showing that Plaintiffs or their attorneys unreasonably and vexatiously multiplied the proceedings in this case. Instead, Plaintiffs' attorneys brought this action on behalf of the Center for Biological Diversity ("Center"), Wishtoyo Foundation, and Delia Dominguez under the National Historic Preservation Act ("NHPA") based upon existing case law and sought adjudication of the case on the merits as quickly as possible.

Sanctions under section 1927 are only available if attorneys exhibit bad faith, which may be present when "an attorney knowingly or recklessly raises a frivolous argument . . . ." *Estate of Blas v. Winkler*, 792 F.2d 858, 860 (9th Cir. 1986) (citations omitted). Here, Plaintiffs' claims were not frivolous. Plaintiffs' case survived multiple motions to dismiss by Tejon and Defendant United States Fish and Wildlife Service (the "Service"), and the Court directed the parties to file a summary judgment motion on the question of whether the California condor qualifies as a traditional cultural property ("TCP") under the NHPA. The Court ultimately disagreed that a wild animal can qualify as a TCP under the NHPA, and that the Service violated the NHPA in making its no adverse effects determinations and approving mitigation for Tribal Cultural Properties, and thus denied summary judgment. However, Plaintiffs claims cannot be frivolous and were based on the NHPA's requirements and the holding of *Dugong v. Rumsfeld*, No. C 03-4350 MHP, 2005 U.S. Dist. LEXIS 3123 (N.D. Cal. Mar. 2, 2005), as well as other cases and regulations.

At best, Tejon's motion merely reflects longstanding animus towards the Center and its staff. Yet, that Tejon is vexed does not render the Center or its attorneys a vexatious litigant, nor does Tejon's frustration entitle it to fees. Tejon's Motion finds no support in applicable case law, which Tejon fails to cite. To the extent any attorney in this matter should be subject to sanctions, it is Tejon's attorneys for bringing this frivolous motion.

II. ARGUMENT

A. Section 1927 Only Applies to Individual Attorneys and Not to a Party Like the Center.

The conduct of the Center and its attorneys provides absolutely no basis for imposition of a fee award. *See infra* Section II.B. In any event, the lone statute upon which Tejon bases its claims for fees does not even apply to parties like the Center. Tejon bases its claim for fees on 28 U.S.C. § 1927.[1] Section 1927 provides:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

It is not entirely clear whether Tejon is seeking attorney's fees against the Center or Wishtoyo Foundation as entities and/or counsel of Plaintiffs, or against Plaintiffs' individual legal counsel in this action, John Rose, John Buse, Lisa Belenky, and Jason Weiner.[2] On the one hand, the Motion repeatedly attacks the Center as an entity, but the Proposed Order submitted with the Motion asks the Court to reimburse "legal counsel

[1] Tejon suggests it is entitled to fees under Federal Rule of Civil Procedure 54(d). Yet, this rule simply provides the *procedure* for seeking fees, and requires the movant to specify the "statute, rule, or other grounds entitling the movant to the award . . . ." And Plaintiffs do not dispute that in circumstances where attorney's fees are awarded, the "lodestar" calculation is the first step in determining the amount.

[2] Jason Weiner was an employee of Plaintiff Wishtoyo Foundation until December 31, 2020, and continues to represent Plaintiffs although he is no longer an employee of Wishtoyo Foundation.

for Plaintiffs" with Tejon's attorney's fees. The murkiness of the Motion renders it a shifting target.

In any event, section 1927 applies to individual attorneys, not entities; it states it applies to an "***attorney or other person*** admitted to conduct cases… ." *Id*., emphasis added. Consistent with this plain language, *Lockary v. Kayfetz*, 974 F.2d 1166, 1170 (9th Cir. 1992) (overruled on other grounds in *Margolis v. Ryan*, 140 F.3d 850 (9th Cir. 1998)) held that section 1927 can only be used to sanction individual attorneys, and not parties to a lawsuit, and that a nonprofit organization (Pacific Legal Foundation) that engaged in sanctionable conduct could only be subject to sanctions under the court's inherent power, and not section 1927. See also *Montgomery v. Etreppid Techs., LLC*, No. 3:06-CV-00056-PMP-VPC, 2010 U.S. Dist. LEXIS 43304 (D. Nev. April 5, 2010) (noting that the district court in *Lockary* "recognized it did not have the power to sanction the non-profit entity under § 1927").

To the extent Tejon is claiming the Center is a law firm (which it is not), Tejon's Motion still fails. *Kaass Law v. Wells Fargo Bank, N.A.*, 799 F.3d 1290, 1291 (9th Cir. 2015) held that section 1927 "does not permit the imposition of sanctions against a law firm." In that case, the district court awarded sanctions against the law firm representing plaintiffs (Kaass Law), and the Ninth Circuit concluded that "the district court abused its discretion when it imposed sanctions against a law firm pursuant to 28 U.S.C. § 1927." *Id*. at 1292. In reaching this conclusion, the Ninth Circuit cited *Claiborne v. Wisdom*, 414 F.3d 715 (7th Cir. 2005) which noted:

> [i]ndividual lawyers, not firms, are admitted to practice before both the state courts and the federal courts. . . **.** It is too much of a stretch to say that a law firm could also be characterized as such a person.

Here, it is even more of a "stretch" to extend section 1927 to the Center—a nonprofit conservation organization. *Kaass Law* also noted that section 1927 "does not permit the awarding of sanctions against an individual employed by attorneys **or against a client** . .

. ." *Id*. at 1293, emphasis added. Again, to the extent Tejon is seeking fees against the Center (which is somewhat unclear), such fees may not be awarded under section 1927. Tejon's motion is even more of a "stretch" because it seeks fees against a client—the Center—for conduct that is largely outside of this case.

To the extent Tejon is seeking sanctions against Plaintiffs' attorneys, it has not pointed to any specific sanctionable conduct by any of these individual attorneys. More specifically, Tejon has not and cannot point to conduct of any of Plaintiffs' attorneys in this case that allegedly "multiplied the proceedings." At best, Tejon has shown that Plaintiffs' attorneys filed a lawsuit against the federal government, and Tejon was unhappy with that lawsuit and decided to intervene in that lawsuit.

B. Tejon Provides No Evidence of Bad Faith by Plaintiffs' Attorneys.

An award of sanctions under section 1927 "must be supported by a finding of subjective bad faith." *New Alaska Development Corp. v. Guetschow*, 869 F.2d 1298, 1306 (9th Cir. 1989). "Bad faith is present when an attorney knowingly or recklessly raises a frivolous argument, or argues a meritorious claim for the purpose of harassing an opponent." *Estate of Blas v. Winkler*, 792 F.2d 858, 860 (9th Cir. 1986) (citations omitted). Tejon, however, presents no evidence that Plaintiffs' attorneys acted recklessly or in bad faith in this action, and thus cannot—even remotely—support a finding of subjective bad faith. It cannot demonstrate that Plaintiffs' arguments are frivolous or "undoubtedly unmeritorious." See *In re Peoro*, 793 F.2d 1048, 1051 (9th Cir. 1986). Tejon (and the United States) filed multiple motions to dismiss this action, all of which were ultimately unsuccessful. An "undoubtedly unmeritorious" case would not have survived these motions.

Nor can Tejon demonstrate that Plaintiffs or their attorneys brought their meritorious claims for the purpose of harassing Tejon. Tejon's effort to impute a malicious motive to the Center's attorneys must fail. Ample evidence shows a more obvious and parsimonious explanation for bringing this case: these attorneys represent

the Center, Wishtoyo Foundation, and Delia Dominguez, who are keenly interested in the conservation of California condors and the preservation of sacred tribal cultural resources and sites. Tejon Ranch, and the Tejon Mountain Village site in particular, are exceptionally important for Condor conservation and the cultural preservation and continuance of numerous Native American tribes. 4722:100095; 2044:32972-33011; 2236:35767-35785; 4722:100097-100098; 17:2890-97; 74:08250-53; 3887:52745-762; 3887:52777-787. According to Tejon's theory, Plaintiffs' stated interests in Condor conservation and the preservation of Native American cultural resources, villages, and ancestral remains important to effected tribes are just pretexts for the Plaintiffs' attorneys' real interest of harassing Tejon. Tejon does not and cannot point to any harassing behavior, but simply assumes that the whole point of this litigation is to harass Tejon. This is, of course, beyond absurd, and is refuted by, among other things, Plaintiffs' standing declarations, which Tejon failed to challenge. Again, that Tejon may be vexed does not render the Plaintiffs' attorneys' conduct vexatious.

Case law confirms that sanctions are wholly unsupported here. In *MGIC Indem. Corp. v. Moore*, 952 F.2d 1120, 1122 (9th Cir. 1991) ("*MGIC*"), the district court imposed sanctions of $7,500 against plaintiffs and characterized a trial as an "abuse of the system." *Id*. at 1121. The Ninth Circuit held that the district court committed a clear error in judgment because there was no evidence of bad faith upon which to rationally base the decision. *Id*. at 1122. Likewise, in *Western Radio Servs. Co. v. Espy*, 79 F.3d 896, 903 (9th Cir. 1996), a defendant and holder of a Forest Service permit sought sanctions under section 1927 after the court held that the plaintiff lacked standing. The Ninth Circuit stated that while "we have little tolerance for plaintiffs who use our court solely as a means of harassment or competitive gain, we do not believe that Western's appeal is frivolous. Therefore, we decline to impose sanctions in this case at this time." See also *Sanchez v. Pacific Powder Co*., 147 F.3d 1097, 1101 (9th Cir. 1998) (declining

to sanction defendants for filing a "frivolous" appeal because the appeal was "not entirely without merit.").

C. Ninth Circuit Precedents Preclude a Fee Award Against a Plaintiff Unless the Lawsuit Was Frivolous.

While not directly applicable to section 1927, other cases provide further guidance on when attorney's fees may be awarded against a plaintiff. Under *Marbled Murrelet v. Babbitt*, 182 F.3d 1091, 1095 (9th Cir. 1999), a court may not award attorney's fees to a defendant unless the case brought was "frivolous." *Marbled Murrelet* followed *Christiansburg Garment Co. v. Equal Employment Opportunity Comm'n,* 434 U.S. 412 (1978) ("*Christiansburg*"), which held that "although a prevailing plaintiff in a Title VII proceeding is ordinarily to be awarded attorney's fees by the district court in all but special circumstances, a prevailing defendant is to be awarded such fees only when the court in the exercise of its discretion has found that the plaintiff's action was frivolous, unreasonable, or without foundation." *Christiansburg* further stated that "a plaintiff should not be assessed his opponent's attorney's fees unless a court finds that his claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so." *Id*. at 422. In *Hughes v. Rowe*, 449 U.S. 5, 14 (1980), the Supreme Court followed *Christiansburg* in holding that a defendant may not recovery attorney's fees unless the plaintiff's action is "meritless in the sense that it is groundless or without foundation. The fact that a plaintiff may ultimately lose his case is not in itself a sufficient justification for the assessment of fees."

Under *Marbled Murrelet* and *Christiansburg*, the inquiry is whether Plaintiffs' lawsuit was "frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so." *Christiansburg*, 434 U.S. at 422. A case is frivolous when the "result is obvious" or a party's argument are "wholly without merit." *National Mass Media Telecomm. Sys. v. Stanley (In re National Mass Media Telecomm. Sys.)*, 152 F.3d 1178, 1181 (9th Cir. 1998).

Here, Tejon has provided no evidence that Plaintiffs' lawsuit was frivolous. The Court reviewed multiple motions to dismiss filed by Tejon, and ultimately agreed that Plaintiffs' claims should proceed to summary judgment, and directed the parties to file a summary judgment motion on the question of whether the California condor qualifies as a TCP under the NHPA. Dkt. No. 39 at p. 15. Moreover, Plaintiffs' view that the Condor and Condor habitat may qualify as TCPs was supported by *Dugong v. Rumsfeld*, No. C 03-4350 MHP, 2005 U.S. Dist. LEXIS 3123 (N.D. Cal. Mar. 2, 2005), as well as other precedents and regulations, which are outlined in Plaintiffs' Motion for Summary Judgment. Tejon does not even attempt to argue—nor can it—that Plaintiffs' claims were frivolous.

Plaintiffs' claims in this litigation, if not ultimately successful, were substantially justified. The Center, Wishtoyo, and Delia Dominguez consistently raised these issues regarding the Condor as a TCP, and the inadequacy and harm of the project's mitigation measures, in comments and eventually pursued them in an Administrative Procedure Act challenge to government action. This is a function of Plaintiffs' right to petition government and redress agency action.

D. Plaintiffs Did Not "Strategically Time" Its Complaint to Delay the Project.

In attempting to support its Motion, Tejon claims Plaintiffs "strategically timed" their complaint to "maximize disruption and delay." Motion at 6. Not so. As a preliminary matter, this appears to be grievance with *when* the parties filed the litigation, which the individual attorneys in this case did not decide or control. Even if the individual attorneys did somehow have full control over when the case was filed (which they do not), Tejon's grievance amounts to a re-run of its laches argument, which Tejon raised in one of its many motions to dismiss. In particular, Tejon argued that Plaintiffs lawsuit should "be barred by the equitable doctrine of laches given their failure to file their Complaint until over six years after the conclusion of the NHPA consultation."

Dkt. No 20 at p. 8. The Court rejected this argument at the motion to dismiss stage. Dkt. No. 29 at p. 10. Despite the opportunity to do so, Tejon did not re-assert the argument in the summary judgment proceedings, or provide any actual evidence of prejudice caused by any delay by Plaintiffs in pursuing this action. Indeed, as Plaintiffs explained in their opposition to Tejon's Motion to Dismiss, Tejon did not identify any actual construction that has occurred onsite for its Tejon Mountain Village development. Dkt. No. 24 at p. 15. If Tejon believed its laches claim was not even worthy of including in its briefing in summary judgment proceedings, it is unclear why Tejon is asking the Court to consider this claim yet again as a basis for sanctions under section 1927. Tejon's re-styled laches argument is meritless and fails to provide even minimal support for sanctioning Plaintiffs' attorneys.

Tejon erroneously suggests that courts can consider conduct in related cases to determine whether proceedings have been unreasonably and vexatiously multiplied in the instant case (Tejon's Motion at p. 3). However, that position finds no support in the Ninth Circuit. In the sole case applying section 1927 from the Ninth Circuit cited in Tejon's motion, *U.S. v. Wilder*, 680 F.2d 59 (9th Cir. 1982), the Ninth Circuit affirmed section 1927 against an admitted tax protester who filed multiple frivolous appeals in the same case. 680 F.2d at 60-61. *Wilder* says nothing about the tax protest's conduct in related cases. In any event, Tejon has not pointed to any instances in other cases where the Center or its attorneys "unreasonably and vexatiously" multiplied the proceedings.

E. Plaintiffs Did Not "Strategically" Amend Their Complaint to "Lengthen" the Litigation.

Tejon claims that that *Plaintiffs* sought to lengthen the litigation through "strategic amendments" to the complaint. Motion at pp. 6-7. This is false. As the docket of the case illustrates, it was Tejon—and not Plaintiffs or their attorneys—who lengthened the litigation by nitpicking the wording of Plaintiffs' complaint, thus requiring the "wordsmithing" and attendant revisions to the complaint that Tejon now protests.

Plaintiffs did not "strategically" decide to amend their complaint; Plaintiffs amended their complaint to have an opportunity to argue the merits of the case. At the risk of stating the obvious, Plaintiffs did not file motions to dismiss the case or affirmatively decide to amend the complaint. Plaintiffs initial complaint was based on their understanding of the applicable precedents, and Plaintiffs thereafter amended the complaint to be consistent with the Court's understanding of applicable precedents.

Here, Tejon is seeking fees for multiple motions to dismiss, all of which were unsuccessful in dismissing the case. Tejon's first motion to dismiss was filed on July 9, 2019 (Dkt. No.12), and Plaintiffs thereafter filed an amended complaint on July 30, 2019 (Dkt. No. 17). On August 15, 2019, the Court denied Tejon's motion to dismiss as moot in light of Plaintiffs' Amended Complaint (Dkt. No. 22). Tejon filed an amended motion to dismiss on August 13, 2019 (Dkt. No. 20), which the Court granted with leave to amend (Dkt. No. 29). After Plaintiffs amended their complaint again on October 30, 2019 (Dkt. No. 31), Tejon filed yet another motion to dismiss (Dkt. No. 33), which the Court denied (Dkt. No. 39). Nonetheless, Tejon grouses about "strategic amendments and evolving legal claims," as if Plaintiffs' amended complaints were intended to drag out the litigation rather than respond to Tejon's motions to dismiss. Filing an amended complaint that ultimately survived Tejon's motions to dismiss was an appropriate step in representing the clients' interests and does not constitute an abusive litigation tactic subject to sanction under section 1927.

Even if Tejon did have a leg to stand on (which it does not), section 1927 "applies only to unnecessary filings and tactics once a lawsuit has begun." *Moore v. Keegan Mgmt. Co. (In re Keegan Mgmt. Co., Sec. Litig.)*, 78 F.3d 431, 435 (9th Cir. 1996). It does not apply to initial pleadings, "since it addresses only the multiplication of proceedings. It is only possible to multiply or prolong proceedings after the complaint is filed." *Brown v. Baden (In re Yagman)*, 796 F.2d 1165, 1187 (9th Cir. 1986). Again, the only party that unnecessarily multiplied proceedings after the initial filing was Tejon,

which filed multiple motions to dismiss that ultimately failed. And Tejon identifies no conduct of the Center's attorneys that plausibly constitutes multiplication of proceedings.

F. Plaintiffs Did Not Misrepresent Regulations or the Administrative Record.

Tejon claims that Plaintiffs "misrepresented regulations and the administrative record." Motion at p. 9. This is incorrect. In support of this allegation, Tejon claims Plaintiffs were incorrect in alleging that Chairwoman Delia Dominguez's concerns were ignored by the Service, and cite the Court's conclusion that Plaintiffs' assertion is "unsupported by the record." Motion at 9-10, citing Dkt. 84 at p. 24 and Dkt. 100 at p.1. Yet, this claim *is supported* by the record. As explained in Plaintiffs' Opposition to Defendants' Cross-Motion for Summary Judgment, *none* of the record citations the Service provided respond to Chairwoman Dominguez's concerns regarding the *cap and fill* mitigation measures, and Plaintiffs included numerous citations from the record supporting this allegation.[3] That the Court ultimately disagreed with Plaintiffs reading of the record does not mean that any misrepresentation of fact occurred.

Tejon also claims that Plaintiffs' mischaracterized a rule regarding bald eagles and whether they may qualify as TCPs. Yet the rule is quite clear that both eagle nests *and* eagles are important subjects of analysis under the NHPA:

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[3] See Dkt. 91 at 24:6-14; 33:7125-29 (Service's January 2012 response to comments citing to prior and different comments from Chairwoman Dominguez, and not her comments regarding cap and fill mitigation from her letter and public testimony (3877:52745, 52777-87) provided to the Service on May 1, 2012; 57: 7915–17 (Service's October 2012 response to comments failing to respond to Chairwoman Dominguez's comments regarding cap and fill (3877:52745, 52777-87) provided on May 1, 2012; 57:7914 (index for Service's October 2012 response to comments only responding to Wishtoyo's comments the Service marks N-2-1 through 2-5 on Wishtoyo's May 1, 2012 letter (3887:52745-49), and not responding to Chairwoman Dominguez's comments included in Wishtoyo's May 1, 2012 letter (3887:52745, 52777-87).

> Eagles also have cultural significance to the wider American public, with the result that the Service will need to consider the concerns of **any party with cultural interest in eagles, eagle nests, and eagle habitat under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470).**

Eagle Permits; Take Necessary To Protect Interests in Particular Localities, 74 Fed. Reg. 46,836, 46,873-74 (Sept. 11, 2009), emphasis added. As such, Plaintiffs did not mischaracterize this rule and respectfully disagree with the Tejon and the Court's interpretation of it. In any event, Tejon fails to support its claim that Plaintiffs' briefing on the rule somehow entitles Tejon to sanctions against Plaintiffs' attorneys for multiplying the proceedings "unreasonably and vexatiously." See 28 U.S.C. § 1927.

G. Tejon Is Not Entitled To Fees Because Its Fees Were Not Reasonably Incurred.

Even if there was attorney misconduct justifying an award of fees under section 1927, which there manifestly was not, a fee award is only proper for "fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. But Tejon cannot claim its fees were "reasonably incurred" when its entire participation in the case was strictly voluntary. Neither Plaintiffs nor their attorneys sued Tejon in this case; Plaintiffs brought suit against the Service, which approved the Tehachapi Uplands Multiple Species Habitat Conservation Plan ("TUMSHCP"). Although Tejon's interests were adequately represented by the Service and Tejon is not a necessary party to the litigation, the Center did not oppose Tejon's intervention. Moreover, the Service has ***not*** sought fees or sanctions against Plaintiffs or their attorneys, nor has the Service alleged that Plaintiffs or their attorneys have "unreasonably and vexatiously" multiplied the proceedings. Indeed, the Service's lack of participation in this Motion suggests it views the Motion as futile, lacking basis in the law, and/or unnecessary.

H. Tejon Has Sought a Litigation Advantage in This Case Based on Misrepresentations of Fact.

As a final attack on Plaintiffs and their attorneys, Tejon claims that Plaintiffs' misrepresented facts in this case and that these "misrepresentations of the Administrative Record" were an "unnecessary multiplication of TRC's legal counsel's time. . . ." Motion at p. 10. Yet, it is Tejon that has misrepresented facts to the Court in this litigation. For instance, in seeking to paint Plaintiffs as unreasonable (and vexatious) outliers, Tejon represented to the Court that the Project and TUMSHCP were "***tacitly endorsed*** by numerous environmental nongovernmental groups." Dkt. 92 at 4, emphasis added. In the summary judgment proceedings, Plaintiffs responded that the agreement called the Tejon Ranch Conservation and Land Use Agreement ("Ranchwide Agreement") is clear that settling conservation organizations were not "***endorsing***" any of Tejon's projects or approvals; these conservation organizations were only agreeing not to oppose future Tejon project approvals in exchange for concessions by Tejon described in the Agreement. Dkt. 93 at p. 20. Indeed, since that filing, the conservation organizations that signed the Ranchwide Agreement filed an action in Kern County Superior Court on December 3, 2020 (the "NRDC Complaint") alleging that Tejon has materially breached the agreement by failing to make payments to fund the operations of the Tejon Ranch Conservancy.[4] In their complaint, the conservation organizations state:

> These negotiations resulted in the June 2008 Tejon Ranch Conservation and Land Use Agreement ("RWA" for short). Plaintiffs agreed not to challenge – ***but did not agree to endorse*** – Defendants' proposed developments.[5]

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[4] Natural Resources Defense Council, "Signatories to Tejon Ranch Conservation Agreement Sue Tejon Ranch Company" (Dec. 3, 2020), available at https://www.nrdc.org/media/2020/201203-0.

[5] Complaint for Declaratory Relief filed by Natural Resources Defense Council, National Audubon Society, Endangered Habitats League, Planning and Conservation League, and Sierra Club against Tejon Ranch and Tejon Ranchcorp ("NRDC Complaint") (Dec. 2, 2020) available at https://www.nrdc.org/sites/default/files/tejon-ranch-complaint.pdf.

Tejon also repeatedly extolled the virtues of the Ranchwide Agreement in its Cross-Motion for Summary Judgment (Dkt. No. 4 at pp. 2 & 4) even while – according to the NRDC Complaint[6] – it was on notice by these conservation organizations of material breaches of the agreement.

I. Tejon's Grievances with the Center Do Not Entitle It Fees.

Tejon's attempts to vilify the Center and its allies for seeking to preserve Tejon Ranch as a state or national park. Motion at p. 1. Although not directly relevant to this litigation, it is true that the Center and many other conservation and tribal organizations (as well as state and local officials) are concerned with the long-term management of Tejon Ranch and wish to see it protected for future generations of Californians and effected Native American tribes. Those concerns regarding the management of the ranch have been borne out by Tejon's alleged breach of the Ranchwide Agreement,[7] Tejon's blacklisting of botanical groups from accessing the ranch,[8] and the unlawful killing of at least 11 mountain lions to prevent them from competing for game animals with trophy hunters.[9]

III. CONCLUSION

For all the reasons explained above, the Court must deny Tejon's motion for sanctions.

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[6] See NRDC Complaint at ¶¶ 35-44.

[7] Louis Sahagun, 'A thorny land conservation dispute takes root in the wilds of Tejon Ranch," *Los Angeles Times* (Dec. 3, 2020), available at https://www.latimes.com/environment/story/2020-12-03/a-thorny-land-conservation-dispute-takes-root-in-the-wilds-of-tejon-ranch.

[8] Louis Sahagun, "A botanist criticized Tejon Ranch. So he got kicked out — along with 10,000 of his friends," *Los Angeles Times* (Dec. 10, 2018), available at https://www.latimes.com/local/california/la-me-tejon-blacklist-20181210-story.html.

[9] Louis Sahagun, "Tejon Ranch to pay fine for killing mountain lions," *Los Angeles Times* (Feb. 11, 2012), available at https://www.latimes.com/local/la-xpm-2012-feb-11-la-me-0211-tejon-lions-20120211-story.html.

Respectfully submitted this 15th day of January, 2021.

/s/_____

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