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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

**IN RE: VICKIE LYNN MARSHALL,  
ET AL.,**

**Debtor,**

**vs.**

**NULL.**

**Case No.: SACV 01-00097 DOC**

**ORDER ON MOTION FOR  
SANCTIONS [580], MOTION TO  
DISMISS SANCTIONS  
PROCEEDINGS [569]**

Before the Court is the Motion for Sanctions (Dkt. 580) filed by Howard K. Stern (“Stern”), Executor of the Estate of Debtor Vickie Lynn Marshall (“Vickie Lynn”), and the Motion to Dismiss (Dkt. 569) filed by Plaintiff/Counter-Defendant Elaine Marshall, Executrix of the Estate of E. Pierce Marshall (“Pierce’s Estate”)<sup>1</sup>. The Court held two status hearings on

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<sup>1</sup> To minimize confusion regarding parties sharing the same last name, the Court refers to Pierce’s Estate in lieu of using the executrix’s first name.

1 these motions and has accepted supplemental briefing. After considering the various moving  
2 and opposing papers and the argument of counsel, the Court DENIES the motion for sanctions  
3 and DENIES AS MOOT the motion to dismiss.

#### 4 **I. Background**

##### 5 **a. Litigation Over the Marshall Estate**

6 This Court has discussed at length the history of Vickie Lynn and J. Howard Marshall  
7 II's relationship and marriage. *See In re Marshall*, 275 B.R. 5, 8-26 (C.D. Cal. 2002) *vacated*  
8 *and remanded*, 392 F.3d 1118 (9th Cir. 2004) *rev'd and remanded sub nom. Marshall v.*  
9 *Marshall*, 547 U.S. 293 (2006) and *rev'd*, 600 F.3d 1037 (9th Cir. 2010) *aff'd sub nom. Stern v.*  
10 *Marshall*, 131 S. Ct. 2594, 180 (2011). Indeed, this Court is one of the few remaining observers  
11 still alive after years of litigation. The Supreme Court has twice considered the nature of Vickie  
12 Lynn's tortious interference claim, as has the Ninth Circuit. *See Stern v. Marshall*, 131 S. Ct.  
13 2594, 2600 (2011); *Marshall v. Marshall*, 547 U.S. 293, 298 (2006); *In re Marshall*, 600 F.3d  
14 1037, 1039 (9th Cir. 2010) *aff'd sub nom. Stern v. Marshall*, 131 S. Ct. 2594 (2011); *In re*  
15 *Marshall*, 392 F.3d 1118, 1121 (9th Cir. 2004) *rev'd and remanded sub nom. Marshall v.*  
16 *Marshall*, 547 U.S. 293 (2006). This is not the only iteration of the Marshall litigation to reach  
17 the appellate courts, *see In re Marshall*, 721 F.3d 1032, 1035 (9th Cir. 2013), but it is the last  
18 surviving piece of decades of litigation. Perhaps unexpectedly, the deeply personal story of  
19 Vickie Lynn and J. Howard Marshall gave important features of bankruptcy law, including the  
20 probate exception and the constitutional authority to issue final judgments, the full attention of  
21 the courts.

22 More relevant to the instant discussion are the facts underlying the litigation of J. Howard  
23 Marshall's estate. After J. Howard Marshall's death, two parallel proceedings developed: the  
24 probate proceedings in Texas and Vickie Lynn's bankruptcy proceedings in this district. *See In*  
25 *re Marshall*, 600 F.3d at 1046. Vickie Lynn filed for bankruptcy in the Central District of  
26 California on January 25, 1996. *See In re Marshall*, 253 B.R. 550, 553 (Bankr. C.D. Cal. 2000)  
27 *adopted as modified*, 275 B.R. 5 (C.D. Cal. 2002). Proceedings on her bankruptcy ended with  
28 Judge Bufford's judgment in her favor on October 6, 2000. *See id.* After an intra-district

1 transfer, the case became active in this Court on January 23, 2001 on appeal from Judge  
2 Bufford's order. *See* Notice of Appeal (Dkt. 2). After a de novo review and bench trial, this  
3 Court issued its order finding in Vickie Lynn's favor on March 7, 2002. *In re Marshall*, 275  
4 B.R. at 5.

5 The Texas probate trial closed on March 7, 2001, with a jury verdict making the  
6 following factual findings: "(1) the Living Trust and will were valid and had not been forged or  
7 altered; (2) J. Howard Marshall II had not been the victim of fraud or undue influence; (3) he  
8 had the requisite mental capacity when he executed his Living Trust and will; and (4) he did not  
9 have an agreement with Vickie Lynn Marshall that he would give her one-half of all his  
10 property." *In re Marshall*, 600 F.3d at 1047. The Texas Probate Court entered final judgment  
11 on August 15, 2001, but amended the judgment twice. *Id.* The Probate Court issued its last  
12 final judgment on December 7, 2001. *Id.* The Texas Probate Court judgment reads, in relevant  
13 part, that the jury found:

14 that Vickie Lynn Marshall does not possess any interest in and is not entitled to  
15 possession of any property within the estate of J. Howard Marshall II or [the  
16 Living Trust] because of any representations, promises or agreements made by J.  
17 Howard Marshall II; . . .

18 that any and all claims that have been or should have been asserted by Vickie  
19 Lynn Marshall . . . based upon alleged representations, promises, or agreements  
20 made by J. Howard Marshall II to or with Vickie Lynn Marshall . . . have been  
21 disposed of in this proceeding; . . .

22 that J. Howard Marshall did not intend to give and did not give to Vickie Lynn  
23 Marshall . . . a gift or bequest from the Estate of J. Howard Marshall II or from the  
24 [Living Trust] either prior to or upon his death; . . .

25 that Vickie Lynn Marshall . . . shall take nothing from any claim that she should  
26 have made in this proceeding as a compulsory counterclaim against . . . E. Pierce  
27 Marshall.

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1 Second Modified Final Judgment, Request for Judicial Notice (“RJN”) (Dkt. 570) Ex. 40 at 638-  
2 39; *In re Marshall*, 600 F.3d at 1047. The Texas judgment is presently on appeal. *See* Notice of  
3 Lodging, June 5, 2014 (Dkt. 637).

4 The litigation record in this Court and the Bankruptcy Court reflects litigants with a  
5 distinct disinterest in rules or ethics. Orders from this Court and the Bankruptcy Court detailed  
6 procedural and ethical violations, including: (1) Mr. Edwin Hunter’s testifying falsely; (2)  
7 attempting to manipulate a sitting federal judge and improperly use his position for personal  
8 gain; (3) backdating and altering documents; (4) egregiously deficient discovery responses; (5)  
9 improper and frivolous claims of privilege; (6) destroying documents; and (7) wilfully  
10 disobeying court orders. *See* Order, May 29, 2013 (Dkt. 563) at 12-24 (summarizing factual  
11 findings in 2002 District Court order and 2000 Bankruptcy Court order).

12 In an opinion issued June 23, 2011, the Supreme Court affirmed the Ninth Circuit’s  
13 determination that the Bankruptcy Court lacked jurisdiction to enter final judgment on Vickie  
14 Lynn’s counterclaims. *Stern*, 131 S. Ct. at 2620. The Ninth Circuit opinion had reversed this  
15 Court’s order finding that J. Howard Marshall’s true intent was to give Vickie Lynn a gift. The  
16 Circuit ruled that the factual findings in the order conflicted with the judgment entered in the  
17 Texas Probate Court, and so were precluded. *See In re Marshall*, 600 F.3d at 1060.

18 Specifically, the Circuit held the following with respect to this Court’s previous Order:

19 In its 2002 judgment, the district court found that: J. Howard Marshall II intended  
20 to give Vickie Lynn Marshall a substantial gift that was to be in the form of a trust  
21 for her benefit; Pierce Marshall tortiously interfered with J. Howard Marshall II’s  
22 intentions by engaging in illegitimate estate planning transactions; Pierce Marshall  
23 had altered the Living Trust to make it irrevocable in furtherance of his plan; and  
24 the Living Trust was invalid.

25 The district court was not free to reach these contradictory findings of fact;  
26 instead, it was bound to afford preclusive effect to the relevant factual findings  
27 made by the Texas Probate Court. It was similarly bound to afford preclusive  
28 effect to the overlapping legal issues finally determined by the Texas Probate

1 Court as a necessary step to the Texas Probate Court's determination of the  
2 validity of J. Howard Marshall II's estate planning measures.

3 *Id.* at 1064. The Ninth Circuit issued its mandate in the case on September 14, 2011. *See*  
4 Mandate (Dkt. 545).

5 **b. Sanctions Proceedings**

6 On December 13, 2011, Stern filed motions for sanctions against Pierce's Estate (Case  
7 no. 99-1372 Dkt. 162) and Marshall Petroleum, Inc. ("MPI") (Case no. 99-1372 Dkt. 161),  
8 requesting a briefing schedule and opportunity to argue.<sup>2</sup> MPI and Pierce's Estate filed an  
9 opposition (Dkt. 169). The opposing parties argued that the sanctions motions were  
10 jurisdictionally barred as collateral attacks on the Ninth Circuit's mandate and an attempt to  
11 relitigate the Bankruptcy Court rulings. Opposition to Motion for Sanctions (Case no. 99-1372  
12 Dkt. 169) at 7-9.

13 This Court denied the motion for sanctions against MPI, but did not deny the motion as to  
14 Pierce's Estate, instead "allow[ing] Plaintiff to pursue those sanctions." Order, May 29, 2013 at  
15 28. In the May 29, 2013 order, the Court specifically directed Stern as follows:

16 The next step in this matter will be a status conference, which the Court sets for  
17 August 13, 2013, at 8:30 a.m. At that conference, Plaintiff should be prepared to  
18 discuss what specific, remedial sanctions Plaintiff expects to pursue, and for what  
19 amounts. The Court will then set a further schedule as to briefing or hearings.

20 *Id.* at 2. The Court reiterated at the close of the order that Stern, at the status conference,  
21 "should be prepared to discuss what remedial sanctions Plaintiff wishes to pursue, identifying  
22 the specific misconduct and specific costs that Plaintiff unjustifiably had to incur because of that  
23 misconduct." *Id.* at 26.

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26 <sup>2</sup> The motions were filed on the docket for case no. 99-1372, although that case was stayed. The  
27 Court's orders on this matter have equal effect in both cases nonetheless. *See* Order, May 29,  
28 2013 (Dkt. 563) at 2.

1 On August 5, 2013, Pierce’s Estate filed a “Motion to Dismiss Post-Judgment  
2 Proceedings Seeking to Sanction the Estate of E. Pierce Marshall” (“Motion”) (Dkt. 569). The  
3 motion raised several important considerations. First, Pierce’s Estate emphasized that conduct  
4 in the bankruptcy court was legally foreclosed in light of Vickie Lynn Marshall’s failure to  
5 appeal Judge Bufford’s sanctions order in that case. *See id.* at 7. Second, Pierce’s Estate argued  
6 that no sanctions could be entered for conduct that would require factual findings conflicting  
7 with the Texas judgment. *See id.* at 13.

8 At the August 13, 2013 status conference, the Court again explained that the May order  
9 was “not the final word” and that “all sides have the opportunity to argue the merits through the  
10 course of hearings and briefings.” August 13, 2013 RT (Dkt. 576) at 5<sup>3</sup>. The Court set two  
11 schedules on that date; one for a response to the motion to dismiss, and one for a substantive  
12 opening sanctions brief, opposition, and reply. *See id.* at 60-62. The substantive opening brief  
13 was to explain the basis for sanctions against Pierce’s Estate. *See id.* at 60-63.

14 Stern timely filed the initial motion for sanctions. *See generally* First Opening Brief  
15 (Dkt. 580). The brief stated that Stern would seek remedial sanctions in the amount of the  
16 “actual loss” caused by Pierce’s alleged litigation misconduct, specifically from the “failure to  
17 produce the catch-all trust and/or its spoliation, and the related lies and cover-up.” *See id.* at 3.  
18 Stern also argued that all fees and costs should be awarded for the case based on pervasive  
19 misconduct. *See id.* (citing *Chambers v. Nasco*, 501 U.S. 32 (1991)). Stern calculated the actual  
20 loss at \$44,292,767.33, plus interest—the compensatory damages awarded by this Court in its  
21 later-reversed decision. *See id.* Stern’s brief argued that misconduct in this Court delayed the  
22 entry of the final order, allowing the Texas probate order to issue first and thus deprive Vickie  
23 Lynn of the full award found by this Court. *See id.*

24 The First Opening Brief claimed several types of misconduct by Pierce and Edwin  
25 Hunter: (1) lying about, failing to produce, and destroying the catch-all trust instrument drafted

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27 <sup>3</sup> All citations to the Reporter’s Transcript for various hearings will be designated by the date of  
28 the hearing followed by “RT” and the appropriate transcript page number.

1 for Vickie Lynn in December 1992; (2) proffering and relying upon perjured testimony  
2 regarding the catch-all trust and Hunter's involvement; and (3) four years of delay from 1998-  
3 2001, including "massive discovery abuse" in the bankruptcy court. Stern claims that: "if Pierce  
4 had been honest and forthright in this Court, this Court's Judgment would have been first in  
5 time. Had Pierce produced the catch-all trust, or at the very least, testified truthfully and  
6 admitted its existence and his actions, this Court certainly would have entered Judgment" before  
7 the Texas court. *Id.* at 14. Stern argued that the Court's opinion shows that the Court spent  
8 significant time "sifting through Pierce's and Hunter's tangled web of lies." *Id.* The motion  
9 includes no exhibits, and cites almost exclusively to this Court's orders and transcripts of  
10 testimony. There is also no documentation of compensable losses beyond the broad claim that  
11 the alleged misconduct caused the later judgment, and therefore caused a \$44 million loss.

12 At the October 17, 2013 hearing, the Court requested more specificity in the opening  
13 sanctions motion. The Court expressed concern that simply duplicating the prior finding  
14 without documentation or a complete legal theory would be improper, and that any sanctions  
15 award would require "some rational basis that I think would be subject to very close scrutiny by  
16 a reviewing court in terms of what the nexus is to that alleged, let's say, problem that  
17 hypothetically occurred." October 17, 2013 RT (Dkt. 588) at 7-8. The Court repeated several  
18 times that any monetary award would need to be clearly tied to specific costs, and that the  
19 briefing received did not set out that relationship nor the amount of costs with sufficient clarity.  
20 *Id.* at 7-8, 14, 46-47. The Court continued the hearing with a new briefing schedule to give  
21 Stern the opportunity to reformulate the opening motion to respond to the Court's concerns, and  
22 to give Mr. Hunter an opportunity to respond. *Id.* at 79-80. The Court then vacated that  
23 schedule when litigation arose regarding a prior settlement between Vickie Lynn and Edwin  
24 Hunter. *See* Order, November 6, 2013 (Dkt. 593). After those issues resolved, the Court set a  
25 new schedule for "reformulated pleadings" and an evidentiary hearing date. *See* Minutes,  
26 December 2, 2013 (Dkt. 616).

27 In the Supplemental Opening Brief (Dkt. 624), Stern presents similar but slightly  
28 modified arguments. Stern again requests a \$44 million award based on actual costs, as well as



1 all litigation fees. Stern again argues that Pierce's wrongful tactics delayed the entry of  
2 judgment from this Court by at least one month, causing the Texas judgment to have preclusive  
3 effect. Specifically, Stern points to several alleged misrepresentations to the Bankruptcy Court  
4 regarding what was being sought in the Texas Probate Court and whether those questions  
5 pertained to Vickie Lynn and whether those claims were for setoff purposes. *See id.* at 10-13.

6 In addition to requesting the \$44 million compensatory judgment, Stern presents the  
7 alternative award of \$25 million initially imposed by Judge Bufford for discovery abuses. *See*  
8 *id.* at 14. This argument appears to be premised on the fact that this award was based on  
9 discovery violations Stern claims were re-perpetrated before this Court. *See id.* Finally, Stern  
10 requests all fees and costs associated with the action since November 2, 1999 (the date the case  
11 was transferred to this Court). *Id.* at 18-19. Stern proposes the lodestar method for calculating  
12 those fees and costs, but no exhibits detailing hours worked, costs incurred, or billing rates were  
13 filed. *See id.* at 19-20.

14 At the hearing, Stern's counsel responded to the Court's concerns about the lack of  
15 specificity and evidentiary proof by arguing that showing an evidentiary basis for sanctions is  
16 premature at this point. March 31, 2014 RT (Dkt. 634) at 5-6. Stern argued that evidentiary  
17 proof would be presented at the hearing set for April 2014. *Id.* Stern pointed to this Court's  
18 prior orders, and the findings therein, as sufficient notice for Pierce's Estate to respond and build  
19 a case, arguing that, "of course [Pierce's Estate] doesn't know what the evidence is going to be  
20 at the evidentiary hearings because they haven't happened yet." *See id.* at 78. Stern similarly  
21 argued that specific evidence of attorneys' fees would be presented at the evidentiary hearing.  
22 *See id.* at 80.

## 23 **II. Legal Standard**

24 As the Court discussed in its prior order, only civil remedial sanctions are appropriate in  
25 this case. First, it is improper for any Court to issue a criminal punishment or its equivalent  
26 without the affording the full due process protections attending a criminal contempt proceeding.  
27 *F.J. Hanshaw Enterprises, Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1139 (9th Cir. 2001)  
28 ("We hold that when a court uses its inherent powers to impose sanctions that are criminal in



1 nature, it must provide the same due process protections that would be available in a criminal  
2 contempt proceeding.”). Second, Pierce Marshall is dead, and so cannot be the subject of any  
3 criminal action. *See Durham v. United States*, 401 U.S. 481, 482 (1971) *overruled on other*  
4 *grounds by Dove v. U. S.*, 423 U.S. 325 (1976); *United States v. Oberlin*, 718 F.2d 894, 895 (9th  
5 Cir. 1983). The Court is therefore committed to ensuring that any sanctions awarded must be  
6 civil in nature, and as compensatory sanctions must “compensate [the opposing party] for the  
7 damage actually caused by [the conduct].” *Miller v. City of Los Angeles*, 661 F.3d 1024, 1029  
8 (9th Cir. 2011).

9 “[W]hether a contempt is civil or criminal turns on the ‘character and purpose’ of the  
10 sanction.” *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994). A  
11 contempt sanction that “is remedial, and for the benefit of the complainant,” is generally civil,  
12 while a criminal contempt sanction is generally “punitive, to vindicate the authority of the  
13 court.” *Id.* at 827-28 (quoting *Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 441  
14 (1911)). Courts also look to the beneficiary of a sanction to determine whether the fine is more  
15 likely criminal (paid to the Court) or civil and remedial (paid to compensate an opposing party).  
16 *See Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1111 (9th Cir. 2005). Compensatory fines must  
17 be caused by the bad faith actions and based on evidence of the complainant’s actual loss. *See*  
18 *Gen. Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1380 (9th Cir. 1986) (citing *United States v.*  
19 *United Mine Workers of Am.*, 330 U.S. 258, 304 (1947) (“Where compensation is intended . . .  
20 [s]uch fine must of course be based upon evidence of complainant’s actual loss.”); *Shuffler v.*  
21 *Heritage Bank*, 720 F.2d 1141, 1148 (9th Cir. 1983)). Any sanction, however, must follow from  
22 a specific finding as to whether the litigant’s conduct “constituted or was tantamount to bad  
23 faith.” *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 767 (1980).

### 24 **III. Discussion**

25 Based on the most recent briefing, the Court understands Stern’s sanctions theories to  
26 encompass roughly the following: (1) perjured testimony by Edwin Hunter, for which Stern  
27 argues Pierce should be held responsible, and misrepresentations by Pierce, *see* First Opening  
28 Brief at 6-12; (2) discovery abuses and other misconduct in the bankruptcy court that required

1 additional time for review in this Court and that caused this Court to repeat the discovery  
2 process, *see* Reply at 6-7; (3) misrepresentations to the bankruptcy court regarding the  
3 declaratory judgment claims in the Texas probate, their dismissal, and the lifting of the  
4 injunction on the Texas action, *see* Supplemental Opening Brief at 10-12; and (4) pervasive and  
5 repeated litigation misconduct throughout the proceedings justifying full attorneys' fees  
6 sanctions under *Chambers v. NASCO*, 501 U.S. 32, 57 (1991), *see* Supplemental Opening Brief  
7 at 16-19.

8         The Court first addresses the issue of sanctions against Edwin Hunter. The Court  
9 previously made extensive findings that Hunter's conduct was perjurious, obfuscating, and  
10 execrable. *See In re Marshall*, 275 B.R. at 29-36 ("The Court concludes that Edwin Hunter's  
11 testimony consisted of numerous lies, and that he has no credibility as a witness."). The Court  
12 found these actions so serious as to raise the issue of criminal proceedings. *See id.* at 36 n.28  
13 ("In light of Hunter's behavior, the Court encourages the United States Attorney for the Central  
14 District of California to undertake a close review of the record in this case to determine whether  
15 to seek an indictment for perjury under 18 U.S.C. § 1621."). Although Edwin Hunter could be  
16 the subject of sanctions for his abusive behavior, it has come to the Court's attention through the  
17 sanctions proceedings that Edwin Hunter and Vickie Lynn entered into a confidential, binding  
18 settlement agreement. *See* Motion to Dismiss Sanctions Proceedings Due to Prior Settlement  
19 (Dkt. 606). There has therefore already been some degree of recovery from Edwin Hunter, and  
20 Stern does not seek to proceed against Edwin Hunter; any remaining compensatory sanctions in  
21 favor of Vickie Lynn's estate are barred.

22         As to Pierce Marshall, the Court is at impasse. None of the arguments in Pierce's  
23 Estate's motion to dismiss are immediately dispositive. The effect of each one depends on the  
24 precise allegations Stern makes, and the extent to which the harm caused can be monetarily  
25 compensated. The motions and record before the Court, however, simply do not permit an  
26 award of sanctions. First, Stern is unable to sufficiently establish that the claimed conduct  
27 would not require findings precluded by the Ninth Circuit's opinion. Although the Court has no  
28 doubt that there were litigious machinations independent of any specific trust documents or

1 estate planning, perhaps out of paranoia rather than actual need, it is crucial that the mandate of  
2 the appellate courts be respected and preserved. The present record does not sufficiently  
3 differentiate the conduct at issue from that precluded by the Texas judgment such that the Court  
4 could make renewed findings of bad faith.

5 Furthermore, there is not a sufficiently close connection to the alleged costs. Stern's  
6 equitable arguments are compelling, and the Court is not insensitive to the unfairness to the  
7 surviving persons interested in this litigation. Sympathy and righteousness, however, are not  
8 legal grounds for compensatory sanctions. There is insufficient evidence before the Court to  
9 justify any incremental sanctions amount, and it is clear that awarding any fraction of the  
10 Court's prior judgment en masse would violate the prohibitions against criminal sanctions. *See*  
11 *Miller*, 661 F.3d at 1030 (“\$63,687.50 is an extraordinary amount for such non-compensatory  
12 sanctions.”); *Hanshaw*, 244 F.3d at 1138 (finding “flat, unconditional fine” of \$500,000 criminal  
13 in nature). Although the records produced in this litigation are voluminous, it is much to ask of  
14 Stern's counsel to locate, parse, and organize the evidence that would be necessary to establish  
15 both substantive bad faith and the attendant costs. Stern's counsel has litigated this case with  
16 commitment and vigor from its inception, and the Court is not unaware of the burden facing  
17 counsel. It would not surprise the Court if the lapse of time has seriously hobbled Counsel's  
18 efforts on this issue, but the Court cannot reduce the evidentiary burden because a case is  
19 complex.

20 Alternatively, Stern presents the possibility that compensation for attorneys' fees could  
21 exceed \$10 million. But the records before the Court do not allow the kind of detailed  
22 calculation that would be necessary to closely link those fees to the costs incurred. The Court  
23 does not disagree that attorneys' fees can be an appropriate sanction under *Chambers*, 501 U.S.  
24 at 45. However, this aspect of the Court's inherent power is constricted to “narrowly defined  
25 circumstances.” *Id.* Specifically, such a sanction under *Chambers* would require finding that  
26 Pierce Marshall “acted in bad faith, vexatiously, wantonly, or for oppressive reasons,” or finding  
27 “that fraud has been practiced upon [the Court], or that the very temple of justice has been  
28 defiled,” or that a party “show[ed] bad faith by delaying or disrupting the litigation or by

1 hampering enforcement of a court order.” *Id.* at 45-46 (internal citations and quotation marks  
2 omitted). Notably, this type of sanction serves “the dual purpose of ‘vindicat[ing] judicial  
3 authority without resort to the more drastic sanctions available for contempt of court and  
4 mak[ing] the prevailing party whole for expenses caused by his opponent's obstinacy.’” *Id.*  
5 (internal citation omitted). *Chambers* therefore does not alter the Court’s obligation to make  
6 narrow and supported findings, nor its obligation to connect the harm to the actions taken. This  
7 is especially true in this case, where the Court cannot issue any sanction against Pierce Marshall  
8 for the purpose of “vindicating judicial authority,” but rather only to compensate. The record  
9 before the Court simply does not allow the findings necessary to award such sanctions.

10 Stern argues that this is not the time for producing evidence or specifics. He argues that  
11 billing records, witness statements, and particularity should be discussed at the evidentiary  
12 hearing, not now. But the point of this Court’s repeated continuances was to obtain a detailed  
13 accounting, with evidentiary support, of the basis for sanctions and the resulting costs justifying  
14 compensation. The Court delayed ruling on Pierce’s Estate’s motion because it was impossible  
15 to do so without a functional and complete motion for sanctions. The most recent briefing  
16 schedule ended one month before the planned evidentiary hearing, and no further briefing  
17 deadlines were set; believing that there was no need to provide a basis for sanctions or  
18 evidentiary support at that point is contrary to the fundamental nature of motions practice. The  
19 Court also cannot comprehend the argument that evidentiary support for sanctions allegations  
20 would not be presented until the hearing itself. *See Lambright v. Ryan*, 698 F.3d 808, 826 (9th  
21 Cir. 2012) *cert. denied*, 133 S. Ct. 2770 (2013) (“[T]he district court has the discretion, but is  
22 not required, to hold an evidentiary hearing prior to imposing sanctions on a party.”); *Wyle v.*  
23 *R.J. Reynolds Indus., Inc.*, 709 F.2d 585, 592 (9th Cir. 1983) (electing to hold an evidentiary  
24 hearing on sanctions after briefing, pursuant to Federal Rule of Civil Procedure 37); *Kraszewski*  
25 *v. State Farm Gen. Ins. Co.*, 130 F.R.D. 111, 114 (N.D. Cal. 1984) (citing *Wyle* for the  
26 proposition that evidentiary hearings are entirely discretionary and noting that the “briefs,  
27 affidavits and other documentary evidence” were sufficient to afford the nonmoving party due  
28 process).

1           There is simply no evidence before the court that justifies awarding sanctions against  
2 Pierce's Estate. It would be unlawful and repugnant for this Court to issue an order designed to  
3 undermine or rewrite the Circuit's precedent or the Texas judgment. Absent close scrutiny of  
4 the factual basis underlying Stern's claims, and adequate opportunity for Pierce's Estate to  
5 respond, no sanctions award is possible. This is particularly true given the large, lump-sum  
6 amounts Stern requests.

7           The Court is not immune to the equitable pleas from Vickie Lynn's estate. It is tempting  
8 to invoke the broad doctrines of discretion, equity, and inherent powers to follow the pull of  
9 one's heart and one's conscience. But the powers granted to the federal courts are not all-  
10 encompassing, and "[b]ecause of their very potency, inherent powers must be exercised with  
11 restraint and discretion." *Hanshaw*, 244 F.3d at 1137. It is a privilege to serve as a custodian of  
12 these powers, and the Court will not flout the wisdom of jurisprudence. The Court also must  
13 consider the very real concerns attendant in sanctioning Pierce Marshall, who is deceased and  
14 therefore cannot be present, cannot attend the hearing, and cannot answer for himself the  
15 allegations against him. Those who remain are several degrees removed from any action  
16 regarding the Marshall estate, both innocent of any bad conduct and long removed in time from  
17 the actions in question.

18           The Court also declines to allow any further reformulation of the sanctions motion or  
19 further briefing on these questions. The instant case has been proceeding in the Bankruptcy  
20 Court, the District Court, the appellate courts, and the Supreme Court for nearly twenty years.  
21 Time spent litigating the relationship between Vickie Lynn and J. Howard has extended for  
22 nearly five times the length of their relationship and nearly twenty times the length of their  
23 marriage. It is neither reasonable nor practical to go forward. The American taxpayer has  
24 supported the burden of this litigation for many years, and it is time for this suit to no longer  
25 "drag[] its weary length before the Court." *See Stern*, 131 S. Ct. at 2600 (quoting C. Dickens,  
26 *Bleak House*, in 1 *Works of Charles Dickens* 4–5 (1891)).

#### 27           **IV. Disposition**

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1 For the foregoing reasons, Stern's Motion for Sanctions (Dkt. 580) is DENIED. Pierce's  
2 Estate's Motion to Dismiss (Dkt. 569) is DENIED AS MOOT.

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4 DATED: August 18, 2014



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5  
6 DAVID O. CARTER  
7 UNITED STATES DISTRICT JUDGE  
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