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LOS ANGELES SUPERIOR COURT
APR 28 2011
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BY BERNICE GUZMAN, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

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| CYRUS M. SANAI,<br>Plaintiff,<br>v.<br>HARVEY A. SALTZ<br>Defendant | CASE NO. BC235671<br>ORDER AND FINAL DECISION ON VEXATIOUS LITIGANT MOTION TAKEN UNDER SUBMISSION |

On April 22, 2011, this court held a hearing on the vexatious litigant motion filed by Defendants against Plaintiff Cyrus M. Sanai. After the hearing this court took the matter under submission to consider the arguments raised at oral argument, as well as all of the pleadings, exhibits, and papers filed both in support and in opposition to the motion. After careful and further consideration of the motion as a result of taking the matter under submission, this court hereby rules as follows on the motion to declare Plaintiff Cyrus M. Sanai a vexatious litigant:

1) It is granted in so far as this court now declares and finds Cyrus M. Sanai to be a vexatious litigant pursuant to CCP section 391(b)(1) and/or 391(b)(3);

2) It is continued as to the motion for an order requiring Plaintiff to furnish security under CCP section 391.1-391.3, to June 24, 2011 at 8:30 a.m. in Department 20; and

3) It is granted as to the request for a prefiling order pursuant to CCP section 391.7. A copy of the legal analysis in support of this order and decision is attached hereto and incorporated fully herein by reference .

On April 25, 2011, Cyrus M.Sanai filed a Statement of Disqualification against this court

and on April 27, 2011, this court entered an order striking the fourth statement of disqualification. In the event this court's order striking the statement of disqualification is later deemed to be in error, an answer was also filed. A copy of this court's April 27, 2011 order and answer are attached hereto. In the event it is determined by any appellate court or any other judge or commissioner that this court's April 27, 2011 order was made in error or without jurisdiction, then this present order shall be immediately stayed until a ruling is made on Plaintiff's Statement of Disqualification filed against this court by another judge.

Dated: April 28, 2011

Kevin C. Brazile

Judge Kevin C. Brazile

Cyrus M. Sanai v. Harvey A. Saltz, et al.
BC235671

**Motion to Declare Plaintiff a Vexatious Litigant**

## LEGAL ANALYSIS

The purpose and structure of the vexatious litigation statute were summarized by the Court of Appeal in Luckett v. Keylee (2007) 147 Cal.App.4th 919:

> The vexatious litigant statutes (CCP §§ 391-391.7) were enacted in 1963 to restrain misuse of the legal system by self-represented parties who continually relitigate the same issues. Singh v. Lipworth (2005) 132 Cal.App.4th 40, 44 (Singh). A vexatious litigant is someone who, while representing himself, either brought and lost at least five actions in the preceding seven years, attempted to relitigate an action he had lost, repeatedly filed meritless motions, pleadings, or papers, or had previously been declared a vexatious litigant by another court. CCP § 391(b)(1)-(4). Upon motion by a defendant in a pending action, and a showing that there is no reasonable probability a vexatious litigant will prevail in an action, the court may order the plaintiff to post security to cover the defendant's costs and attorney's fees. If the security is not posted, the action will be dismissed. CCP §§ 391.1-391.4; Singh, *supra*, at pp. 44-45, 47.
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> Section 391.7 permits a court, acting on its own motion or that of a party, to enter a prefiling order which prohibits a vexatious litigant from filing a new action without first obtaining leave of court. CCP § 391.7(a). The new action may be filed only if it appears to have merit and was not brought for the purposes of harassment or delay. Such an action may still be subject to an order to post security pursuant to section 391.3. CCP § 391.7(b). When such a prefiling order has been issued, the clerk may not file the action without an order from the court allowing the plaintiff to file his complaint. If the clerk mistakenly permits the filing of an action without such an order, upon filing of a proper notice by any party, the action may be stayed for 10 days until permission to file is granted. If the plaintiff does not then obtain the order, the action will be dismissed. CCP § 391.7(c). A vexatious litigant who disobeys a prefiling order may be punished for contempt of court. CCP § 391.7(a).

Luckett v. Keylee (2007) 147 Cal.App.4th 919, 924.

Defendants therefore seek a declaration that Plaintiff is a vexatious litigant pursuant to CCP § 391(b), an order to furnish security pursuant to CCP § 391.3, and a prefiling order pursuant to CCP § 391.7.

### I. Declaration as Vexatious Litigant

CCP § 391(b) defines a vexatious litigant as a person who does either of the following:

(1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

(2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

Here, Defendants argue that Plaintiff is vexatious litigant based on three sections, contending that Plaintiff has been declared a vexatious litigant by the Ninth Circuit Court of Appeals for repeatedly attacking judges as part of a litigation strategy and that Plaintiff has repeatedly filed unmeritorious motions and pleadings. In their reply, Defendants also argue that Plaintiff is a vexatious litigant under subsection (1) because the decisions of other courts have identified five cases within the last seven years which have resulted in final determinations against Plaintiff. Defendants do not appear to make any arguments regarding subsection (2).

A. Federal Declaration and CCP § 391(b)(4)

Defendants contend that Plaintiff should be declared a vexatious litigant pursuant to the declaration by the Ninth Circuit. However, in order for this Court to declare Plaintiff a vexatious litigant pursuant to the federal order, the declaration from the federal court must have arisen from an action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

Previously, this Court stated that Defendants have not provided sufficient evidence that would enable this Court to determine that the action or proceeding in which Plaintiff was declared a vexatious litigant arose from the same or substantially similar facts, transaction, or occurrence as the case here. In their reply, Defendants argue that the order declaring Plaintiff a vexatious litigant in federal court arose from Plaintiff's repeated attacks on the federal judiciary. However, even if the vexatious litigant designation was based on the same type of attacks, that would not mean that the order was issued in a federal proceeding that arose from the same or substantially similar facts, transaction, or occurrence as the proceeding here. Therefore, Defendant has failed to show that Plaintiff may be a vexatious litigant under CCP § 391(b)(4).

B. Litigation Conduct and CCP § 391(b)(3)

Plaintiff argues that to find him a vexatious litigant, Defendants must show that Plaintiff has filed repeated motions on the same or similar subject matter where each motion is not merely unsuccessful, but utterly devoid of merit and that those motions were not filed when Plaintiff was effectively the defendant. However, this reading of CCP § 391(b)(3) ignores the last part of the disjunctive, which defines a vexatious litigant as a plaintiff who "engages in other tactics that are frivolous or solely intended to cause unnecessary delay." Repeated conduct is therefore not necessarily required if the litigation tactics engaged in by Plaintiff are frivolous or solely intended to cause unnecessary delay.

To support their original motion, Defendants focus on two sets of motions filed by Plaintiff: motions to tax costs and motions and objections relating to judicial recusals. This Court will address each in turn. The Court will then turn to the tactics on which Defendants focused in their reply.

1. Motions to Tax Costs

Defendants argue that Plaintiff has filed six frivolous Motions to Strike or Tax Memo of Costs as to Defendants' Memorandum of Costs seeking to collect on their money judgment.

However, this Court does not believe that the motions to tax costs can serve as the basis for declaring Plaintiff a vexatious litigant. As the Court of Appeals stated in their order granting supersedeas relief, motions in which Plaintiff was effectively the defendant should not provide a basis for finding Plaintiff vexatious. "[T]he notion of determining [Plaintiff] is a vexatious litigant in connection with an enforcement proceeding that is directed against him is nonsensical." Order Granting Supersedeas Relief, p. 4, attached to the Declaration of Cyrus Sanai in Support of First Preliminary Opposition, Exh. A.

A Motion to Tax Costs is brought when a memorandum of costs is filed by Defendants. As such, it is defensive in nature. In addition, the filing of subsequent motions to tax costs could be necessitated by the repeated filings of memorandums of cost by the Defendant in order to preserve certain appellate rights.

As such, this Court does not believe that the filings of seven motions to tax costs can be used as the basis for a finding that Plaintiff is a vexatious litigant.

2. Motions and Objections Regarding Judicial Recusals and Prejudice

Defendants also argue that Plaintiff has repeatedly engaged in attacks on judicial officers that disagree with him or have ruled against him.

In Golin v. Allenby (2010) 190 Cal.App.4th 616, the Court of Appeals held that repeatedly challenging judicial officers may provide a basis for a finding that a plaintiff is a vexatious litigant. The Court stated:

> [T]he [trial] court's comments at the hearing suggest that it reached the conclusion that the Golins were vexatious not because of individual

> unmeritorious filings but because of their litigation tactics-their regular practice of revisiting issues and the volume of their supplemental and amended filings that cumulatively evidenced a "level of vexatiousness." According to the trial court, together these spoke to an improper motive to "grind down the other side" or to keep them from "being able to move forward" in the litigation. This goes to the third, disjunctive prong of section 391, subdivision (b)(3)-engaging in tactics that are frivolous or solely intended to cause unnecessary delay.
>
> Based on our review of the voluminous record in this case, there is substantial evidence from which to imply findings in support of the trial court's ultimate determination about the Golins' litigation tactics. We need only examine one topic-their challenges to every judicial officer assigned to this case in Santa Clara County-to reach this conclusion. This is because the record demonstrates that the Golins' persistent and obsessive use of judicial challenges in this action, both peremptory and for cause and without regard to timeliness or validity, rises to the level of a frivolous litigation tactic that qualifies them as vexatious litigants under section 391, subdivision (b)(3), even though the trial court did not specifically cite this tactic in its ruling.

Golin v. Allenby (2010) 190 Cal.App.4th 616, 118 Cal.Rptr.3d 762, 783. Therefore, it is appropriate for this Court to consider whether Plaintiff's frequent challenges to judicial officers rise to the level of a frivolous litigation tactic that qualifies him as a vexatious litigant.

In reviewing the outcomes of the recusal motions and objections, however, this Court cannot determine that the challenges by themselves rise to the level of a frivolous litigation tactic for the reason that Plaintiff has been occasionally successful. In Golin, the Court concluded that the tactic did rise to the level of a frivolous litigation tactic because, "in this case alone, their judicial challenges directly resulted in recusals only twice and more often, they did not." Id. at 784. Here, however, the ultimate outcomes of Plaintiff's challenges are more positive. Plaintiff has challenged six judicial officers, and three ultimately recused themselves. In addition, the challenges against three judicial officers have not been subject to a final determination.

The only challenge undertaken by Plaintiff that has been found to wholly lack merit was his attacks on the Honorable Terry Green. Plaintiff's original attempts to disqualify Judge Green were rejected, and the Court of Appeals denied Plaintiff's Writ Petition, affirmatively ruling against Plaintiff. *See* Defendants' Exh. 80. It was only after the case was remanded to the court after the Appellate Court affirmed a ruling against Plaintiff that Judge Green was excused from this case pursuant to a peremptory challenge under 170.6.

Plaintiff has also attacked Judges Grimes, Munoz, Weintraub, and Brazile and Commissioner St. George. However, Judge Grimes recused herself after an appellate court stated that it would in the interests of justice to do so even though it did not find bias. *See* Defendants' Exh. 90. Judges Weintraub and Green recused themselves after 170.6 peremptory challenges were issued after appellate decisions were reached. Finally,

the challenges to Judges Munoz and Brazile and to Commissioner St. George have not been adjudicated as meritless as of yet.

However egregious or improper Plaintiff's continued challenges of Judge Green or his wife may be, this Court does not believe that they alone are sufficient in light of Plaintiff's other "successes" to find a pattern that rises to the level of a frivolous litigation tactic.

3. Other Litigation Tactics

However, when Plaintiff's judicial tactics are matched with his other conduct in this case, it becomes clear that Plaintiff engaged in litigation tactics, specifically filing improper memorandums of costs, failing to properly comply with abstracts of judgment, and engaging in methods and practices with proofs of service, that cumulatively evidence a level of vexatiousness. These tactics speak to an improper motive to grind down the other side and to keep them from being able to move forward in the litigation.

Plaintiff has engaged in frivolous and improper tactics regarding his memorandum of costs. Plaintiff sought $137,800 in attorneys' fees in a memorandum of costs. First, As stated by the Court of Appeals, in granting a motion to strike the memorandum of costs, "[t]he court expressly found Mr. Sanai thereafter "intentionally altered court documents to show that certain individuals were served on behalf of corporate defendants." Sanai v. Saltz (2009) 170 Cal.App.4th 746, 758 (hereinafter Sanai (2009)). Second, in affirming the motion to strike, the Court of Appeals then stated:

> Notwithstanding our instructions that any restitution award be based on an adequate record and supported by findings, in his memorandum of costs after judgment Mr. Sanai claimed entitlement to $137,800 in attorney fees.[FN24] Mr. Sanai's attempt to avoid a hearing on the merits of his restitution request not only contravened our express directions but also violated Code of Civil Procedure sections 685.040 and 685.070, which govern the items properly recoverable by a judgment creditor as costs of enforcing a judgment.
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> FN 24 At a March 8, 2007 hearing Mr. Sanai attempted to explain, "Yes, I did it through the memorandum of costs procedure rather than doing it through the procedure of filing a motion, which would request the same thing, because it is the same thing." Of course, it is not the same. Even if the Saltz parties had failed to file a timely response to a motion for restitution, Mr. Sanai would still bear the burden of establishing by competent evidence and relevant law his entitlement to any sums requested. Yet, at least according to Mr. Sanai, pursuant to the procedures governing a memorandum of costs after judgment, the failure to file a timely motion to tax costs results in an enforceable judgment in his favor whether or not he is, in fact, entitled to restitution.

Sanai (2009) at 780-81. As such, the tactic of seeking over $137,000 in attorney's fees was a tactic that was unmeritorious and frivolous.

Plaintiff has also engaged in tactics that are frivolous and designed solely to unnecessarily delay by improperly dealing with abstracts of judgment. First, Plaintiff refused to execute a satisfaction of judgment because Defendants had *overpaid.* In response, Judge Green stated that the argument was an embarrassment. *See* Exhibit 121, Reporters Transcript 3-8-07, 15:11. Judge Green then went on to state:

> THE COURT: Mr. Sanai, I think your position is so ridiculous that it is not propounded in good faith. It is – you have gone beyond just being a stickler for details. I have no problem being a stickler for details. I have no problem following procedure. I have no problem with that, but your position, as articulated today and on March 2nd, shows me that the only reason your are doing this and –
>
> MR. SANAI: No.
>
> THE COURT: Wait a minute. – is to inflict the maximum amount of pain on the defense and the defendants for your own personal gain.
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> MR. SANAI: No. No. No. No.
>
> THE COURT: That's the finding I'm making.

*See* Exhibit 121, Reporters Transcript 3-8-07, 32: 13-25.

Second, Plaintiff attempted to acquire a fraudulent abstract of judgment. As stated by the Court of Appeals:

> Yet another clash erupted over Mr. Sanai's procurement of an abstract of judgment in October 2006 for the full amount reflected in his memorandum of costs after judgment notwithstanding the trial court's July 31, 2006 order striking the memorandum. On March 9, 2007 the court recalled and quashed the abstract of judgment, finding "Plaintiff Cyrus Sanai ('Plaintiff' or 'Sanai') fraudulently obtained from this Court on October 18, 2006 an Abstract of Judgment in the amount of $143,469.96, and wrongfully caused this Abstract of Judgment to be recorded with the Los Angeles County Recorder's Office...."

Sanai (2009) at 759 n7. The dispute arose when Plaintiff fraudulently and improperly obtained an abstract of judgment from the Clerk, Ms. Sally Perez. Judge Green then held an evidentiary hearing to determine if Plaintiff had indeed procured the abstract of judgment fraudulently. In later addressing the prior proceedings, Judge Green stated that he found that Plaintiff lied under oath concerning the abstract of judgment:

> THE COURT: Listen to me. Then we came to Court and we did a hearing, and I listened to your testimony, and I listened to – and I observed your demeanor and listened to her testimony and observed her demeanor, and I made factual findings. And I noted that your testimony did not pass the straight-face test. That's a polite way of saying you're lying under oath, all right?

*See* Exhibit 53, 3-8-07 Reporter's Transcript, 53:19-26. Judge Green then added:

> THE COURT: Okay. In October you're down there getting judgments at a time and a place where you could not, under any construction of law or evidence, have any good faith belief that you were entitled to it.
>
> Wait a minute. I have already found that going down to Sally Perez and filling out that document was fraud.
>
> I've already found that you lied under oath in Court.
>
> Id already found and struck that as being improperly served, and you had appealed it.
>
> You have no rational grounds for believing that somehow you're entitled to go down and collect on something. You have, under no construction of evidence, or no construction of law, or no construction of any fact you're entitled to do that, and as a result, you're causing harm on the defense solely for the fact of causing harm.
>
> And I mean, it is so astonishing – it is so astonishing to me why a person would do this, I can't figure it out, other than pure malice.
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> MR. SANAI: Okay.
>
> THE COURT: Other than this obsessive hatred you have for the individuals sitting on the defense side of the table, this obsessive hatred you have for the clients they represent. That's the only reason.

*See* Exhibit 53, 3-8-07 Reporter's Transcript, 55:4-27. Plaintiff's refusal to execute a satisfaction of judgment despite being paid in full – and then some – and his fraudulent obtaining of an abstract of judgment readily evidence tactics that are frivolous and designed solely to unnecessarily delay.

Finally, Plaintiff has engaged in improper practices, methods, and tactics concerning proofs of service. Plaintiff does not deny that he has refused to serve Defendants with any proofs of service or notation of mailing. Instead, Plaintiff argues that "Judge Green's oral fulminations do not constitute an order" and that "[t]he Code of Civil Procedure bars any penalty for [sic] being imposed on Plaintiff for ignoring the directory portions of the rules concerning form proofs of service, and this Court cannot contravene the Code by making what is explicitly "directory" into a mandatory obligation." *See* Sur-Reply, 16:7-11. However, as stated by Judge Green, "This litigation is littered with claims that pleadings were never properly filed and served...." Minute Order, May 12, 2006. Judge Green then later stated, "Specifically, this case is littered with claims that parties have not received notice of various rulings. The parties are directed to Local Rule 7.12(b) which mandates, among other things, to allow the opposing party to respond." Order, July 31, 2006. Even if Plaintiff is correct that his tactics regarding proofs of service are technically proper under the Code of Civil Procedure, the tactics identified in the two orders of Judge Green still evidence tactics that are solely intended to cause unnecessary delay.

These three tactics described above, when combined with Plaintiff's repeated and continued attacks on the judiciary, demonstrate that Plaintiff engaged and continues to engage in tactics that are frivolous or solely intended to cause unnecessary delay. Each individual tactic does not need to be determined to be unmeritorious on a case by case and individual basis with finality as would an unmeritorious motion; it is enough that Plaintiff continues to engage in a series of tactics that are either frivolous or solely intended to cause unnecessary delay or both.[1] Therefore, whether the prior orders of the various trial courts were overturned or vacated for other reasons, or whether the statements of the various Judges of this Court to have encountered Mr. Sanai were not enshrined in orders, is of no issue; those statements and rulings clearly support the judgment of this Court that Plaintiff engaged in other tactics that are frivolous or solely intended to cause unnecessary delay. Therefore, Plaintiff is declared a vexatious litigant pursuant to CCP § 391(b)(3).

C. Final Determination of Five Cases in Last Seven Years and CCP § 391(b)(1)

Defendants also argue that Plaintiff has had five cases subject to a final determination against him within the past seven years, and that therefore Plaintiff is a vexatious litigant. In his sur-reply, Plaintiff states that this Court cannot consider the argument because it was not originally raised. However, the argument was raised in Defendant's reply, the evidence to support the arguments was submitted with the motion, and this Court continued the hearing to allow Plaintiff the opportunity to respond to the allegations concerning this argument. As such, it is proper for this Court to consider the argument here.

"The vexatious litigant statutes apply to 'litigation,' which is expressly defined as 'any *civil* action or proceeding, commenced, maintained or pending in any state or federal court.'" People v. Harrison (2001) 92 Cal.App.4th 780, 787, *quoting* CCP § 391(a). "The statute does not define the phrase 'final determination against the same defendant.' However, a judgment is final for all purposes when all avenues for direct review have been exhausted." Childs v. PaineWebber Incorporated (1994) 29 Cal.App.4th 982, 992, *citing* First Western Development Corp. v. Superior Court (1989) 212 Cal.App.3d 860, 864.

Here, it appears that Sanai's frequent challenges to the members of the federal judiciary have been finally determined adversely to Plaintiff. *See* Exhibit 85, Order of the Judicial Council of the Ninth Circuit, November 9, 2009, In re Complaint of Judicial Misconduct. Each complaint was given an individual case number, and the total number of complaints totals 20. Plaintiff states that it is a matter of absolute certainty that the judicial challenges cannot be considered litigation, as they do not involve granting any kind of relief, do not involve motion practice, and because the complainants have no right to appear. As such, Plaintiff argues that they fall outside the definition of "civil cases."

[1] Indeed, shortly after this Court issued a tentative ruling on Friday, April 22, 2011 that stated the Court's intention to declare Plaintiff a vexatious litigant and to issue a pre-filing order, but before this Court could issue an actual order, Plaintiff filed a 170.1 challenge to this Court and to the entire Superior Court of Los Angeles. This Court ordered the filing to be stricken on April 27, 2011. Although the merits of the 170.1 challenge have not yet been finally determined or even addressed by an appellate court, the filing of the challenge again indicates that Plaintiff engages in tactics that are frivolous or solely intended to cause unnecessary delay. See, this court's April 27, 2011 order.

However, "civil cases" is not the definition of litigation as defined by the Code. The reference to "civil cases" was only stated in People v. Harrison to differentiate between criminal cases and civil cases, not to establish that all "litigation" as defined must be civil *cases*. *See* People v. Harrison, *supra*, 92 Cal.App.4th at 787. "Litigation" is broader, and includes the more broadly stated "proceedings." The judicial complaints as filed by Plaintiff are individual proceedings filed in Federal Court. As such, they may be considered in determining if Plaintiff has had five cases finally determined against him adversely within the last seven years.

A review of the Order from Circuit Judge Stephen Reinhardt indicates that all 20 complaints filed by Plaintiff were determined against him adversely. In his conclusion, Judge Reinhardt stated:

> Complainant has made numerous allegations accusing the many judges who have ruled against him or members of his family, both in civil cases and with respect to misconduct complaints that he has filed, of doing so in order to injure him or to effect nefarious or dishonest purposes. He has done so without any factual basis for his claims, and appears to have described his conduct as part of a litigation strategy. ... Complainant, moreover, has a history of using the federal courts and the state appeals courts to accuse state judges who had made rulings adverse to him and members of his family of bias and corruption. ...
>
> DISMISSED in part, CONCLUDED in part, and REFERRED to the Ninth Circuit Judicial Council for the sole purposes set forth above.

*See* Exhibit 85, Order, November 9, 2009, p. 10-11. As such, all twenty complaints filed by Plaintiff were determined adversely against him, as they were either dismissed or deemed concluded.[2]

As such, Plaintiff is also a vexatious litigant pursuant to CCP § 391(b)(1).

D. Conclusion

Therefore, the motion to declare Plaintiff Cyrus M. Sanai a vexatious litigant is GRANTED. Plaintiff is deemed a vexatious litigant pursuant to either CCP §§ 391(b)(1) or 391(b)(3).[3]

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[2] In oral argument, Defendants argued that, in addition to the judicial complaints discussed above, Plaintiff has had numerous other cases decided against him. Defendants point to a decision by Judge Zilly from the Western District of Seattle, Case No. C02-2165Z, which details five other proceedings. *See* Exhibit 76. However, no dates for the final determination of those referenced cases were given. As such, Defendants have failed to show that those cases were finally determined adversely to Plaintiff within the immediately preceding seven-year period before December 16, 2010. Indeed, Plaintiff indicates that the referenced California litigation was terminated in May 2003 and the Washington case concluded in August, 2003. Finally, Defendants provide no authority in their motion or reply briefs that each denied appeal or writ may be considered a separate proceeding or litigation that has been finally determined against Plaintiff.

[3] Plaintiff may argue that he is entitled to a hearing to determine if he is a vexatious litigant pursuant to CCP § 391(b)(3). However, the hearing requirement is for a motion for order requiring security filed under CCP § 391.1. As explicitly acknowledged in Fink v. Shemtov (2010) 180 Cal.App.4th 1160, 1175-76, the Court can declare Plaintiff a vexatious litigant without a motion being made under CCP § 391.1. As such, a

II. Order to Furnish Security

Defendant has also moved for an order requiring Plaintiff to furnish security. CCP §§ 391.1 – 391.3 state:

> 391.1: In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion must be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that he will prevail in the litigation against the moving defendant.
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> 391.2: At the hearing upon such motion the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion. No determination made by the court in determining or ruling upon the motion shall be or be deemed to be a determination of any issue in the litigation or of the merits thereof.
>
> 391.3: If, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix.

Here, Plaintiff states that he is entitled to cross-examine witnesses who submitted declarations in support of Defendant's contentions that Plaintiff cannot prevail on the merits. Defendant has filed a motion for protective order with a hearing date of June 1, 2011. Plaintiff has also filed a motion in limine seeking to exclude all declarations of witnesses who do not appear to be cross-examined on April 22, 2011. As such, the determination of the order to furnish security should be continued to allow the motion for protective order to properly heard and adjudicated and for the motion in limine to properly considered.

Therefore, the motion for an order requiring Plaintiff to furnish security is CONTINUED. The Court sets a hearing date of: June 24, 2011.

III. Prefiling order prohibiting the filing of new litigation

Finally, Defendant also seeks a prefiling order prohibiting the filing of new litigation. CCP § 391.7(a) provides:

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full evidentiary hearing, in which Plaintiff may be entitled to cross-examine certain witnesses, would not be required. In addition, the Court notes that the determination that Plaintiff is a vexatious litigant is made solely by references to the records of this Court, the appellate Court, transcripts of the hearings therein, and the records of the Federal courts. The Court further expressly notes that no determination is made as to whether Plaintiff is entitled to cross-examine witnesses at the hearing on the motion for an order to furnish security pursuant to CCP § 391.1.

> In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.

As summarized by the Court of Appeals:

> As succinctly stated in 3 Witkin, California Procedure (5th ed. 2008) Actions, section 370, page 479: "A motion for a prefiling order under [section] 391.7 is not required to be made during pending litigation, as does a motion for security under [section] 391.1. By its very nature, the prefiling order of [section] 391.7 affects a vexatious litigant's future filings. The remedy is directed at precluding the initiation of a meritless lawsuit and the costs associated with defending that litigation. Thus, [section] 391.7 affords protection to defendants named in pleadings not yet filed with the court." *See* Bravo v. Ismaj, *supra,* 99 Cal.App.4th at p. 222 ("Unlike Section 391.1, section 391.7 does not reference 'pending' litigation").

Fink v. Shemtov (2010) 180 Cal.App.4th 1160, 1176. Here, the Court has already determined that Plaintiff is a vexatious litigant. The Court further believes that prefiling order pursuant to CCP § 391.7 would be appropriate and supported by the weight of the evidence.

As such, the motion for a prefiling order pursuant to CCP § 391.7 is GRANTED.