UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES – GENERAL

Case No. SA CV 19-1904-DOC (ADSx) Date: January 23, 2020

Title: NAGUI MANKARUSE ET AL V. RAYTHEON COMPANY ET AL

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Deborah Lewman	Not Present
Courtroom Clerk	Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFF: None Present	ATTORNEYS PRESENT FOR DEFENDANT: None Present

PROCEEDINGS (IN CHAMBERS): ORDER GRANTING MOTION TO DECLARE PLAINTIFF A VEXATIOUS LITIGANT [56]

Before the Court is Defendants Raytheon Company and TRS LLC US' (collectively, "Raytheon" or "Defendants") Motion to Declare Plaintiff a Vexatious Litigant ("Motion") (Dkt. 56). Having reviewed the papers and considered the parties' oral arguments on January 21, 2020, the Court **GRANTS** Defendants' Motion.

I. Background

A. Facts

The following facts are taken from the Motion. Plaintiff Nagui Mankaruse ("Plaintiff") is a former employee of Raytheon. Mot. At 1. He has been deemed a

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

vexatious litigant by the Superior Court of California.[1,2] Plaintiff, as a *pro se* litigant, has maintained seven cases against Raytheon and three cases against Intel Corporation, all of which were determined adversely to Plaintiff. Mot. At 1. Plaintiff filed the instant action in this Court on October 3, 2019. Dkt. 1. This is the same day as the hearing in which the Superior Court of California granted Raytheon's summary judgment motion on Plaintiff's last-pending state court case. Mot. At 2. On the same day, Plaintiff filed a related suit against Intel Corporation, also pending before this Court. *Id.*

In *Mankaruse v. Raytheon Company, et al*., Case No. 30-2016-00878349-CU-IP-CJC, Orange County Superior Court, Raytheon filed a motion to have Plaintiff deemed a vexatious litigant pursuant to California law, to require that Plaintiff post a security bond of $10,000, and for a prefiling order prohibiting the filing of new litigation. On July 12, 2018, the Honorable James Crandall granted the motion and ordered Plaintiff to post a security bond in the amount of $10,000. RJN ¶ 1, Ex. 1. Plaintiff, therefore, was placed on the vexatious litigant list maintained by the California Judicial Council. RJN ¶ 2, Ex. 2. Raytheon was granted summary judgment in that case, and Plaintiff forfeited the bond. RJN ¶¶ 3, 10, 11.

B. Procedural History

On October 3, 2019, Plaintiff filed the action in this Court (Dkt. 1). On December 12, 2019, Defendants filed the Motion (Dkt. 56). On December 23, 2019, Plaintiff opposed the Motion ("Opp'n") (Dkt. 59). On December 30, 2019, Defendants replied ("Reply") (Dkt. 62). On January 21, 2020, the Court held oral argument on the Motion to allow all parties to have their day in Court.

In its Motion, Raytheon moves this Court to (1) declare Plaintiff a vexatious litigant; (2) require Plaintiff to furnish a security bond if this case is to move forward; (3) stay discovery until Plaintiff has posted such bond; and (4) issue a pre-filing order prohibiting Plaintiff from filing any new law suit in federal court without obtaining permission from this Court.

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[1] The Court takes judicial notice of the documents Raytheon submitted in their Request for Judicial Notice ("RJN"). Dkt. 56. The documents are records of prior court proceedings, documents maintained by state actors pursuant to state law, or official state records.

[2] Plaintiff argues that he is no longer deemed a vexatious litigant. *See* Opp'n at 6. However, that is directly contradicted by the orders declaring Plaintiff a vexatious litigant and denying his request to be removed from the vexatious litigant list. *See generally* RJN.

II. Legal Standard

A. Vexatious Litigant

"Federal courts can 'regulate the activities of abusive litigants by imposing carefully tailored restrictions under . . . appropriate circumstances.'" *Ringgold-Lockhart v. Cty. Of Los Angeles*, 761 F.3d 1057, 1061 (9th Cir. 2014) (quoting *De Long v. Hennesy*, 912 F.2d 1144, 1447 (9th Cir. 1990)). "Flagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." *DeLong v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990); *see* C.D. Cal. R. 83-8.1 ("It is the policy of the Court to discourage vexatious litigation."). Thus, "[p]ursuant to the All Writs Act, 28 U.S.C. § 1651(a), 'enjoining litigants with abusive and lengthy [litigation] histories is one such . . . restriction' that courts may impose." *Ringgold-Lockhart*, 761 F.3d at 1061 (quoting *De Long*, 912 F.2d at 1147). Federal district courts also "have inherent power to require plaintiffs to post security for costs." *Simulnet E. Assocs. v. Ramada Hotel Operating Co*., 37 F.3d 573, 574 (9th Cir. 1994).

However, "[o]ut of regard for the constitutional underpinnings of the right to court access, 'pre-filing orders should rarely be filed, and only if courts comply with certain procedural and substantive requirements.'" *Ringgold-Lockhart*, 761 F.3d at 1062 (quoting *De Long*, 912 F.2d at 1147). In *DeLong v. Hennessey*, 912 F.2d 1144 (9th Cir. 1990), the Ninth Circuit "outlined four factors for district courts to examine before entering pre-filing orders." *Molski v. Evergreen Dynasty Corp*., 500 F.3d 1047, 1057 (9th Cir. 2007).

> First, the litigant must be given notice and a chance to be heard before the order is entered. Second, the district court must compile "an adequate record for review." Third, the district court must make substantive findings about the frivolous or harassing nature of the plaintiff's litigation. Finally, the vexatious litigant order "must be narrowly tailored to closely fit the specific vice encountered."

Id. (quoting *De Long*, 912 F.2d at 1147-48). "The first and second of these requirements are procedural, while the 'latter two factors . . . are substantive considerations . . . [that] help the district court define who is, in fact, a "vexatious litigant" and construct a remedy that will stop the litigant's abusive behavior while not unduly infringing the litigant's right to access the courts.'" *Ringgold-Lockhart*, 761 F.3d at 1062 (quoting *Molski*, 500 F.3d at 1058). The Ninth Circuit has outlined the following factors to consider when determining who constitutes a "vexatious litigant":

> (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel;(4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; (5) whether other sanctions would be adequate to protect the courts and other parties.

Id. (quoting *Molski*, 500 F.3d at 1058).

III. Discussion

A. Notice and Opportunity to be Heard

The first *De Long* factor requires this Court consider whether the Plaintiff has had notice and opportunity to be heard. *De Long*, 912 F.2d at 1147. Raytheon filed the Motion on December 21, 2019 and properly served the Plaintiff. Dkt. 56. Plaintiff opposed the motion on December 23, 2019. Dkt. 59. Finally, the Court held a hearing on the Motion on January 21, 2020, and Plaintiff was in attendance. Dkt. 67. Thus, Plaintiff had an opportunity to be heard.

B. Record for Review

The second *De Long* factor requires "a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed." *De Long*, 912 F.2d at 1147. This listing should show "that the litigant's activities were numerous or abusive." *Id*. Plaintiff has filed numerous cases against Raytheon and Intel (defendant in the related action filed on the same day as the instant action). A listing of these cases is provided by Raytheon in its Motion. *See* Mot. at 8–10. The list includes six *pro se* actions determined adversely to Plaintiff filed against Raytheon or Intel in the past seven years.[3] An additional four actions were voluntarily dismissed by the Plaintiff. *Id*. at 9–10. The Court finds that the actions voluntarily dismissed by the Plaintiff were "abusive" given the timing of the dismissals, including some dismissals on the eve of a hearing on a

[3] The Court notes that the action determined adversely to the Plaintiff on October 3, 2019 has since become a final decision, as counsel for the Defendants indicated to the Court that the time to appeal that action has elapsed.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

dispositive motion. *Id*. On this record, the Court finds that these filing are both numerous and abusive. *See De Long*, 912 F.2d at 1147.

C. Substantive Findings

"[B]efore a district court issues a pre-filing injunction against a pro se litigant, it is incumbent on the court to make substantive findings as to the frivolous or harassing nature of the litigant's actions." *De Long*, 912 F.2d at 1148 (internal quotations omitted). In evaluating this factor this Court also considers five additional issues: (1) the litigant's history of litigation and whether it entailed vexatious, harassing, or duplicative suits; (2) the litigant's motive in pursuing the litigation; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or posed an unnecessary burden on the courts; and (5) whether other sanctions would adequately protect the courts and other parties. *Molski*, 500 F.3d at 1058 (citing *Safir v. United States Lines, Inc*. 792 F.2d 19, 24 (2d Cir. 1986)).

Raytheon has supplied the Court with an overview of the harassing and abusive nature of Plaintiff's litigation tactics. For example, in *American Innovation Corp. and Mankaruse v. Raytheon Company, et al*., Case No. 30-2014-00732670-CU-BC-CJC, Plaintiff dismissed the action shortly after Raytheon filed a dispositive motion. Mot. at 11. Then, the next day, Plaintiff refiled the action resulting in "two-plus" additional years of litigation. *Id*. As another example, in *Mankaruse v. Raytheon Company, et al.,* Case No. 30-2016-00841632-CU-IP-CJC, Plaintiff dismissed the suit the day before a hearing without informing the Defendants, resulting in Raytheon preparing for a fully briefed hearing only to find out the case was dismissed at the hearing itself. *Id*. Plaintiff therefore has an extensive history of frivolous and harassing litigation tactics. These tactics force Raytheon and Intel to spend significant resources in order to defend themselves. Indeed, Raytheon has provided evidence that it has, at times, fully briefed issues that were then dismissed by Plaintiff with little or no explanation. This compels the Court to make an adverse inference regarding Plaintiff's motive in bringing these actions.

Finally, the Court considers whether sanctions *other than* a prefiling order and security bond would adequately protect the Court and the parties. *See Molski*, 500 F.3d at 1058. The Court finds that Plaintiff's prior actions, including proceeding with this action *after* being declared a vexatious litigant in state court and previously losing a security bond in the amount of $10,000, compels the inference that other sanctions would be insufficient. The Plaintiff has not been deterred by similar findings in California state court, and therefore is not likely to be deterred absent a *strong* sanction in this instance.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

D. Narrowly Tailored Order

While prefiling orders that prevent a litigant from filing *any* suit in a particular court are overbroad, *see De Long*, 912 F.2d at 1148, a prefiling order that covers a specific plaintiff's future actions under a particular statute within a particular district can be appropriate. *See Molski*, 500 F.3d at 1061 ("The order . . . appropriately cover[ed] only the type of claims [plaintiff had been filing.]"). Further, the plaintiff in *Molski* was not entirely prevented from filing those claims. Instead, the plaintiff simply needed to get approval before being allowed to move forward. *Id*.

Given Plaintiff's continued filings against Raytheon and Intel, the Court **DECLARES** Plaintiff a vexatious litigant and finds that a prefiling order is appropriate moving forward. Plaintiff is **ORDERED** to seek prefiling approval in this Court prior to filing cases in the Central District of California *pro se* against Raytheon, TRS, Intel, or any of their employees, officers, or agents regarding Plaintiff's prior employment with these entities or regarding any alleged stolen trade secrets or patent infringement by these actors. *See* C.D. Cal. R. 83-8.2. This order is narrowly tailored to the "group of defendants" Plaintiff has targeted and to the "type[s] of claims [Plaintiff] ha[s] been filing vexatiously." *Molski*, 500 F.3d at 1061. Further, the order will not deny Plaintiff access to the courts generally. Instead, it subjects Plaintiff to an initial screening regarding a subset of potential future litigation against particular parties that Plaintiff has unfairly targeted *pro se*. The Court also **GRANTS** Raytheon's request for a security bond in the amount of $25,000. *Id*. Plaintiff must pay the security bond on or before February 29, 2020 or the action will be dismissed. The Court **STAYS** the matter until the payment of the security bond.

IV. Disposition

Accordingly, the Court **GRANTS** Defendants' Motion. The Court **DECLARES** Plaintiff a vexatious litigant, **ISSUES** a prefiling order as described above, and **ORDERS** a security bond in the amount of $25,000. The Court **STAYS** the action pending payment of the security bond.

The Clerk shall serve this minute order on the parties.

Initials of Deputy Clerk kd

MINUTES FORM 11
CIVIL-GEN

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NAGUI MANKARUSE, an individual,

Plaintiff,

v.

RAYTHEON COMPANY, a Delaware corporation; TRS LLC US, a Delaware limited liability company; DAVID EARL STEPHENS, an individual; JOHN RYAN, an individual; JAMES LEROY COTTERMAN, JR., an individual; JAMES E. WEBER, an individual; MARK P. HONTZ, an individual; KIMBERLY R. KERRY (KIM KERRY), an individual; COLIN J. SCHOTTLAENDER, an individual; WILLIAM H. SWANSON, an individual; THOMAS A. KENNEDY, an individual; MATTHEW BREWER, an individual; F. KINSEY HAFNER, an individual; KEITH PEDEN, an individual; RICHARD ROCKE, an individual, and DOES 1-10, inclusive,

Defendants.

CASE NO. 8:19-cv-1904 DOC (ADSx)

JUDGMENT

On January 23, 2020, the Court issued an Order Granting Motion To Declare Plaintiff A Vexatious Litigant (Dkt. 68). Specifically, the Court ordered Plaintiff Nagui Mankaruse ("Plaintiff") to pay a security bond in the amount of $25,000 on or before February 29, 2020 or this action would be dismissed. As of June 9, 2020, Plaintiff has failed to post the required bond. According, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that this action is hereby **DISMISSED** in its entirety.

IT IS SO ORDERED.

Dated: June 9, 2020

David O. Carter

The Honorable David O. Carter
United States District Court Judge