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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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12 B. Spain,

Plaintiff,

No. CIV 07-0308-PHX-RCB

vs.

O R D E R

15 EMC Mortgage Company,
et al.,

Defendants.

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The primary issue currently before the court is the propriety of entering a pre-filing order against plaintiff *pro se*, B. Spain. In Spain v. EMC Mortgage Co., 2008 WL 752610 (D. Ariz. March 18, 2008) ("Spain I"), the first of four comprehensive orders issued in this case, the court explicitly warned plaintiff that:

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Given his numerous filings, most of them wholly without merit, coupled with the tone and form of those filings, [he] [w]as dangerously close to crossing the line from permissible use of the judicial process to flagrant abuse[.]

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Id. at *8. Plaintiff Spain did not heed that warning or

1 subsequent ones. Instead, plaintiff's "repeated attempts
2 . . . to misuse the courts" have resulted in, among other
3 things, the "needless[] squander[ing]" of judicial and other
4 resources. See O'Loughlin v. Doe, 920 F.2d 614, 618 (9th Cir.
5 1990). Consequently, as fully discussed below, the court
6 finds ample justification for the entry of a pre-filing order
7 against plaintiff Spain.

8 Background

9 I. The Bankruptcy Case

10 Well before commencing this action, plaintiff Spain had
11 "extensive involvement" as "a claimant in a District of
12 Arizona bankruptcy proceeding . . . span[ning] more than a
13 decade."¹ Spain I, 2008 WL 752610, at *1. That bankruptcy
14 had its genesis in a 1978 judgment of dissolution entered by
15 the Superior Court in Maricopa County. As part of that
16 judgment, the Superior Court awarded several properties
17 located in Creede, Colorado ("Colorado properties") to Norma
18 J. Hurt. See Eagleburger I, Doc. 92 at 1; and Eagleburger
19 II, 2009 WL 307280, at *1. In 1985, Ms. Hurt filed for
20 bankruptcy in the District of Arizona. Eagleburger II, 2009
21 WL 307280, at *1.

22 In Eagleburger II, Judge Campbell outlined plaintiff
23 Spain's involvement as a claimant in that bankruptcy action:

24 On April 3, 1990, the bankruptcy court issued an
25 _____

26 ¹ In addition to that bankruptcy action, prior to the commencement of the
27 present action, plaintiff commenced two other federal district court actions:
28 Spain v. Eagleburger Group, No. CV 06-0712-PHX-ROS ("Eagleburger I"); and Spain v.
Eagleburger Group, No. CV-08-1089-PHX-DGC ("Eagleburger II"). Pursuant to Fed. R.
Evid. 201, this court takes judicial notice of all orders issued in the bankruptcy
case, and in Eagleburger I, and Eagleburger II.

1 order approving a stipulated settlement agreement
2 disposing of all claims against the bankruptcy
estate ("Settlement Agreement"). See *In re Norma*
3 *Hurt*, No. 85-3802-PHX-RGM, Adv. No. 87-199
(Bankr.D.Ariz. Apr. 3, 1990). Spain and other
4 claimants appealed the bankruptcy court's order,
arguing in part that the Settlement Agreement was
5 unenforceable due to misrepresentation and fraud.
The order was affirmed. See *In re Hurt*, BAP No.
6 AZ-90-1142/AZ-90-1174 RJMe (BAP 9th Cir. June 1,
1992); *In re Hurt*, No. 92-16538, 1994 WL 224263, 26
7 F.3d 130 (9th Cir. May 26, 1994), cert. denied sub
nom., *Kachina Plywood, Inc. v. Hurt*, 513 U.S. 1190,
8 115 S.Ct. 1253, 131 L.Ed.2d 134 (1995), and *Pace v.*
Hurt, 514 U.S. 1098, 115 S.Ct. 1829, 131 L.Ed.2d 749
(1995).

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10 In January 2003, Bankruptcy Judge James Marlar
11 confirmed the bankruptcy estate's sale of the
Colorado Properties to the City of Creede. See *In re*
12 *Hurt*, No. B-85-03802-JMM (Bankr.D.Ariz. Jan.
31, 2003). ITNX, Inc., an entity allegedly controlled
13 by Spain and Pace, appealed from Judge Marlar's
confirmation order. The order was affirmed. See *In*
14 *re Hurt*, BAP No. AZ-98-1532-KPRy (BAP 9th Cir. Sept.
13, 1999); *In re Hurt*, No. 00-15088, 2001 WL 615282,
15 9 Fed. Appx. 780 (9th Cir. June 5, 2001).

16 Eagleburger II, 2009 WL 307280, at *1 (footnote omitted).

17 As this court pointed out in Spain I, after finding that
18 "plaintiff's liens and encumbrances . . . placed upon the
19 real properties of [the bankrupt estate of Norma J. Hurt]
20 [were] null and void[,] . . . , the Bankruptcy Court . . .
21 enjoined [Spain] from bringing any action or filing, or
22 causing to be filed any lien or claim against the property of
23 [the bankrupt estate][.]" Spain I, 2008 WL 752610, at *1
24 (citations and internal quotation marks omitted). "Plaintiff
25 also signed a settlement agreement which stated the same, and
26 additionally stated that '[Spain agrees] that . . . all
27 objections to the sale of any real properties now pending
28 . . . are waived and withdrawn.'" Eagleburger I, Doc. 92 at

1 2:5-7.

2 **II. Eagleburger I**

3 Unwilling to concede defeat, "in 2004 plaintiff commenced
4 a federal court action in Colorado[,]" which eventually was
5 transferred to this district and assigned to Judge Silver.
6 See Spain I, 2008 WL 752610, at *1. Among the defendants in
7 that case were Bankruptcy Judge Marlar, and counsel who had
8 represented Ms. Hurt in the bankruptcy proceeding. See
9 Eagleburger II, 2009 W 307280, at *1. In Eagleburger I,
10 plaintiff Spain alleged that defendants violated the
11 Racketeer Influenced and Corrupt Organizations Act ("RICO").
12 Eagleburger I, Doc. 92 at 2:21-22. In particular, plaintiff
13 "alleged that the Colorado Properties were not part of the
14 Settlement Agreement and that the defendants made
15 misrepresentations and filed fraudulent documents in the
16 Bankruptcy Case." Eagleburger II, 2009 WL 307280, at *1
17 (citation omitted). Plaintiff "further alleged that Judge
18 Marlar knowingly approved the fraudulent Settlement Agreement
19 in confirming the sale of the Colorado Properties." Id.
20 (citation omitted).

21 Judge Silver dismissed that case for failure to state a
22 claim "on the ground that Spain's claims could have been
23 raised in the Bankruptcy Case and were therefore barred by
24 the doctrine of res judicata." See id. (citation omitted).
25 Thereafter, plaintiff moved to vacate that order because
26 supposedly it was "void for lack of jurisdiction."
27 Eagleburger I, Doc. 96 at 1:28 - 2:1. Because plaintiff did
28 "not explain how th[at] Court lack[ed] jurisdiction[,]" Judge

1 Silver denied plaintiff's motion to vacate. Id. at 2:3-6.

2 Plaintiff Spain responded by filing a motion to
3 disqualify Judge Silver. See id., Doc. 97. Judge Silver
4 denied that motion, explaining that "[t]he Court has already
5 entered judgment against Plaintiff, dismissed the action and
6 complaint, and denied [his] motion to reopen the case and
7 vacate the dismissal order." Id., Doc. 98 at 1:20-21. Judge
8 Silver unequivocally stated: "At this point, no further
9 pleadings or motions in this Court are allowed." Id., at
10 1:20-22. She therefore denied "as moot" plaintiff's motion,
11 and directed him to "not file any more motions in th[at]
12 Court, as the case is closed." Id. at 23-24. Judge Silver
13 also "ordered . . . the Clerk of the Court . . . not to
14 accept further motions or pleadings in th[at] case." Id. at
15 2:3-4 (emphasis omitted).

16 **III. Eagleburger II**

17 The foregoing did not deter plaintiff Spain from
18 continuing to litigate with respect to the bankruptcy case.
19 Evidently dissatisfied with the outcome in Eagleburger I,
20 plaintiff "fil[ed] a complaint against Judge Silver and all
21 defendant's named in [her] case with the exception of [Ms.]
22 Hurt." Eagleburger II, 2009 WL 307280, at *2 (citation
23 omitted). Plaintiff Spain asserted "RICO claims based on an
24 alleged conspiracy between Defendants to deprive Spain of his
25 purported ownership of the Colorado properties[,]" which were
26 the subject of the Hurt bankruptcy. Id. (citation omitted).
27 Defendants and plaintiffs alike filed a host of motions in
28 that case.

1 Finding that the complaint before him was "nearly
2 identical to the second amended complaint [{"SAC"}]" in
3 Eagleburger I, and that Judge Silver had "dismissed the [SAC]
4 on the merits, and final judgment was entered in favor of
5 Defendants and against Spain[,]" Judge Campbell held that res
6 judicata barred the claims before him. See id. (citations
7 omitted). Judge Campbell also dismissed the claims against
8 Judges Silver and Marlara on judicial immunity grounds. See
9 id. at *3. Additionally finding that judicial immunity would
10 bar plaintiff's proposed section 1983 claims against those
11 two Judges, Judge Campbell also denied plaintiff's motion to
12 amend his complaint. Id.

13 Moreover, Judge Campbell granted the motion by Judges
14 Silver and Marlara "enjoin[ing] Spain from filing in th[at]
15 Court, absent prior permission, any suit against Defendants
16 concerning the Colorado Properties." Id. at *4 (citing 28
17 U.S.C. § 1651). Judge Campbell soundly reasoned:

18 Spain's claims relating to the Colorado Properties
19 have been repeatedly denied. . . . With each
20 judicial failure, [Spain] file[s] the next cause of
21 action, creating a snowballing effect by naming the
22 same defendants and adding attorneys and judges [he
holds] responsible for [his] defeat. . . . Spain's
claims are not only numerous, but patently without
merit. . .

23 Id. (citations, internal quotation marks and footnote
24 omitted). Judge Campbell then directed the Clerk of the
25 Court to terminate that action. Id. at *5, ¶ 6.

26 **IV. The Present Case**

27 **A. Spain I**

28 "Slightly more than a month" after Judge Silver barred

1 plaintiff from further filings in Eagleburger I, plaintiff
2 Spain filed the present action. Spain I, 2008 WL 752610, at
3 *1 (citation and internal quotation marks omitted). It was
4 readily apparent to the court that plaintiff's first amended
5 complaint ("FAC") herein, bore a "striking resemblance" to
6 his amended complaint in Eagleburger I. Id. "[T]he factual
7 predicate [did] differ[]" between those two complaints in
8 that the Colorado properties were at issue in Eagleburger I,
9 whereas the property at issue here "is located at 2258 East
10 Alpine Drive, Mesa, Arizona ('the property')[.]" Id. at *3
11 (citation omitted). Plaintiff Spain alleged the same legal
12 theory though as he did in Eagleburger I - alleged RICO
13 violations." See id. at *1. Indeed, "many parts [of
14 plaintiff's FAC] [we]re identical to his amended complaint"
15 in Eagleburger I. Id. at *2. This court found that
16 "similarity" to be "significant because in [Eagleburger I]
17 the court granted defendants' motion for a more definite
18 statement . . . , noting that it was 'an understatement[]' to
19 refer to plaintiff's complaint therein as 'unorganized[.]'"
20 Id. (citation omitted). This court found "the same" to be
21 "true here." Id.

22 Despite "plaintiff's scattershot approach to pleading[,]"
23 and his "lengthy recitations to cases which on their face
24 appear[ed] largely irrelevant[,]" the court did address
25 defendants' standing arguments in Spain I. Id. at *3. The
26 court addressed those arguments although it had "serious
27 reservations as to whether the FAC in its current form
28 "perform[ed] the essential functions of a complaint." Id.

1 (quoting McHenry v. Renne, 84 F.3d 1172, 1180 (9th Cir.
2 1996)). Plaintiff did not address the standing issue in
3 Spain I. See id. at *4. Instead, as to one defense motion,
4 "with no basis," plaintiff simply "respond[ed] that that
5 motion [wa]s ` . . . a substantive and procedural
6 nullity[.]'" Id. (citation omitted). "Except for asserting
7 different names," that was also plaintiff's response to
8 another defense motion. Id. Plaintiff took "a different but
9 equally unresponsive approach" to yet another defense motion.
10 Id. Plaintiff "devote[d] the bulk" of that response "to
11 arguing that it `[wa]s nothing more and nothing less than a
12 frivolous demurrer[.]'" Id. (citation omitted).

13 After thoroughly discussing why plaintiff's FAC did not
14 sufficiently allege standing, the court found that it
15 "lack[ed] subject matter jurisdiction[,] and so "denie[d] as
16 moot all remaining pending motions[.]" See id. at *5 - *7.
17 Primarily because of "the Ninth Circuit's general reluctance
18 to deny *pro se* litigants an opportunity to amend, the court
19 [did] allow plaintiff to amend his complaint[]" though. Id.
20 at *8. The court cautioned plaintiff, however:

21 Before filing any amended complaint, . . . plaintiff
22 would do well to seriously consider the numerous
23 apparent defects discussed in defendants' motions,
24 such as the lack of personal jurisdiction by the
25 Ruyle defendants and defendant Huston, and the fact
26 that arguably this action is an impermissible
27 collateral attack on prior court proceedings. The
28 court stresses that these are just two of the
seeming defects, which are too countless to
enumerate, in the FAC-and two which at first glance
it does not appear can be cured by amendment.

27 Id. The court further advised plaintiff, among other things,
28 that if he "has any doubt as to the pleading requirements

1 under the Federal Rules of Civil Procedure, he can consult,
2 among other sources, the Rule's Appendix of Forms, which are
3 ``intended to indicate the simplicity and brevity of
4 statement which the rules contemplate.'" Id. (quoting
5 Fed.R.Civ.P. 84).

6 At that point, the court gave plaintiff the first of
7 several warnings pertaining to "the manner" in which he was
8 "conduct[ing] this litigation[.]" Id. Given his conduct "to
9 date, as well as his extensive prior litigation involvement
10 documented in the record, the court caution[ed] him regarding
11 the use of the courts in a vexatious fashion." Id.

12 Although the court found that "[a]t th[at] juncture the
13 plaintiff ha[d] not engaged in a 'flagrant abuse of the
14 judicial process[,]" it opined that "[g]iven his numerous
15 filings, most of them wholly without merit, coupled with the
16 tone and form of those filings, plaintiff [wa]s dangerously
17 close to crossing the line from permissible use of the
18 judicial process to flagrant abuse[.]" Id. (quoting Molski,
19 500 F.3d at 1057). The court further advised plaintiff that
20 it would "not look favorably upon the filing of an amended
21 complaint which does not fully comport with the relevant
22 Federal Rules of Civil Procedure and governing case law."
23 Id. The Court allowed plaintiff 30 days in which to file and
24 serve his amended complaint. See id.

25 **B. Spain II**

26 Rather than filing and serving an amended complaint as
27 the court allowed, plaintiff "filed a 'motion to vacate[,]'
28 asserting that *Spain I* [wa]s 'facially void[.]'" Spain v. EMC

1 Mortg. Co., 2008 WL 2328358, at *1 (D.Ariz. June 4,
2 2008)(“Spain II”) (citation omitted). After defendants
3 promptly responded or joined in responses filed by other
4 defendants, plaintiff filed three additional motions and
5 lodged a SAC with the court, but he did not reply to any of
6 those responses or joinders. That flurry of motion activity
7 is outlined in Spain II, and incorporated herein by
8 reference. See id.

9 Partially due to his *pro se* status, this court overlooked
10 the fact that in moving to vacate plaintiff did not rely upon
11 the proper Rule. See id. at *2. The court could not so
12 easily overlook the “largely incomprehensible” nature of
13 plaintiff’s motion, however. See id. Nor could the court
14 overlook the fact that plaintiff “simply disagree[d] with
15 [this court’s] rulings in *Spain I*. Id. As this court held,
16 “[p]laintiff’s dissatisfaction [wa]s not a proper basis for
17 reconsideration[.]” See id. (citing cases). Additionally,
18 plaintiff did not fully comply with LRCiv. 7.2(g)(1) in
19 moving to vacate. Id. Accordingly, the court denied
20 plaintiff’s motion to vacate. Id. at *5.

21 Although styled differently, plaintiff filed two other
22 “virtually identical” motions, which the court jointly
23 considered in Spain II. Basically, plaintiff was seeking an
24 extension of time in which to file his SAC. In arguing for a
25 “good cause” extension of time, plaintiff vowed that “if an
26 extension of time [wa]s not granted, he w[ould] ‘wast[e]
27 *judicial resources and the Court’s time*[.]’” Id. at *3
28 (quoting Resp. (Doc. 136)) (emphasis added). This court

1 found "[p]laintiff's ready willingness to 'wast[e] judicial
2 resources and the Court's time[]" [to be] troubling to say
3 the least." Id. (citation omitted). The court conceded that
4 "[p]erhaps when read in isolation, [it] would be willing to
5 overlook th[at] statement." Id. But, "[w]hen read in
6 conjunction with plaintiff's motion to vacate, with its
7 vituperative tone, the court f[oun]d[] that once again
8 'plaintiff is dangerously close to crossing the line from
9 permissible use of the judicial process to flagrant
10 abuse[.]'" Id. (quoting Spain I, 2008 WL 752610, at *8).

11 After carefully examining the four factors pertinent to a
12 finding of excusable neglect, this court held that "because
13 . . . it appear[ed] that plaintiff Spain's delayed filing did
14 not result from deviousness or willfulness," it was "willing
15 to give him some leeway." Id. at *4 (internal quotation
16 marks omitted). Thus, "the court, in its discretion,
17 grant[ed] plaintiff an extension of time in which to file and
18 serve his SAC." Id. at *5. Concluding, the court added that
19 "[d]espite [its] leniency this time, plaintiff is forewarned
20 that it will not look so favorably upon similar future
21 motions." Id. (footnote omitted).

22 **C. Spain III**

23 In Spain v. EMC Mortg. Co., 2009 WL 464983 (D.Ariz. Feb.
24 24, 2009) ("Spain III"), this court had before it plaintiff's
25 SAC and "various potentially dispositive motions, which
26 called to mind "the immortal words of baseball sage Yogi
27 Berra . . . , 'This is deja vu all over again.'" Id. at *1
28 (footnote omitted). That comment was prompted by the fact

1 that "[d]espite this court's admonitions and guidance in
2 terms of repleading, plaintiff . . . Spain's SAC b[ore] a
3 striking resemblance to his . . . FAC[.]" Id. The SAC
4 "appear[ed] to be a slightly shorter 'cut and paste version'
5 of the FAC, suffer[ing] from many of the same infirmities as
6 the FAC." Id. Necessarily then, defendants' reiterated their
7 dismissal arguments pertaining to the FAC. See id. at *5.

8 Before resolving the motions to dismiss, given the
9 numerous and in some instances untimely submissions, the
10 court had to first "clarify the scope" of what it would
11 "consider[] on th[os]e motions." Id. at *2. The court
12 refused to consider a number of plaintiff's filings including
13 four "replies to a reply," because they were duplicative,
14 violative of the Local Rules, or simply irrelevant. See id.
15 at *2. In a similar vein, the court denied plaintiff's
16 motion for reconsideration because he did not comply with
17 LRCiv 7.2. Id. at *3. Plaintiff Spain was well aware of
18 "the necessity of complying with" that Rule "which the court
19 discussed at some length in Spain II[.]" Id.

20 Next, the court addressed the parties' respective
21 standing arguments. In contrast to Spain I, where plaintiff
22 claimed that he had standing by virtue of his "ownership
23 interest in Aurora Management[,]" in Spain III plaintiff
24 sought to establish that he had "an ownership interest in the
25 Alpine property itself." Id. at *4. Plaintiff
26 unsuccessfully attempted to allege his ownership interest in
27 the Alpine property by relying upon a "promissory note, [a]
28 Warranty Deed," and copies of 30 checks. Id. at *6.

1 As to the Warranty Deed, this court explained:

2 Despite what plaintiff might believe, that Deed did
3 not convey any portion of the Alpine property to him
4 individually. It is plain from the face of the
5 Warranty Deed that the property was conveyed to the
6 "ABS PROPERTY TRUST[,]" and to plaintiff solely in
7 his capacity as trust "Beneficiary[.]" Doc. 88 at 6.
8 However, "the beneficiary of a trust generally is
9 not the real party in interest and may not sue in
10 the name of the trust." Orff v. United States, 358
11 F.3d 1137, 1148 (9th Cir. 2004) (internal quotation
12 marks and citation omitted). Thus, as a trust
13 beneficiary, plaintiff lacks standing to pursue
14 claims on behalf of the trust.

9 Id. at *6. In summarizing its holdings, the court reiterated:

10 The Warranty Deed . . . does not support a finding
11 that plaintiff has standing here because on its face
12 that Deed shows that plaintiff is a trust
13 beneficiary and, as such, is not the real party in
14 interest. Any rights which that Deed may establish
15 in the subject property are rights belonging to the
16 ABS Property Trust-not to plaintiff. To the extent
17 plaintiff believes that he has been deprived of his
18 rights as a trust beneficiary, then he has sued the
19 wrong parties.

16 Id. at *8. Consequently, this court found that "[a]t the end
17 of the day, at most, the SAC, *just like the FAC*, alleges
18 injuries which 'were suffered, if at all, by Aurora, Alpha
19 Mega and/or Bing Four, not by plaintiff.'" Id. (quoting Spain
20 I, 2008 WL 752610, at *5 (internal quotation marks and
21 citation omitted)) (emphasis added). So, although the SAC
22 "remain[ed] largely incomprehensible and undeniably
23 confusing[,]" it was "ascertainable . . . that despite
24 amendment, plaintiff . . . failed to cure the fundamental
25 defect of standing." Id. at *6 (citation and internal
26 quotation marks omitted).

27 Significantly, in Spain III plaintiff "persisted in . . .
28 using a vituperative tone," despite this court's earlier

1 caution against such conduct. See id. at *7 (citation and
2 internal quotation marks omitted). Plaintiff also “cast[]
3 disparaging remarks against” one of the defense counsel,
4 asserting that that particular lawyer was “harass[ing]”
5 plaintiff. Id. This court found that assertion
6 “[r]emarkabl[e]” given that “arguably, it [wa]s the other way
7 around.” Id. Continuing, the court explained that, “[as]
8 the record amply demonstrates, at this point, plaintiff’s
9 repetitive and non-responsive filings border on harassment.”
10 Id. However, in large part because the court was dismissing
11 the SAC with prejudice and directing entry of judgment in
12 defendants’ favor, and that the case be terminated, the court
13 saw no need for a pre-filing order at that time. See id. at
14 *9.

15 **D. Spain IV**

16 Following dismissal of this action with prejudice and
17 entry of judgment in defendants’ favor, plaintiff filed a
18 wholly baseless “Motion for New Trial, Rehearing, and
19 Reconsideration[.]” See Spain v. EMC Mortg. Co., 2009 WL
20 2590100, at *8 (D.Ariz. Aug. 20, 2009) (“Spain IV”). As
21 recounted in Spain IV, plaintiff based that motion upon a
22 “purportedly ‘corrected’ Warranty Deed[:.]”

23 Plaintiff claims that the Warranty Deed upon which
24 the court focused in Spain III had a ‘typographical
25 error[,] in that it ‘was erroneously made out to ABS
26 PROPERTY TRUST & B. Spain Beneficiary [,]’ rather
27 than to plaintiff as ‘an individual[.]’ . . . Since
28 the issuance of Spain III, plaintiff asserts that
that ‘error has . . . been corrected . . . by
re-recording the original deed.’ . . . Apparently
plaintiff re-recorded the original deed to ‘correct
grantee information[,]’ on March 6, 2009—ten days
after the issuance of Spain III. . . . More

1 particularly, rather than indicating as it did in
2 the Spain III record that the 'GRANTEE' was 'ABS
3 PROPERTY TRUST B.Spain, Beneficiary[,] the
4 Warranty Deed now reads that the 'GRANTEE' is 'ABS
5 PROPERTY TRUST B. Spain, Beneficiary
6 Individually[.]' . . . Plaintiff readily admits
7 that he made this 'alteration[.]' . . .

8 Id. at *1(citations and footnote omitted).

9 The court denied plaintiff's motion for a new trial for
10 the patently obvious reason that there had been no trial.
11 See id. at *3. Likewise, the court denied plaintiff's motion
12 for reconsideration. Those reasons are incorporated by
13 reference herein, but several bear repeating as they are
14 particularly illustrative of plaintiff's dubious litigation
15 tactics.

16 First, as discussed in Spain IV, "[t]he court disagrees
17 with plaintiff's characterization of the original deed as
18 containing a 'typographical' error." Id. at *5. As this
19 court reasoned:

20 This supposed typographical error arises from the
21 fact that the conveyance there was to plaintiff in
22 his capacity as a trust 'beneficiary' as opposed to
23 'individually.' Transposing an entire word,
24 especially when those words are spelled quite
25 differently, is not a mere typographical error,
26 despite how plaintiff tries to portray it. A
27 typographical error would be, for example, the
28 difference between the word 'data' and the word
'date.' It is easy to see how in transcription those
two words inadvertently could be interposed one for
the other. The same is not true, however, of the
words 'beneficiary and 'individually.'

Id. Second, as further explained in Spain I:

[T]he timing of plaintiff's 'discovery'
significantly undermines his argument that the
original deed was 'erroneously made out.' . . . That
'discovery' was not until two and a half years
after the Warranty Deed is dated, and after
plaintiff reviewed Spain III and realized that his
trust beneficiary status was disadvantageous to him

1 in terms of pursuing this litigation. . . . Thus,
2 the court gives no credence to plaintiff's assertion
3 that the original Warranty Deed had a typographical
4 error.

5 Regardless of the foregoing, what is abundantly
6 clear is that the 'corrected' Deed did not surface
7 until more than a week after the issuance of *Spain*
8 *III* when apparently plaintiff re-recorded the Deed
9 to reflect the supposedly new grantee information.

10 Id. at *6 (citations omitted). As the foregoing readily
11 shows, in pursuing these claims, plaintiff will go to almost
12 any length, including altering documents.

13 After finding plaintiff's remaining reconsideration
14 arguments to be without merit, the court was "compelled to
15 comment, as it ha[d] previously, upon the manner in which
16 plaintiff has conducted this litigation." Id. at *7.
17 Essentially, the court found that "since *Spain I*" plaintiff
18 "has done nothing to dispel the court of th[e] view[]" that
19 he was coming "dangerously close to crossing the line from
20 permissible use of the judicial process to flagrant abuse[.]"
21 Id. (citation and internal quotation marks omitted). The
22 court thus advised the parties that it was "seriously
23 considering entering a pre-filing order . . . precluding any
24 further filings by plaintiff in this action." Id. at *8.
25 The court suggested that "[s]uch an order also might,
26 perhaps, preclude plaintiff from any further filings
27 generally as to the transaction which is the subject of this
28 lawsuit[.]" Id.

The court allowed plaintiff "15 days from the date of
entry of th[at] order in which to file and serve a memorandum
of law and any supporting documentation which he deem[ed]

1 appropriate directed to the issue of the propriety of
2 entering a pre-filing order[.]” Id. Defendants were given “10
3 days thereafter to file and serve a response, if any[,]” but
4 the court plainly stated, “[n]o reply shall be permitted
5 unless so directed by the court.” Id.

6 The parties timely filed their respective memoranda in
7 accordance with Spain IV. Blatantly disregarding that order,
8 plaintiff filed two untimely and unauthorized memoranda - a
9 “Supplemental Information to Memorandum of Points and
10 Authorities against the Entry of a pre-filing Order” (Doc.
11 272), and a “Supplement” entitled “B. Spain’s memorandum of
12 law objecting to the propriety of Judge Broomfield’s entering
13 a pre-filing order **and** motion for a pretrial scheduling
14 conference” (Doc. 273) (bold emphasis added). The court will
15 not consider the merits of the “Supplemental Information” or
16 the second memorandum of law as they are in direct
17 contravention of Spain IV, but it will briefly address
18 plaintiff’s motion for a pretrial scheduling conference.

19 At the same time, the court recognizes that those two
20 untimely and unauthorized filings are relevant to the issue
21 of whether a pre-trial order is necessary in this case.
22 Those two filings reaffirm plaintiff’s disregard for the
23 judicial process and, more specifically, orders of this
24 court. This time instead of waging personal attacks on
25 defense counsel, plaintiff has elected to attack the court in
26 a similarly inappropriate manner. Furthermore, plaintiff’s
27 “Supplemental Information” evinces his declared intent to
28 “‘wast[e] judicial resources and the Court’s time[.]’” See

1 Spain II, 2008 WL 2328358, at *3 (citation omitted). That
2 submission consists of nothing more than plaintiff's 20 page
3 "Response to Motion to Enjoin Vexatious Litigation" in
4 Eagleburger II, and Judge Silver's order in Eagleburger I
5 denying plaintiff's motion to vacate therein.

6 Discussion

7 I. Pre-filing Order

8 Pursuant to the All Writs Act, 28 U.S.C. § 1651(a),
9 district courts have "the inherent power to enter pre-filing
10 orders against vexatious litigants." Molski, 500 F.3d at
11 1057 (citation omitted). That power is not unfettered
12 though. In De Long v. Hennessey, 912 F.2d 1144 (9th Cir.
13 1990), the Ninth Circuit "outlined four factors for district
14 courts to examine before entering pre-filing orders." Id.
15 (citation omitted). "First, the litigant must be given
16 notice and a chance to be heard before the order is entered."
17 Id. (citing De Long, 912 F.2d at 1147). Second, the district
18 court must compile 'an adequate record for review.'" Id.
19 (quoting De Long, 912 F.2d at 1148). These two factors "are
20 procedural considerations - that is, the factors define [a]
21 specific method or course of action that district courts
22 should use to assess whether to declare a party a vexatious
23 litigant and enter a pre-filing order." Id. at 1057-58
24 (internal quotation marks and citation omitted).

25 The next two factors "are substantive considerations-that
26 is, the[se] factors help the district court define who is, in
27 fact, a 'vexatious litigant' and construct a remedy that will
28 stop the litigant's abusive behavior while not unduly

1 infringing the litigant's right to access the courts." Id.
2 at 1058. The first of these substantive factors requires the
3 district court to "make substantive findings about the
4 frivolous or harassing nature of the plaintiff's litigation."
5 Id. at 1057 (citation omitted). The next substantive factor
6 requires that "the vexatious litigant order . . . be narrowly
7 tailored to closely fit the specific vice encountered.'" Id.
8 (quoting De Long, 912 F.2d at 1148). The court will consider
9 these factors seriatim in light of the extensive record
10 outlined herein regarding plaintiff's litigation tactics.

11 **A. Notice and Opportunity to be Heard**

12 Contemplating the entry of a pre-filing order against
13 plaintiff, in Spain IV, this court indicated its "[k]een[]
14 aware[ness] of the ramifications of such an order[.]" Spain
15 IV, 2009 WL at *8. Therefore, "in accordance with *De Long v.*
16 *Hennessey*, . . . , and its progeny," the court g[a]ve[]
17 plaintiff notice . . . that it is considering entering such
18 a[] [pre-filing] order." Id. (citation omitted). Further,
19 the court explicitly advised plaintiff, "[a]s the *Hennessey*
20 line of cases requires, [he] shall have an opportunity to be
21 heard in this regard." Id.

22 As plaintiff readily concedes in his "Memorandum of
23 Points and [A]uthorities [A]gainst the Entry of a [P]re-
24 filing Order[,] . . . *this obviously is [his] opportunity to*
25 *be heard[.]*" Memo. (Doc. 270) at 4:21 (emphasis added). The
26 court thus finds that plaintiff had adequate notice and an
27 opportunity to be heard, as this Circuit requires prior to
28 the entry of a pre-filing order.

1 B. Record for Review

2 "An adequate record for review should include a listing
3 of all the cases and motions that led the district court to
4 conclude that a vexatious litigant order [i]s needed." De
5 Long, 912 F.2d at 1147. Here, as just discussed, that record
6 consists of plaintiffs' litigation activities and resultant
7 court orders in this action, as well as those in three other
8 actions. What emerges from that record is a disturbing
9 pattern by plaintiff of repetitive and baseless filings
10 against these defendants. The record further shows that
11 plaintiff's conduct herein is not isolated. The record is
12 replete with orders by this court and others discussing the
13 meritless nature of plaintiff's claims, as well as his
14 numerous problematic filings and questionable litigation
15 tactics.

16 C. Frivolous or Harassing Nature of Filings

17 The third De Long factor "gets to the heart of the
18 vexatious litigant analysis[.]" Molski, 500 F.3d at 1059. In
19 making the necessary "substantive findings as to the
20 frivolous or harassing nature of the litigant's actions[,]
21 . . . the district court must look at both the number and
22 content of the filings as indicia of the frivolousness of the
23 litigant's claims." Id. (citations and internal quotation
24 marks omitted) (emphasis added). A showing of litigiousness
25 is not enough. "The plaintiff's claims must not only be
26 numerous, but also be patently without merit." Id. (citation
27 and internal quotation mark omitted). In fact, in Molski the
28 Ninth Circuit "reemphasize[d] that the simple fact that a

1 plaintiff has filed a large number of complaints, standing
2 alone, is not a basis for designating a litigant as
3 vexatious." Id. at 1061 (citations and internal quotation
4 marks omitted). The Molski Court further "emphasize[d] that
5 the textual and factual similarity of a plaintiff's
6 complaints, standing alone, is not a basis for finding a
7 party to be a vexatious litigant." Id.

8 By the same token though, "[f]rivolous litigation is not
9 limited to cases in which a legal claim is entirely without
10 merit." Id. at 1060. "It is also frivolous for a claimant
11 who has some measure of a legitimate claim to make false
12 factual assertions." Id. A person "may cross the line into
13 frivolous litigation by asserting facts that are grossly
14 exaggerated or totally false." Id. at 1062.

15 The Ninth Circuit has found that "the Second Circuit's
16 five-factor standard [adopted in Safir v. United States
17 Lines, Inc., 792 F.2d 19 (2nd Cir. 1986)] provides a helpful
18 framework for applying" this Circuit's two substantive
19 factors - findings of frivolousness or harassment and
20 narrowly tailored pre-filing orders. See id. at 1058
21 (citation omitted). The five Safir factors are:

22 (1) the litigant's history of litigation and in
23 particular whether it entailed vexatious, harassing,
24 or duplicative suits; (2) the litigant's motive in
25 pursuing the litigation, for example, whether the
26 litigant had a good faith expectation of prevailing;
27 (3) whether the litigant is represented by counsel;
28 (4) whether the litigant has caused unnecessary
expense to the parties or placed a needless burden
on the courts; and (5) whether other sanctions would
be adequate to protect the courts and other parties.

Id. (citation omitted). Employing that framework to the

1 record before it, it is easy to see the need for a carefully
2 circumscribed pre-filing order against plaintiff B. Spain.

3 **1. Plaintiff's Litigation History**

4 Plaintiff Spain's litigation history, as explicated
5 herein, reveals a persistent litigant who unceasingly
6 continues to pursue claims against parties, even when those
7 claims are clearly without merit. Despite being given
8 considerable leeway by this court, plaintiff did not address
9 the numerous substantive defects in his complaints. Instead,
10 when he did not succeed on the merits, plaintiff resorted to
11 filing numerous motions, some of which were duplicative, many
12 of which were largely incomprehensible, and all of which had
13 little or no bearing on the issues.

14 **2. Litigant's Motive**

15 Given the number of defendants, many whom have an
16 extraordinarily attenuated, if any, relationship to the
17 events complained of, and the vitriol frequently expressed in
18 plaintiff's filings, plaintiff Spain's primary motive here
19 clearly appears to be to harass defendants. See Gabor v.
20 County of Santa Clara Bd. of Supervisors, 2008 WL 902407, at
21 *7 (N.D.Cal. Mar. 31, 2008), aff'd without pub'd opinion, 363
22 Fed.Appx. 456 (9th Cir. 2010) ("It is unclear whether
23 plaintiffs[] are bringing this action for purposes of
24 harassing the named defendants, although based on the number
25 of defendants and the vitriol expressed in the instant
26 complaint, it would appear that there may be some intent to
27 harass.); see also Boustred v. Government, 2008 WL 4287570,
28 at *2 (N.D.Cal. Sept. 17, 2008) (three actions sufficient to

1 support vexatious litigant order where actions contained
2 "similar rambling, largely incomprehensible claims" and named
3 "numerous defendants including ones having no connection" to
4 conduct alleged).

5 **3. Represented by Counsel**

6 Plaintiff is appearing *pro se* here, as he did in
7 Eagleburger I and Eagleburger II, and at various times during
8 the bankruptcy proceeding. Generally courts are protective
9 of *pro se* litigants. As this court first admonished
10 plaintiff in Spain I, however, "[f]lagrant abuse of the
11 judicial process cannot be tolerated because it enables one
12 person to preempt the use of judicial time that properly
13 could be used to consider meritorious claims of other
14 litigants.'" Spain I, 2008 WL 752610, at *8 (quoting Molski,
15 500 F.3d at 1057). Therefore, plaintiff Spain's *pro se*
16 status does not excuse his highly questionable and harassing
17 litigation tactics. Cf. Doran v. Vicorp Restaurants, Inc.,
18 407 F.Supp.2d 1115, 1118 (C.D.Cal. 2005) ("Since fewer
19 sanctions are available against a *pro per* litigant, the power
20 to declare him vexatious becomes an important tool for the
21 courts to manage their docket and prevent frivolous claims.")

22 **4. Unnecessary Expense or Needless Burden**

23 As earlier stressed, plaintiff threateningly declared
24 that "if an extension of time [wa]s not granted, he w[ould]
25 'wast[e] judicial resources and the Court's time[.]'" Id. at
26 *3 (quoting Resp. (Doc. 136)) (emphasis added). Plaintiff
27 made good on his word. Plaintiff's modus operandi throughout
28 this litigation has been one of persistently filing motions

1 and other submissions which are baseless. The court has been
2 considerably lenient with plaintiff, primarily because of his
3 *pro se* status. Rather than productively using the
4 opportunities which the court has accorded him, plaintiff has
5 "forced defendants to undertake unnecessary expense to defend
6 themselves from baseless claims[,] and respond to numerous
7 unwarranted filings. See Gabor, 2008 WL 902407, at *7. In
8 the same way, this court has expended considerable time and
9 effort reviewing and ruling on plaintiff's baseless claims
10 and motions. See id. For example, as the Poli & Ball
11 defendants accurately stated, when plaintiff filed his SAC,
12 which, "bore a 'striking resemblance to his [FAC][,]'" they
13 and the other defendants were "forced . . . to file an
14 additional round of motions to dismiss." Resp. (Doc. 274) at
15 2:18-19 (quoting Spain III, 2009 WL 464983, at *1). And,
16 instead of "respond[ing] to the merits of those motions,
17 plaintiff resorted to personal attacks upon counsel[,] as
18 mentioned earlier. Id. at 2:19-20 (citation omitted).
19 Thus, the court finds that plaintiff Spain has "caused
20 unnecessary expense to the parties and ha[s] placed a
21 needless burden on the courts." See Gabor, 2008 WL 902407,
22 at *7.

23 **5. Adequacy of Other Sanctions**

24 When viewed in isolation, plaintiff's filings and
25 litigation tactics are problematic. When viewed in the
26 aggregate, however, and in light of the governing legal
27 principles, their vexatious and harassing nature become
28 patently obvious. As the record demonstrates, it seems that

1 unless and until a court expressly prohibits plaintiff Spain
2 from future filings, he will persist in abusing the court's
3 process by filing meritless claims and motions. Especially
4 because plaintiff has not heeded any of this court's prior
5 warnings regarding the manner in which he has conducted this
6 litigation, the need for a carefully circumscribed pre-filing
7 order is readily apparent.

8 **D. Narrow Tailoring**

9 "[C]autious[ly] review[ing] . . . the pertinent
10 circumstances[,]" as this Circuit requires, the court finds
11 that it is necessary and proper to enter a pre-filing order
12 in the format set forth below. See Molski, 500 F.3d at 1057.
13 This is part of this courts "'affirmative obligation to
14 ensure that judicial resources are not needlessly squandered
15 on repeated attempts by litigants to misuse the courts.'" See Englerious v. U.S. Government, 2009 WL 1393558, at *2
16 (W.D.Wash. May 15, 2009) (quoting O'Loughlin, 920 F.2d at
17 618.
18

19 In issuing this pre-filing order, the court stresses the
20 limited nature of the relief which it is granting. Plaintiff
21 is enjoined from making any further filings in *this action*,
22 Spain v. EMC Mortg. Co., et al., CV 07-0308 PHX-RCB.
23 Plaintiff is further enjoined from filing any further actions
24 in the United States District Court for the District of
25 Arizona pertaining to the underlying real property
26 transaction, *i.e.*, the Alpine property, which is the subject
27 of this lawsuit, without first following the procedures
28 outlined below.

1 **II. Motion for Pre-Trial Scheduling Conference**

2 In light of the foregoing, the court hereby DENIES as
3 moot plaintiff Spain's motion for a pre-trial scheduling
4 conference (Doc. 273).

5 **Conclusion**

6 For the reasons set forth above, the court finds that
7 plaintiff B. Spain has engaged in vexatious litigation in the
8 present action. Therefore, because this action is closed, no
9 further pleadings or motions are allowed herein, *i.e.*, Spain
10 v. EMC Mortg. Co., et al., No. CV 07-0308-PHX-RCB. Further,
11 plaintiff shall not file any other actions in the United
12 States District Court for the District of Arizona pertaining
13 to the underlying real property transaction, *i.e.*, the Alpine
14 property, which is the subject of this lawsuit, without
15 complying with the following procedure. Plaintiff B. Spain
16 shall first lodge the proposed complaint with this Court in
17 accordance with section II(H) of the Electronic Case Filing
18 Administrative Policies and Procedures Manual for the
19 District of Arizona. No defendant need initially respond to
20 that lodged complaint, however.

21 Instead:

22 [this] Court shall review the [lodged] complaint
23 and determine whether the complaint should be
24 summarily denied, or whether it should proceed. If
25 the Court summarily denies the relief requested and
26 dismisses the complaint, the summary denial and
27 dismissal order and complaint shall be placed on the
28 docket. If th[is] Court allows the complaint to
proceed, th[is] Court will direct the Clerk of Court
to open a proceeding, assign a case number, and Mr.
[Spain] may proceed according to the Federal Rules
of [Civil] Procedure or by other appropriate
[lawful] means.

1 See In re GTI Holdings, LLC, 420 B.R. 1, 17 (Bankr. D.Ariz.
2 2009).

3 **IT IS ORDERED:**

4 (1) that plaintiff B. Spain is **ENJOINED** from filing in
5 this court, subject to the procedures set forth above, any
6 suit against defendants pertaining to the Alpine Property;
7 and

8 (2) that plaintiff B. Spain's Motion for a Pretrial
9 Scheduling Conference is **DENIED** (Doc. 273).

10 DATED this 27th day of September, 2010.

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14 Robert C. Broomfield
15 Senior United States District Judge
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19 Copies to plaintiff *pro se* and counsel of record
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