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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

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Michael A. Leon, )

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Plaintiff, )

CV 14-226 TUC DCB

10

v. )

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Meggitt PLC, a corporation; Pacific Scientific )

12

Energetic Materials Company/Pacific Scientific, )

**ORDER**

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a subsidiary of Meggitt PLC, or corporation; )

*This Order is amended at page 23  
to add further directive, pursuant  
to the Mandate and Decision  
issued by the Ninth Circuit Court  
of Appeals on October 28, 2016  
(Doc. 103).*

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Boeing, a corporation, Securaplane )

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Technologies, Inc., a corporation, Fiona Grieg, )

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and John Doe 1-50; Mary Roe 1-50; XYZ Corp )

1-50; ABC LLC 1-50 named as unknown )

fictitious defendants )

Defendants. )

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Defendants: Motions to Dismiss and Requests for Sanctions

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Plaintiff sues named Defendants: Meggitt PLC (Meggitt); Pacific Scientific

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Energetic Materials Company/Pacific Scientific (Pacific Scientific), Boeing Corporation

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(Boeing); Securaplane Technologies Inc. (Securaplane), and Fiona Grieg (Greig).<sup>1</sup> He seeks

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leave to file a Second Amended Complaint to add: Exponent Inc.; McKinsey & Company;

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Marc R. Birtel, and the Office of the Mayor, City of Philadelphia. Boeing and Securaplane

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answered with Motions to Dismiss for failure to state a claim and frivolousness. They seek

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sanctions against Plaintiff for what they assert is vexatious litigation. Defendants Grieg,

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Meggitt, and Pacific Scientific seek dismissal for improper service. Plaintiff appears to have

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<sup>1</sup>Fiona Greig is an employee of Meggitt PLC.

1 served the proposed Second Amended Complaint on the defendants he seeks to add, and  
2 Exponent Inc., has filed a Motion to Dismiss, and joined in the Boeing and Securaplane  
3 motions for sanctions.

#### 4 Standard of Review

5 The Supreme Court has explained that to survive a motion to dismiss for failure to  
6 state a claim upon which relief can be granted, “factual allegations must be enough to raise  
7 a right to relief above the speculative level, on the assumption that all the allegations in the  
8 complaint are true even if doubtful in fact.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,  
9 555 (2007) (citations and internal quotations omitted). Under Rule 12(b)(6), all factual  
10 allegations are taken as true and construed in the light most favorable to the nonmoving  
11 party. *Iolab Corp. v. Seaboard Sur. Co.*, 15 F.3d 1500, 1504 (9<sup>th</sup> Cir.1994).

12 Dismissal is appropriate if the facts alleged do not state a claim that is “plausible on  
13 its own face.” *Twombly*, 550 U.S. at 570. The Supreme Court has found this reflects Rule  
14 8(a)(2)’s threshold requirement that the “plain statement” possess enough heft to “sho[w] that  
15 the pleader is entitled to relief.” *Id.* at 557. “[O]nce a claim has been stated adequately, it  
16 may be supported by showing any set of facts consistent with the allegations in the  
17 complaint.” *Id.* at 561 (abrogating long-standing “no set of facts” to support a claim for relief  
18 standard established in *Conley v. Gibson*, 355 U.S. 41 (1957)). “[F]actual allegations must  
19 be enough to raise a right to relief above the speculative level, on the assumption that all the  
20 allegations in the complaint are true even if doubtful in fact.” *Id.* at 555-556. Put another  
21 way, a complaint must be supported by specific, non-conclusory factual allegations sufficient  
22 to support a finding by the court that the claims are more than merely possible, they are  
23 plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Both *Iqbal* and *Twombly* justified  
24 establishing “plausible” as the Rule 8(a) standard to curb the expense of discovery related  
25 to frivolous law suits. *Twombly*, 550 U.S. at 558-560, 595; *Iqbal*, 129 S. Ct. at 678-679.

1 Plaintiff proceeds *in forma pauperis*, pursuant to 28 U.S.C. § 1915, which allows a  
2 Court to authorize commencement of a suit without prepayment of the filing fee and requires  
3 the United States Marshall to serve the Complaint on defendants on behalf of a plaintiff. 28  
4 U.S.C. § 1915(a)(1). An *in forma pauperis, pro se* litigant should be given an opportunity  
5 to amend the complaint to overcome a deficiency unless it is clear that no amendment can  
6 cure the defect. *See eg., Potter v. McCall*, 433 F.2d 1087, 1088 (9th Cir. 1970); *Noll v.*  
7 *Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987), *superseded by statute*; *Lopez v. Smith*, 203  
8 F.3d 1122, 1129-1131 (9<sup>th</sup> Cir. 2000) (subsequent to Prisoner’s Litigation Reform Act  
9 (PLRA), district court retains discretion to dismiss a pro se prisoner’s *in forma pauperis*  
10 complaint with or without leave to amend, depending on whether amendment can cure the  
11 defect).

12 “District judges have no obligation to act as counsel or paralegal to *pro se* litigants”  
13 because this would undermine district judges’ role as impartial decisionmakers. *Pliler v.*  
14 *Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d at 1131, n.13 (declining to decide  
15 whether the court was required to inform a litigant of pleading deficiencies under the PLRA,  
16 but noting that the pro se litigant, unskilled in the law, is far more prone to making errors in  
17 pleading than the person who has the benefit of being represented by counsel) (citing *Noll*,  
18 809 F.2d at 1448). So while the Court may not serve as advocate for the pro se litigant nor  
19 act as legal advisor, the Court does explain the pleading deficiencies and afford the pro se  
20 litigant an opportunity to amend the Complaint, unless the Court is convinced that the action  
21 is frivolous.<sup>2</sup> Section 1915(e) provides for dismissal of a Complaint filed *in forma pauperis*  
22 if the Court is convinced that the action is frivolous.

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24 <sup>2</sup>Frivolousness exists if the plaintiff would not be entitled to relief under any arguable  
25 construction of law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Dismissal under  
26 § 1915(e) is justified for legal frivolousness where a complaint is based on "an indisputably  
27 meritless legal theory...[such as] claims against which it is clear that the defendants are  
immune from suit, and claims of infringement of a legal interest which clearly does not  
exist...." *Id.* at 327.

1 For the reasons explained below, the Court grants the Defendants' motions to  
2 dismiss, including the requests for sanctions. The Court dismisses this action, with prejudice  
3 and without leave to amend, and finds the Plaintiff to be a vexatious litigant.

4 Plaintiff's Litigious Record: The 2013 Internet Defamation Tort Claims.

5 On January 8, 2014, the United States District Court for the District of Illinois  
6 transferred this case here, accordingly, returning Plaintiff to this Court to adjudicate tort  
7 claims previously dismissed by the Honorable Cindy K. Jorgenson. Plaintiff charges that  
8 Defendant Fiona Greig, an alleged representative of Defendants Securaplane and Boeing,  
9 made defamatory statements about Plaintiff which were published on the internet in January  
10 and February 2013. Allegedly, Fiona Gregg stated that Plaintiff was a convicted felon and  
11 Boeing stated he was fired for email violations. The Court refers to these tort claims as the  
12 2013 internet defamation claims.

13 On March 26, 2013, Judge Jorgenson *sua sponte* dismissed Leon's case against  
14 Meggitt PLC, Securaplane, Boeing, Pacific Science, and Grieg, CV 13-111 TUC CKJ. As  
15 he does now, Plaintiff proceeded *in forma pauperis*, requiring Judge Jorgenson to screen the  
16 Complaint before ordering it served by the United States Marshal. 28 U.S.C. § 1915(a)(1),  
17 (e)(2). In her screening Order, she dismissed two federal claims brought by the Plaintiff  
18 under the False Claims Act (FCA) alleging fraud on the government related to the lithium  
19 ion battery. Then, finding no federal jurisdiction over the action, she dismissed the pendant  
20 state law tort claims: intentional infliction of emotional distress (IIED); negligent infliction  
21 of emotional distress (NIED); libel; slander, and invasion of privacy. Plaintiff based these  
22 tort claims on allegations that the defendants continued misrepresenting facts to the FAA,  
23 ASHA, NTSB, and the FBI since 2006 and the 2013 internet defamation claims. Judge  
24 Jorgenson's dismissal was without prejudice. (Order (Doc. 8) (CV 13-111 TUC CKJ)).

25 Subsequently, Plaintiff dropped his federal FCA claims, and filed the tort claims in  
26 the Pima County Superior Court, *Leon v. Meggitt, PLC, et al.*, (C-2013-2950), but was  
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1 prevented from proceeding there because the state court has declared him to be a vexatious  
2 litigant. Plaintiff may not file lawsuits, without approval of the Presiding Judge for the  
3 Arizona Superior Court, against: Danahare Corporation, Pacific Scientific, and Securaplane  
4 Technologies, Inc. His complaint was reviewed, and on June 19, 2013, he was denied leave  
5 to file it. (Doc. 63), Ex. O.)

6 On April 25, 2013, Plaintiff again filed these same tort claims in federal court: *Leon*  
7 *v. Boeing* (CV 13-286 TUC JGZ); *Leon v. Meggitt* (CV 13-287 TUC JGZ); *Leon v. Pacific*  
8 *Scientific* (CV 13-288 TUC JGZ), and *Leon v. Greig* (CV 13-289 TUC DCB). The  
9 Honorable Jennifer G. Zippis consolidated the three cases, CV 13-287 TUC JGZ, CV 13-286  
10 TUC JGZ, and CV 13-288 TUC JGZ, with the lead case being: CV 13-287 TUC JGZ. On  
11 July 19, 2013, Plaintiff filed *Leon v. Meggitt* (CV 13-673 TUC CKJ).

12 On May 10, 2013, this Court dismissed the action, *Leon v. Greig* (CV 13-289 TUC  
13 DCB), and on August 5, 2013, Judge Jorgenson dismissed *Leon v. Meggitt* (CV 13-673 TUC  
14 CKJ). Both of these cases were dismissed as duplicative of the consolidated case *Leon v.*  
15 *Meggitt* (CV 13-287 TUC JGZ).

16 As well, Plaintiff filed the same “2013 internet defamation” tort claims in the federal  
17 court in Illinois, adding the FCA claims again without stating them with any more specificity  
18 than he had when he urged them before Judge Jorgenson. (Complaint ((CV 13-1679); (CV  
19 14-226 TUC DCB)) (Doc. 1)). On November 10, 2013, Plaintiff filed a First Amended  
20 Complaint (FAC), dropping the FAC claims and adding a claim of retaliation under Title VII,  
21 (FAC (Doc. 14). This is the instant case, transferred here and pending before this Court as:  
22 CV 14-226 TUC DCB. Except for the Title VII retaliation claim, the tort claims brought in  
23 this action are duplicitous of the consolidated cases considered by Judge Zippis: *Leon v.*  
24 *Boeing* (CV 13-286 TUC JGZ); *Leon v. Meggitt* (CV 13-287 TUC JGZ), and *Leon v. Pacific*  
25 *Scientific* (CV 13-288 TUC JGZ), which were dismissed by Judge Zippis as consolidated: CV  
26 13-287 TUC JGZ.

1 Judge Zipps also afforded the Plaintiff *in forma pauperis* status, consolidated and  
2 screened the complaints, which again alleged the 2013 internet defamation claims allegedly  
3 made by Fiona Greig and Boeing. *See* (Order (CV 13-287 TUC JGZ) at 1 n.1 (describing  
4 other two cases as “identical Complaints”). A review of the three complaints reflects the  
5 only difference were the named defendants. The lead case, CV 13-287 TUC JGZ, named  
6 Meggitt PLC; CV 13-286 TUC JGZ named Boeing, and CV 13-288 TUC JGZ named Pacific  
7 Scientific Energetic Materials Comp./Pacific Scientific. Judge Zipps described the crux of  
8 the First Amended Complaint relates to the publishing of a January 22, 2013 on-line article,  
9 including alleged Boeing spokesman Birtel’s statement that a 2006 battery fire resulted from  
10 improper testing, not design; Securaplane through Greig made alleged statements that  
11 Plaintiff was a convicted felon, who lied to FAA investigators, falsified his employment  
12 history, and statements plaintiff violated e-mail policies). Judge Zipps addressed the merits  
13 of Plaintiff’s tort claims. *Id.* at 4-5. In addition to substantial pleading deficiencies, she  
14 dismissed the cases because Plaintiff failed to state any tort claim against the parties he  
15 named.

16 Judge Zipps found the claims meritless because: 1) Plaintiff cannot link the named  
17 defendant to the publication of the internet article, and even if he could the information  
18 summarized in the internet article appears to have come from a published opinion readily  
19 located at the United States Department of Labor website and so Plaintiff is unable to prove  
20 a person reciting this information would have no reason to know that it is false; 3) the facts  
21 alleged do not support extreme and outrageous conduct or even negligence for IIED or NIED  
22 claims, and 4) Plaintiff cannot sue as a private citizen to enforce various federal and state  
23 criminal statutes against cyber stalking. (Order (CV 13-287 TUC JGZ) at 4-8.)

24 Plaintiff sought an appeal. Judge Zipps found the Plaintiff’s appeal was not taken  
25 in good faith, the Ninth Circuit Court considered the Plaintiff-Appellant’s motion to proceed  
26 on appeal *in forma pauperis*. It denied *in forma pauperis* status and held: “Because the court  
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1 has found that this appeal is frivolous, the district court judgment may be summarily affirmed  
2 even if appellant pays the fees,” unless the appellant can show cause why the judgment  
3 challenged in this appeal should not be summarily affirmed. (Order (Doc. 51) (CV 13-287  
4 TUC JGZ5): United States Court of Appeals Case No. 14-15543 Order at 2 (citing Cir. R.  
5 3-6 (where it is manifest that the question raised in the appeal are so insubstantial as not to  
6 justify further proceedings the Court may issue appropriate dispositive order).

7 The tort claims alleged here, (CV 14-226 TUC DCB), like those alleged in *Leon v.*  
8 *Meggitt*, (CV 13-673 TUC CKJ), dismissed by Judge Jorgenson and the claims against Greig  
9 alleged in *Leon v. Grieg, et al.*, (CV 13-289 TUC DCB), dismissed by this Court, are  
10 duplicative of the tort claims urged before Judge Zipps in the consolidated case CV 13-287  
11 TUC JGZ. They all in one way or another assert that defendants committed defamation,  
12 libel, slander, via the internet in 2013.<sup>3</sup> The Court dismisses the tort claims alleged, here,  
13 because they are identical to the claims adjudicated by Judge Zipps, with the exception of the  
14 addition of Defendant Securaplane, here, and the other defendants the Plaintiff seeks to add  
15 in this case by a proposed Second Amended Complaint. (SAC): Exponent, Inc. McKinsey  
16 & Company, Marc R. Birtel, and Office of the Mayor, City of Philadelphia. Judge Zipps’  
17 findings in respect to the lack of merit of Plaintiff’s tort claims against Defendants Meggitt,  
18 Boeing, Grieg and Pacific Scientific apply equally to Securaplane and the new defendants  
19 Plaintiff proposes to add, here.

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22 <sup>3</sup> Compare: CV 13-287 TUC JGZ: “On January February 2013 next gov Fiona Greigg  
23 stated Plaintiff was a convicted felon, lied to FAA investigators and terminated for internet  
24 email usage perpetuating negativity in an attempt to further discredit Plaintiff concerning  
25 safety concerns.” (Complaint (Doc. 1) at 2.) CV 14-226 TUC DCB: “On January February  
26 2013 nest gov Fiona Greigg stated Plaintiff was a convicted felon perpetuating negativity in  
27 an attempt to further discredit Plaintiff concerning safety concerns. Boeing and Fiona Griegg  
(spokesperson for all of the defendant companies in articles) stated that I was fired for  
internet email . . . . Boeing Securaplane accused me of lying to FAA investigators. . .”



1 (ADA). At the time, Securaplane asserted it was a wholly-owned subsidiary of DH Holdings  
2 Corp., not a subsidiary of Pacific Scientific as asserted by Plaintiff, and that DH Holdings  
3 Corp. was wholly owned by Danaher Corporation. (Report & Recommendation (R&R)  
4 (Doc. 30) at 8 n.4.) By 2013, Plaintiff began naming Defendant Meggitt as the parent  
5 company of Pacific Scientific, named as the parent company of Securaplane. Regardless of  
6 the confusion surrounding the various alleged parent corporate entities and subsidiary entities  
7 of Securaplane, it is undisputed that Securaplane was a subcontractor for Boeing. It is  
8 undisputed that Plaintiff was an employee of Securaplane, and that his employment ended  
9 with Securaplane on May 11, 2007. (R&R (Doc. 30) at 10.)

10 It is also undisputed that on August 19, 2010, Plaintiff filed a Notice of Charge of  
11 Discrimination with the EEOC. (R&R (Doc. 30) at 11.) His EEOC complaint alleged  
12 discriminatory conduct that allegedly occurred during his employment and post-employment  
13 retaliation related to whistle-blowing allegations he made regarding safety concerns related  
14 to the allegedly “defective” lithium ion battery being built and tested by Securaplane for  
15 Boeing.

16 On September 9, 2010, Plaintiff filed a federal lawsuit alleging Title VII and ADA  
17 violations: CV 10-587 TUC DCB. Not relevant here, the Plaintiff alleged disability  
18 discrimination claims during the time of his employment, which were dismissed as time  
19 barred. Relevant here, Plaintiff’s 2010 case included allegations Securaplane allegedly  
20 slandered and libeled him by making him out to a violent scary person in retaliation for  
21 safety concerns he raised in respect to the lithium ion battery.<sup>5</sup> He also alleged that in  
22 October and November of 2010, Securaplane refused to hire him for various job openings  
23 for which he was qualified. On September 7, 2011, this Court dismissed the case. Relevant  
24 here, the Court explained that his allegations of retaliation for whistle-blowing were not  
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26 <sup>5</sup>In the 2010 case, Plaintiff alleged that Securaplane made him out to be violent and  
27 scary by posting his picture with security at Securaplane in the format of a “wanted poster.”

1 related to conditions of employment or due to discrimination based on race, color, religion,  
2 sex, or national origin. The Court did not grant him leave to amend the Complaint because  
3 his grievances were not actionable under Title VII or the ADA.

4 Plaintiff repeats the same mistakes in the Title VII action he brings now: CV 14-226  
5 TUC DCB. The First Amended Complaint alleges: “On January February 2013, next gov  
6 Fiona Greig states Plaintiff was a felon perpetuating negativity in an attempt to further  
7 discredit Plaintiff concerning Safety concerns.” (FAC (Doc. 14) ¶ 11.) He alleges the  
8 retaliatory conduct has continued for years and years escalating with international libel in an  
9 attempt to conceal, suppress faulty parts, lithium ion battery. . . . Harassment began when I  
10 brought forth safety concerns prior to lithium ion battery fire in November 7, 2006 and has  
11 continually escalated.” *Id.* ¶ 15.

12 Plaintiff does not and cannot state a claim under Title VII for retaliation based on  
13 these type of “whistle-blowing” allegations. Accordingly, the action must be dismissed as  
14 to all named Defendants. *Cf.* (R&R (Doc. 30) at 17-18 (explaining same).

15 The proposed amendment to the FAC to add parties in a Second Amended  
16 Complaint does not change the futility of the claim. “Because individual defendants cannot  
17 be held personally liable under Title VII . . . ,” (R&R (Doc. 30) at 13), named Defendant  
18 Grieg must be dismissed and the proposed addition of Defendant Marc R. Birtel would be  
19 futile. No facts are alleged nor could they be alleged against the proposed Defendants  
20 Exponent, McKinsey & Co., and Office of the Mayor, City of Philadelphia, because no  
21 employee-employer relationship existed between these parties. 42 U.S.C. §§ 2000e-2(a) and  
22 2000e-3(a).<sup>6</sup> Plaintiff cannot sue Boeing, simply because Securaplane was Boeing’s  
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24 <sup>6</sup>Because Defendant Grieg cannot be sued, individually, under Title VII, the Court  
25 does not address the confusion as to who she is: Fiona Grieg, Fiona Greig, or Gregg; does  
26 she reside in Washington D.C. and is she an employee of McKinsey & Co. or does she reside  
27 in the United Kingdom as an employee of Meggitt PLC, or is she the “next gov Fiona  
28 Greigg.” The Court does not sort out the difference between Meggitt PLC, a corporate entity

1 subcontractor. *See EEOC v. Foster Wheeler Const.*, 1999 WL 515524 (Ill. 1999) (answering  
2 the question in EEOC case of whether employees of subcontractor can sue contractor;  
3 depends on whether contractor can hire or fire subcontractor's employees).

4 The sole Defendant employer is Securaplane; Plaintiff's employment with  
5 Securaplane ended in 2007. Plaintiff filed one EEOC action in 2010. Title VII requires a  
6 plaintiff, prior to commencing a law suit, to exhaust available administrative remedies. 42  
7 U.S.C. §§ 2000e-5(e); 12117(a), *B.K.B. v. Maui Police Dept.*, 276 F.3d 1091, 1099 (9<sup>th</sup> Cir.  
8 2002). The EEOC claim must be brought no more than 300 days after the alleged unlawful  
9 conduct occurred. *Id.* Failure to exhaust administrative relief renders the complaint untimely  
10 and precludes the action. *Id.*; *Sommantino v. United States*, 255 F.3d 704, 707-708 (9<sup>th</sup> Cir.  
11 2001).

12 Even if the Plaintiff's allegation that he was retaliated against because of his safety  
13 related whistle-blowing about the lithium ion battery stated a claim under Title VII,<sup>7</sup> the  
14 Plaintiff failed to file an EEOC complaint within 300 days of the alleged defamatory  
15 statements about the Plaintiff which were published on the internet. The retaliation claim for  
16 the 2013 defamatory statements cannot be like nor reasonably related to the allegations  
17 contained in the 2010 EEOC complaint because the span of years between the two precludes  
18 the latter judicial charges from falling within the scope of the earlier EEOC's actual

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20 in the United Kingdom, and Meggitt-USA, Inc., a subsidiary of Meggitt PLC located in the  
21 United States, but not named in the action. Likewise, the Court does not resolve the  
22 confusion between entities Pacific Scientific Company and Pacific Scientific Energetic  
23 Materials, which appear to be two totally separate entities. *See* (Motion to Dismiss or, in the  
24 Alternative, Quash Service (Doc. 57) (CV 14-226 TUC DCB) (explaining confusion in  
25 context of service deficiencies). The Court denies the Motion to Quash by Defendants  
26 Meggitt PLC and Fiona Greig and Pacific Scientific Company as moot because the case is  
27 dismissed on the merits.

28 <sup>7</sup>The Court would also have to ignore that Plaintiff complains about statements made  
by Defendant Greig, who is not an employee of Securaplane, and ignore the lack of any  
employer-employee relationship between Plaintiff and Boeing.

1 investigation. This is not a situation where the EEOC investigation might reasonably be  
2 expected to grow out of the original charge of discrimination to encompass later occurring  
3 allegations. *EEOC v. Farmer Bros. Co.*, 31 F.3d 891, 899 (9<sup>th</sup> Cir. 1994), *see Oubichon v.*  
4 *North Am. Rockwell Corp.*, 482 F.2d 569, 571 (9<sup>th</sup> Cir. 1973) (allowing judicial complaint  
5 to encompass any discrimination like or reasonably related to EEOC allegations, including  
6 new acts occurring during pendency of the EEOC charge).

7 “In determining whether a plaintiff has exhausted allegations that he did not specify  
8 in his EEOC charge, the Court may consider such factors as the alleged basis of the  
9 discrimination, dates of discriminatory acts specified within the charge, perpetrators of  
10 discrimination named in the charge, any locations at which discrimination is alleged to have  
11 occurred, and the extent to which plaintiff’s judicial claims are consistent with the plaintiff’s  
12 original theory of the case.” ((R&R (doc. 30) at 19) (citing *B.K.B.*, 276 F.3d at 1101)). The  
13 retaliation claim Plaintiff seeks to bring here based on defamatory internet statements made  
14 internationally in 2013 cannot be said to be within the scope of an EEOC investigation  
15 conducted in 2010 aimed only at defamatory statements made by Securaplane employees in  
16 Tucson, Arizona.

17 In conclusion, the Court finds that the Plaintiff’s FAC not only fails to state a Title  
18 VII claim, but this case is frivolous and filed for the purpose of harassing these Defendants.  
19 The Court bases its opinion on the fact that in 2010, it fully adjudicated a prior claim brought  
20 by the Plaintiff pursuant to Title VII and the ADA. The Court explained the elements of such  
21 a claim, including the 300 day limitation period and the administrative exhaustion  
22 requirements. The Court found the 2010 Complaint failed to state a claim and explained the  
23 reasons. This action includes the same deficiencies. While Plaintiff is *pro se*, he had the  
24 advantage of his experience from the 2010 case. The Plaintiff knew or at least should have  
25 known this case lacked merit because it reasserted a retaliation claim based on whistle-

1 blowing and was untimely because it was filed approximately 6 years after his employment  
2 ended with Securaplane.

3 Sanctions: Vexatious Litigant

4 The Defendants ask the Court to find the Plaintiff is a vexatious litigant and impose  
5 sanctions, including ending his *in forma pauperis* status and precluding him from filing any  
6 future actions with this Court, without seeking leave of the Court. In 2010, the Defendants  
7 asked the Court to impose sanctions against the Plaintiff, who at that time had filed three  
8 lawsuits against Securaplane. This Court denied the request because there was no evidence  
9 of vindictiveness, even though the 2010 case was wholly lacking in merit. (R&R (Doc. 30)  
10 at 22-23.) The record has changed since then.

11 In addition to the eight related cases discussed in detail in this Order, Plaintiff also  
12 filed *Leon v. Danaher Corporation et al.*, (CV 12-74 TUC CKJ), which was dismissed *sua*  
13 *sponte* as being duplicitous of a proceeding being prosecuted in state court.

14 Plaintiff has filed four cases in Pima County Superior Court: *Leon v. Securaplane*  
15 *Technologies, et al.*, (C-2009-1791); *Leon v. Securaplane Technologies, et al.*, (C-2010-  
16 8434); *Leon v. Danaher Corp., et al.*, (C-2012-0876), and *Leon v. Meggitt, PLC et al.*, (C-  
17 2013-2950).

18 In the first, summary judgment was granted for defendants on the merits of  
19 Plaintiff's tort claims that Securaplane employees invaded his privacy and defamed him,  
20 including the claim previously seen by this Court in the 2010 case that Securaplane made him  
21 out to be violent and scary by posting his picture with security at Securaplane in the format  
22 of a "wanted poster." The state court dismissed allegedly defamatory statements made on  
23 or before March 12, 2008, as barred by a one-year statute of limitations and dismissed  
24 defamation claims based on testimony received during an August 2009 hearing before a  
25 Labor Department Administrative Judge under the AIR 21 Whistleblower Protection  
26 Program as absolutely privileged. (Doc. 63, Ex. B: Order (C-20091791) filed June 17, 2011.

1 The second case was adjudicated against the Plaintiff on the merits of claims of  
2 discrimination brought under the Arizona Civil Rights Act for similar reasons this Court  
3 dismissed his 2010 Title VII discrimination case.

4 Plaintiff appealed both decisions and they were both affirmed. The Court of  
5 Appeals for the State of Arizona imposed sanctions on the Plaintiff in the form of attorney  
6 fees for the defendant because the appeal was meritless. (Motion for Decl. of Vexatious  
7 Litigant (Doc. 63), Ex. H: Memorandum Decision at 7-8.)

8 The third case resulted in an injunction against further filings by the Plaintiff  
9 because he was found to be a vexatious litigant, and the fourth case<sup>8</sup> was dismissed pursuant  
10 to the vexatious litigant order.

11 Beginning around 2013, Plaintiff began filing cases in other forums and adding new  
12 defendants: *Leon v. Pacific Scientific Energetic Materials Co.*, Case No.  
13 2:13-cv-00838-MCE-KJN (E.D. Cal. Dismissed July 25, 2013, Dkt. # 5, 8); *Leon v. The*  
14 *Boeing Co.*, Case No. 1:13-cv-02860 (N.D. Ill. Transferred to D. Ariz. July 12, 2013, Dkt.  
15 # 23, appeal dismissed, Dkt. # 33); *Leon v. Meggitt PLC*, Case No. 1:13-cv-00964-UNA  
16 (D.D.C. Transferred to D. Ariz. June 26, 2013, Dkt. # 4); *Leon v. Exponent, Inc.*, Case  
17 No.5:13-cv-05481-HRL<sup>9</sup> (N.D. Cal. Dismissed February 10, 2014, Dkt. # 18); *Leon v.*

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19 <sup>8</sup>This case was part of the round robin begun when Judge Jorgenson dismissed CV 13-  
20 111 TUC CKJ. Plaintiff refiled in the Pima County Superior Court, C-2013-2950, which was  
21 dismissed pursuant to the vexatious litigant order. Plaintiff refiled in the federal court of  
22 Illinois when the Pima County Superior Court dismissed it. Coming full circle, the Illinois  
23 proceeding, CV 13-1679, was transferred back to the federal courts in Arizona and assigned  
to this Court: CV 14-226 TUC DCB.

24 <sup>9</sup>In this case, the court took judicial notice of *Leon v. Meggitt PLC* (CV 13-111 TUC  
25 CKJ; *Leon v. Boeing* (CV 13-286 TUC JGZ); *Leon v. Grieg* (CV 13-289 TUC DCB; *Leon*  
26 *v. The Boeing Co.*, Case No. 1:13-cv-02860 (N.D. Ill. Transferred to D. Ariz. July 12, 2013,  
27 appeal dismissed), and *Leon v. Exponent, Inc.*, Case No. 2:14-cv-00095 (W.D. Wash  
Dismissed February 21, 2014), and found all the actions duplicative, unnecessary and  
frivolous, and moreover that plaintiff was engaged in a strategic litigation campaign against

1 *Exponent, Inc.*, Case No. 2:14-cv-00095 (W.D. Wash Dismissed February 21, 2014, Dkt. #  
2 11), and *Leon v. Meggitt, PLC*, Case No. 1:13-cv-1679<sup>10</sup> (E.D. Ill. Transferred January 2,  
3 2014, Dkt. # 40). (Motion for Decl. of Vexatious Litigant (Doc. 63) at 8.)

4 Defendant Securaplane asserts it has been expressly named in 12 cases, *id.*, and  
5 Boeing asserts it has been named in approximately 14 cases, (Boeing Motion to Dismiss  
6 (Doc. 54), Ex. AA.).

7 Plaintiff has also filed lawsuits against counsel for defendants and judicial officers:  
8 *Leon v. State of Arizona, et al.*, Case No. 4:12-cv-556-CKJ (D.Ariz. Dismissed May 16,  
9 2013, Dkt. # 37); *Leon v. State of Arizona, et al.*, Case No. 5:12-cv-04340 (N.D. Cal.  
10 Dismissed Oct. 15, 2012, Dkt. # 24); *Leon v. Kearney, et al.*, Case No. 4:13-cv-00278 (D.  
11 Ariz. Dismissed May 9, 2013, Dkt. # 6-7); *Bernstein v. Dunlop, et al.*, Case No.  
12 3:13-cv-1563 (N.D. Cal. Dismissed July 26, 2013, Dkt. # 27, 44); *Leon v. Tibor Nagy, et al.*,  
13 Case No. CV2013-1121 (Pima Cty. Sup. Ct. Dismissed August 26, 2013); *Leon v. Ogletree,*  
14 *Deakins, Nash, Smoak & Stewart, P.C.*, Case No. 6:13-cv-00072 (D.S.C. Dismissed Mar. 12,  
15 2013, Dkt. # 28), and *Leon v. Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*, Case No.  
16 1:13-cv-00100 (D.D.C. Dismissed Jan. 24, 2013, Dkt. # 5). (Motion for Decl. of Vexatious  
17 Litigant (Doc. 63) at 8-9.)

18 Plaintiff has sought recusal of judges presiding over his cases, *see* Order (Doc. 8)  
19 (CV 13-111 TUC CKJ) and in this case he seeks recusal of this Court. As Judge Jorgenson  
20 did and for the same reasons, this Court denies the Plaintiff's Motion to Disqualify Judge.  
21 (Order (Doc. 8) (CV 13-111 TUC CKJ) at 2-13). It is the duty of this Court and within its

22 \_\_\_\_\_  
23 these defendants to, at the very least, keep defendants occupied with litigation in many  
24 districts. The court found that 28 U.S.C. § 1915 was designed to prevent this type of abusive  
25 conduct and dismissed the case without leave to amend and revoked plaintiff's *in forma*  
26 *pauperis* status for any appellate proceedings. (Boeing Reply (Doc. 59), Ex. A: Order  
Dismissing Complaint.)

27 <sup>10</sup>See n. 8.

1 jurisdiction to decide the Motion to Disqualify/Recuse. *United States v. Studley*, 783 F.2d  
2 934, 940 (9th Cir. 1986) (the Ninth Circuit Court of Appeals has "held repeatedly that the  
3 challenged judge himself should rule on the legal sufficiency of a recusal motion in the first  
4 instance.")

5 “The standard for recusal under 28 U.S.C. §§ 144, 455 is ‘whether a reasonable  
6 person with knowledge of all the facts would conclude that the judge's impartiality might  
7 reasonably be questioned.’” *Id.* at 939. The alleged prejudice must result from an  
8 extrajudicial source; a judge's prior adverse ruling is not sufficient cause for recusal. *Id.* A  
9 motion for recusal based entirely on prior adverse rulings is insufficient and will be denied.  
10 *Mayer v. Leipziger*, 729 F.2d 605, 607 (9th Cir. 1984). Applying this standard and because  
11 in large part,<sup>11</sup> Plaintiff simply complains of prior adverse rulings, the Court denies the  
12 request for recusal.

13 The Court turns to the question of sanctions and whether to grant the Defendants’  
14 request for a pre-filing restriction. Restricting access to the courts is a serious matter because  
15 it restricts a fundamental constitutional right. *Delew v. Wagner*, 143 F.3d 1219, 1222 (9<sup>th</sup>  
16 Cir. 1998). Pre-filing restrictions should rarely be filed and only after the Court complies  
17 with procedural and substantive requirements: 1) to give the Plaintiff notice and an  
18 opportunity to oppose the order before it is entered; 2) compile an adequate record for  
19 appellate review, including listing all the cases and motions that led this Court to conclude  
20 that a vexatious litigant order is necessary; 3) make substantive findings of frivolousness or  
21 harassment, and 4) tailor the order narrowly so it closely fits the specific needs of this case.  
22 *De Long v. Hennessey*, 912 F.2d 1144, 1147-48 (9<sup>th</sup> Cir. 1990).

23 The first two factors are procedural and the last two are substantive. The Court  
24 considers five factors in making its substantive determination: “(1) the litigant's history of

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25  
26 <sup>11</sup>This Court does not own stock in Boeing company. Plaintiff attaches financial  
27 disclosure documents which reflect that Boeing stock was sold in 2003.

1 litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits;  
2 (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective  
3 good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4)  
4 whether the litigant has caused needless expense to other parties or has posed an unnecessary  
5 burden on the courts and their personnel; and (5) whether other sanctions would be adequate  
6 to protect the courts and other parties.” *Ringgold-Lockhart v. County of Los Angeles*, \_\_\_  
7 F.3d \_\_\_, 2014 WL 3805579 \* 3 (Calif. August 4, 2014).

8 Here, the Court has given the Plaintiff an opportunity to oppose and he has opposed  
9 Securaplane’s request that this Court issue a vexatious litigant order.<sup>12</sup> He has responded to  
10 Defendant Boeing’s Motion to Dismiss, which included the request that his *in forma*  
11 *pauperis* status be revoked. Plaintiff requested a hearing on the question of whether he is a  
12 vexatious litigant. The Court denies the Plaintiff’s request for oral argument. It has reviewed  
13 Plaintiff’s litigation record by reviewing briefs and court orders contained in full in the  
14 electronic record system, CM/ECF, for the United States District Court for the District of  
15 Arizona for a total of 12 cases. All have been discussed above, except for CV 09-390 TUC  
16 CKJ, which was removed from federal court and remanded to state court on July 14, 2009.  
17 It was the first case adjudication by the Pima County Superior Court, wherein summary  
18 judgment was denied. The parties submitted memoranda thoroughly discussing the law and  
19 evidence in support of their positions, and oral argument will not aid the court's decisional  
20 process. *See Mahon v. Credit Bur. of Placer County, Inc.*, 171 F.3d 1197, 1200 (9th Cir.  
21 1999) (explaining that if the parties provided the district court with complete memoranda of  
22 the law and evidence in support of their positions, ordinarily oral argument would not be  
23 required).

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26 <sup>12</sup>Defendant Exponent, named in the proposed SAC, which was served by mail by  
27 Plaintiff, filed a Motion to Dismiss and joined in the vexatious litigant motion. Plaintiff filed  
28 a Response.



1 more frivolous and harassing law suits. *Ringgold-Lockhart*, 2014 WL 3805579 \* 5. The  
2 Court considers: “nonmonetary directives; an order to pay a penalty into court; or, if imposed  
3 on motion and warranted for effective deterrence, an order directing payment to the movant  
4 of part or all of the reasonable attorney's fees and other expenses directly resulting from the  
5 violation.” *Id.* (citing Fed. R. Civ. P. 11(c)(4)).

6 The Court finds that imposing costs and fees on the Plaintiff would not be an  
7 adequate deterrence. For example, the fees and costs incurred by the Defendants in this case  
8 alone must be in the thousands of dollars given the number of Defendants the Plaintiff named  
9 and because of the voluminous record required to prove up the duplicitous, frivolous, and  
10 harassing nature of the Plaintiff’s extensive litigation record. While Plaintiff does not meet  
11 the 2014 guideline for poverty, he unquestionably has a very low income. “The deterrent  
12 effect of an award of attorney's fees of a given sum of money is obviously dependent on the  
13 extent of the sanctioned party's resources. The poorer the offender, the smaller need be the  
14 sanction to ensure the desired deterrent effect.” *Eastway Const. Corp. v. City of New York*,  
15 637 F. Supp. 558, 573-74 (E.D.N.Y. 1986). (citing *see e.g., Oliveri v. Thompson*,  
16 CV–83–3572 (E.D.N.Y. Dec. 23, 1985) (reducing sanction against attorney from \$51,000  
17 to \$5,000 because of his financial condition)). “Accordingly, many courts have reduced fee  
18 awards based on ability to pay.” *Id.* (citing *e.g., Faraci v. Hickey Freeman Co., Inc.*, 607  
19 F.2d 1025 (2d Cir.1979) (section 706(k) award); *Colucci v. New York Times Co.*, 533  
20 F.Supp. 1011 (S.D.N.Y.1982) (same); *Kostiuk v. Town of Riverhead*, 570 F.Supp. 603  
21 (E.D.N.Y.1983) (section 1988 case); *Kuzmins v. Employee Transfer Corp.*, 587 F.Supp. 536  
22 (N.D.Ohio 1984) (same); *Taylor v. Prudential-Bache Securities*, 594 F.Supp. 226  
23 (N.D.N.Y.), *aff'd mem.*, 751 F.2d 371 (2d Cir.1984) (Rule 11 case, pro se plaintiff);  
24 *Heimbaugh v. City of San Francisco*, 591 F.Supp. 1573 (N.D.Cal.1984)).

25 Given Plaintiff’s low income, any attorney fee award would be exceedingly nominal  
26 and have a very low deterrence impact as an example to others. It would utterly fail to  
27

1 compensate the Defendants for the needless expenses incurred from Plaintiff's vexatious  
2 litigation. And, Plaintiff might in fact be unable to pay even a nominal penalty, especially if  
3 the award were a lump sum of money. Any deterrence affect would be outweighed by the  
4 administrative expense incurred by either the Court or Defendants to collect the award,  
5 especially if it were paid overtime instead of in a lump sum. Collection efforts might well  
6 spawn further litigation. The Court finds a monetary sanction is not a realistic lesser  
7 restrictive sanction. The Court narrowly tailors the vexatious litigant Order to the  
8 Plaintiff's wrongful behavior. *Ringgold-Lockhart*, 2014 WL 3805579 \* 6. Here, Plaintiff's  
9 wrongful conduct includes relitigating the same factual allegations and claims, either  
10 simultaneously in multiple pending actions or in actions filed subsequent to adjudication of  
11 the claims in other courts. But there is more, he repackages his grievances by adding new  
12 even more frivolous claims and new even more tenuously related parties.<sup>13</sup> So for example,  
13 his FAC filed in CV 13-287 TUC JGZ against Meggitt added claims for cyber stalking, cyber  
14 harassment, and cyber bullying to his internet defamation tort claims, (FAC (Doc. 13) (CV  
15 13-287 TUC JGZ)), and in this case, he seeks to add new Defendant McKinsey & Company,  
16 a public relations firm and allegedly Boeing client<sup>10</sup> and the Office of Mayor Philadelphia,  
17 (Motion for Leave to File SAC (Doc. 73), Ex. A: SAC ¶ 21). And, Plaintiff sues the  
18 attorneys representing the parties he names in these frivolous law suits.

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21 <sup>13</sup>The doctrine of *res judicata* bars further litigation of claims by parties on causes of  
22 action that were previously asserted, or could have been previously asserted, in a prior  
23 litigation which has been adjudicated to a final judgment. *Tahoe-Sierra Preservation*  
24 *Council, Inc. v. Tahoe Regional Planning Agency*, 322 F.3d 1064, 1077 (9<sup>th</sup> Cir. 2003).  
25 Claims dismissed for failure to state a claim have been fully adjudicated. *Barren v.*  
*Harrington*, 152 F.3d 1193, 1194 (9<sup>th</sup> Cir. 1998) (standard of review same under 28 U.S.C.  
1915(e) screening order and motion to dismiss under Fed. R. Civ. P. 12(b)(6)).

26 <sup>10</sup>It is more likely that McKinsey & Company provides public relations services to  
27 Boeing.

1 The Court finds that Plaintiff has abused his right of access to the courts in respect  
2 to the many claims he has filed related in some way or another to his employment  
3 relationship with Securaplane and the testing and development of the lithium ion battery.  
4 The defendants he chooses to name have some relationship, either parent or subsidiary  
5 corporate entities to Securaplane, or contractual such as Boeing, its clients or service  
6 providers, and he sues these entities' employees.

7 In *Ringgold-Lockhart*, the court explained that courts routinely perform the task of  
8 filtering out frivolous suits, pursuant to Rule 11(b) of the Federal Rules of Civil Procedure,  
9 "but courts cannot properly say whether a suit is 'meritorious' from pleadings alone." *Id.*  
10 With this in mind, this Court crafts an injunction to prevent the malicious and vexatious  
11 filings described above, but to allow the Plaintiff access to the courts in the event he seeks  
12 to file a claim of merit. *Id.* This Court limits screening of any future filings by the Plaintiff  
13 for frivolousness or harassment.

14 **Accordingly,**

15 **IT IS ORDERED** that Defendants' Motions to Dismiss (Docs. 52, 54, 57, 76) are  
16 GRANTED.

17 **IT IS FURTHER ORDERED** that Defendant Securaplane's Motion for Order  
18 Declaring Michael Leon a Vexatious Litigant (Doc. 63) is GRANTED.

19 **IT IS FURTHER ORDERED** that all Plaintiff's motions (Docs. 68, 73, 77, 79, 82,  
20 84, and 86) are DENIED.

21 **IT IS FURTHER ORDERED** that all other motions are denied as moot.

22 **IT IS FURTHER ORDERED** finding that the Plaintiff is a vexatious litigant, and  
23 the Clerk of the Court shall designate him as such for the purpose of tracking any future  
24 filings by him in this Court.

25 **IT IS FURTHER ORDERED** that the Plaintiff's *in forma pauperis* status is  
26 revoked for purposes of any appeal taken in this case, and Plaintiff is denied *in forma*

1 *pauperis* status for all future filings in the United States District Court for the District of  
2 Arizona.

3 **IT IS FURTHER ORDERED** that Plaintiff is enjoined from filing any further  
4 actions arising directly or indirectly from measures taken by the Plaintiff in respect to the  
5 lithium ion battery within the context of his employment relationship with Securaplane, its  
6 parent corporate entities or subsidiaries, the Boeing Company, its clients or entities providing  
7 services to Boeing, and past or future employees or non-employee individuals, who Plaintiff  
8 alleges to be “representing” these entities.

9 **IT IS FURTHER ORDERED** that this injunction expressly applies to any further  
10 actions for relief under Title VII, the ADA, or the FCA.

11 **IT IS FURTHER ORDERED** that the factual allegations reached by this injunction  
12 include, but are not limited to: 1) discriminatory conduct that allegedly occurred during his  
13 employment and post-employment retaliation related to whistle-blowing allegations he made  
14 regarding safety concerns related to the lithium ion battery; 2) continued misrepresenting  
15 facts to the FAA, ASHA, NTSB, and the FBI since 2006; 3) Securaplane made him out to  
16 be violent and scary person by posting his picture for security purposes in the format of a  
17 “wanted poster”; 4) statements made about Plaintiff and published on the internet in January  
18 and February 2013, such as: “On January February 2013 next gov Fiona Greigg stated  
19 Plaintiff was a convicted felon, lied to FAA investigators and terminated for internet email  
20 usage perpetuating negativity in an attempt to further discredit Plaintiff concerning safety  
21 concerns”; and cyber stalking, cyber harassment, and cyber bullying.

22 **IT IS FURTHER ORDERED** that the parties protected by this injunction include,  
23 but are not limited to: Meggitt PLC; Pacific Scientific Energetic Materials Company/Pacific  
24 Scientific, Boeing Corporation; Securaplane Technologies Inc., Fiona Grieg a/k/a Greig or  
25 Gregg, Exponent Inc., McKinsey & Company; Marc R. Birtel, and the Office of the Mayor,  
26 City of Philadelphia.

