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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUCIO A. BARROGA,  
  
Plaintiff,  
  
v.  
  
BOARD OF ADMINISTRATION,  
CAL.PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM,  
  
Defendant.

No. 2:19-cv-0921-MCE-KJN PS  
  
FINDINGS AND RECOMMENDATIONS  
TO DISMISS WITH PREJUDICE AND  
TO DECLARE PLAINTIFF  
A VEXATIOUS LITIGANT,  
ORDER TO STAY ACTION WHILE  
F&R IS PENDING  
  
(ECF Nos. 20, 22)

Plaintiff Lucio Barroga, proceeding without counsel, brings suit against Defendant “CalPERS” concerning his retirement benefits. (ECF No. 1.) CalPERS moves to dismiss for lack of subject matter jurisdiction (11th Amdt. immunity) and for failure to state a claim (claim and issue preclusion). (ECF No. 20.) CalPERS also requests the Court declare Barroga a vexatious litigant and issue a pre-filing order against him, given that these claims have been denied multiple times by both state and federal courts since the early 1990s. (ECF No. 22.)

After a review of the record, the undersigned recommends this action be dismissed with prejudice. Further, the undersigned finds Barroga to be a repeat, serial litigant whose multiple suits against CalPERS have made it clear that he will only continue to abuse the judicial process and inundate this district with frivolous complaints. Therefore, the undersigned recommends Barroga be deemed a vexatious litigant and a pre-filing order be instituted against him.

1           **Background**<sup>1</sup>

2           On May 22, 2019, Barroga filed a complaint entitled “complaint for declaratory relief  
3 under Cal Code of Civil Proc. Sec. 1062 on new or same action based on the same facts which  
4 overcomes res judicata.” (ECF No. 1.) This 382-page complaint asserts that when Barroga  
5 reached fifty years of age in 1979, he retired from his employment with the City of El Segundo.  
6 (Id. at p. 3.) Barroga opted to withdraw his retirement contributions from CalPERS, but ten years  
7 later requested by letter that he be allowed to repay these amounts so he could start receiving a  
8 monthly benefit. CalPERS denied his request. (Id.)

9           From the point of CalPERS denial in the early 90s through the present, Barroga has  
10 attempted to litigate this same issue in a variety of settings. (See, generally, exhibits attached to  
11 ECF Nos. 1 and 21 (various complaints, letters, orders, judgments and appeals re: Barroga’s suits  
12 against CalPERS)). Notably, Barroga’s 2019 complaint raises the same issues as were raised in  
13 2012 by Judge England of this district court. (See 2:12–cv–1121 MCE–KJN (PS), at ECF No. 1,  
14 “Complaint for declaratory relief under Cal Code of Civil Proc. Sec. 1062 on new or same action  
15 based on the same facts which overcomes res judicata.”; ECF No. 21 at p. 215.)

16           CalPERS moved to dismiss in this action, asserting the same defenses as were raised in  
17 the 2012 action. (See ECF No. 20.) These issues are the same that, in 2012, Judge England  
18 deemed dispositive in his judgment and order, and are the same that the Ninth Circuit affirmed on  
19 two years later. (See 2:19–cv–921 MCE–KJN (PS) at ECF No. 32 (recommending dismissal on  
20 11th Amendment Immunity grounds); see also Barroga v. CalPERS, 579 F. App’x 613 (9th Cir.  
21 2014) (affirming dismissal on issue and claim preclusion grounds, as well as on the Rooker–  
22 Feldman doctrine)). Barroga opposed. (ECF Nos. 26–27.)

23           CalPERS also moved to declare Barroga a vexatious litigant, and requested judicial notice  
24 of Barroga’s extensive litigation history. (ECF Nos. 21–22.) Barroga did not respond.

25 \_\_\_\_\_  
26 <sup>1</sup> These facts are based on information contained in the Complaint, and on documents submitted  
27 by CalPERS that are part of the public record—of which the undersigned takes judicial notice.  
28 See Fed. R. Evid. 201; Mir v. Little Co. of Mary Hosp., 844 F. 2d 646, 649 (9th Cir. 1988) (“In  
addition to the complaint, it is proper for the district court to take judicial notice of matters of  
public record outside the pleadings and consider them for purposes of the motion to dismiss.”)

1           **I.       Barroga’s claims fail on the same grounds as in the 2012 action.**

2           Given that Barroga is attempting to litigate the same issues as he raised in 2012  
3 (reinstatement of his pension), and given that CalPERS has raised the same issues in their motion  
4 to dismiss, the Court will not burden the parties with a lengthy analysis. Instead, the Court refers  
5 the parties to the findings and recommendations, order, judgment, and memorandum disposition  
6 in the 2012 action. (See 2:19-cv-921 MCE-KJN (PS) at ECF No. 32 (recommending dismissal  
7 on 11th Amendment Immunity grounds); ECF No. 45 (adopting the F&R and dismissing  
8 Barroga’s complaint with prejudice); see also Barroga v. CalPERS., 579 F. App’x 613 (9th Cir.  
9 2014) (affirming dismissal of the 2012 action on issue and claim preclusion grounds, as well as  
10 on the Rooker–Feldman doctrine—which bars litigation that seeks relief from a state court  
11 decision based on an alleged error therein)).

12           For the same reasons as was stated in the dismissal orders, judgment, and Ninth Circuit  
13 memorandum in the 2012 action, the undersigned recommends dismissal of Barroga’s current  
14 complaint with prejudice.

15           **II.       Barroga should be deemed a vexatious litigant, and a pre-filing order should**  
16 **be imposed.**

17           Alongside the motion to dismiss, CalPERS moved to deem Barroga a vexatious litigant,  
18 and requested the Court either require Barroga post security before the action is to proceed or  
19 issue a pre-filing order “prohibiting him from filing any new litigation without first obtaining  
20 leave of court to do so.” (ECF No. 22.) Barroga did not respond in writing to this motion.

21           **Legal Standard**

22           The district courts have the power under the All Writs Act, 28 U.S.C. § 1651(a), to issue  
23 pre-filing orders that restrict a litigant’s ability to initiate court proceedings. De Long v.  
24 Hennessey, 912 F. 2d 1144, 1146 (9th Cir. 1990). “[S]uch pre-filing orders are an extreme  
25 remedy that should rarely be used.” Molski v. Evergreen Dynasty Corp., 500 F. 3d 1047, 1057  
26 (9th Cir. 2007). However, “[f]lagrant abuse of the judicial process cannot be tolerated because it  
27 enables one person to preempt the use of judicial time that properly could be used to consider the  
28 meritorious claims of other litigants.” De Long, 912 F. 2d at 1148.

1 Before entering a pre-filing order, a court is to: (A) give the litigant notice and a chance  
2 to be heard before the order is entered; (B) compile an adequate record for review; (C) make  
3 substantive findings about the frivolous or harassing nature of the plaintiff’s litigation, and (D)  
4 narrowly tailor the vexatious litigant order “to closely fit the specific vice encountered.” Molski,  
5 500 F. 3d at 1057. The first and second factors are procedural considerations; the third and fourth  
6 factors are substantive considerations that help the district court “define who is, in fact, a  
7 ‘vexatious litigant’ as well as construct a remedy that will stop the litigant’s abusive behavior  
8 without unduly infringing the litigant’s right to access the courts.” Id. at 1057-58. As to the  
9 substantive factors, the Ninth Circuit has found a separate set of considerations (employed by the  
10 Second Circuit Court of Appeals) provides a helpful framework. Ringgold-Lockhart v. County of  
11 Los Angeles, 761 F. 3d 1057, 1062 (9th Cir. 2014) (citing Molski, 500 F. 3d at 1058). These  
12 include consideration of the litigant’s history, motives, representation by counsel, as well as the  
13 expense to others or burdens on the court and the possibility of other sanctions. Molski, 500 F.  
14 3d at 1058 (quoting Safir v. U.S. Lines, Inc., 792 F. 2d 19, 24 (2d Cir. 1986)).

15 Additionally, the Eastern District has adopted California’s procedure from its “vexatious  
16 litigant” laws. See Local Rule 151(b) (adopting Cal. Civ. Proc. Code §§ 391–391.8). These laws  
17 were “designed to curb misuse of the court system by those persistent and obsessive litigants  
18 who, repeatedly litigating the same issues through groundless actions, waste the time and  
19 resources of the court system and other litigants.” Shalant v. Girardi, 51 Cal. 4th 1164, 1169  
20 (2011). The statute provides, among other things, that before an action is allowed to proceed, a  
21 plaintiff will be required to furnish security—meaning the litigant must “assure payment . . . of  
22 the party’s reasonable expenses, including attorney’s fees . . . incurred in or in connection with a  
23 litigation instituted . . . by a vexatious litigant.” Cal. Civ. Proc. Code § 391. If the plaintiff fails  
24 to furnish the security, the action will be dismissed. Id.

### 25 Analysis

26 As demonstrated below, Barroga’s litigation history demonstrates a pattern of frivolous  
27 and harassing complaints and motions. These actions call for him to be deemed a vexatious  
28 litigant. De Long, 912 F. 2d at 1146.

1           **A. Notice and Opportunity to Be Heard**

2           Procedural due process is satisfied in this instance where the court notifies the litigant it is  
3 considering a vexatious litigant order, provides details about the scope of the proceedings, and  
4 allows for the litigant to respond to the court’s concerns. Ringgold-Lockhart, 761 F. 3d at 1063.

5           CalPERS filed its motion to declare Barroga a vexatious litigant on July 22, 2019, and set  
6 the matter for a hearing on August 29, 2019. Barroga did not respond to this motion, but did  
7 appear at the hearing. (See ECF No. 28.) There, the Court questioned Barroga about the current  
8 motion to dismiss, his litigiousness against CalPERS regarding his pension, and his continued  
9 disregard of prior judgments indicating his claims have no merit. Barroga responded that the  
10 current claim is different because he has “new evidence”—which he asserted was a new source of  
11 law (the California Constitution) that he has recently discovered and has not previously raised.  
12 The Court explained to Barroga that this constitutional provision, which was in existence during  
13 the pendency of his earlier claims, does not constitute “new evidence,” but is merely a new legal  
14 theory that could have been raised at the earlier proceeding. Barroga contended that he should  
15 not be deemed a vexatious litigant because courts in the past have not answered “yes or no” as to  
16 whether his claim is viable. The Court informed Barroga the answer is “no,” and reiterated that  
17 past courts have in fact said the same thing.

18           Thus, because Barroga was on notice of the motion to deem him a vexatious litigant, and  
19 because he appeared at the hearing and responded to the motion, the Court has met its procedural  
20 duty on this first of the De Long factors, 912 F. 2d at 1146. See also Ringgold-Lockhart, 761 F.  
21 3d at 1063 (finding due process satisfied where the litigant was notified of the vexatious–litigant  
22 motion and appeared at a hearing on the motion prior to the district court’s issuance of the order).

23           **B. Adequate Record for Review**

24           “An adequate record for review should include a listing of all the cases and motions that  
25 led the district court to conclude that a vexatious litigant order was needed.” De Long, 912 F. 2d  
26 at 1147. A district court compiles a proper record for review where a complete list of the cases  
27 filed by the litigant, alongside those complaints, accompanies the vexatious litigant order.  
28 Ringgold-Lockhart, 761 F. 3d at 1063.

1 Barroga has filed ten actions against CalPERS since his dispute began in the early 90s, as  
2 well as multiple appeals.<sup>2</sup> Within these actions, Barroga has a history of filing multiple motions,  
3 letters, and other miscellaneous correspondence, as shown by his conduct in the two actions filed  
4 in this district.<sup>3</sup> As a general outline, the undersigned notes that in many of Barroga’s complaints,  
5 he argues that (a) his employer’s contributions to his retirement account were “normal  
6 contributions,” and thus he is still a member of CalPERS; (b) CalPERS violated the California  
7 Government Code by offering him the option of withdrawing his entire balance at once; and  
8 (c) he is entitled to a retirement balance comprised of his employer’s contributions. (See Section  
9 II.C.1, below, for further detail on the frivolousness of these complaints and motions).

10 <sup>2</sup> **Actions in California state courts, including appeals:** Barroga v. Bd. of Admin. CalPERS,  
11 KC003981 (L.A. Super. Ct.); Barroga v. Bd. of Admin. CalPERS, No. S038365 (Cal.); Barroga  
12 v. Gillan, et al., No. KC024567 (L.A. Super. Ct.); Barroga v. Gillan, et al., No. B115924 (Cal.  
13 App.); Barroga v. Gillan, et al., No. SD69199 (Cal.); Barroga v. Bd. of Admin. CalPERS, No.  
14 KC030508 (L.A. Super. Ct.).

14 **Actions in the United States District Court for the Central District of California:** Barroga v.  
15 Bd. of Admin. CalPERS, No. 2:99-cv-9457; Barroga v. Bd. of Admin. CalPERS, No. 2:03-cv-  
16 7673; Barroga v. Bd. of Admin. CalPERS, No. 2:04-cv-6315; Barroga v. Bd. of Admin.  
17 CalPERS, No. 06-3696; Barroga v. Bd. of Admin. CalPERS, No 2:09-cv-00056.

17 **Actions in the United States District Court for the Eastern District of California:** Barroga v.  
18 Bd. of Admin. CalPERS, No. 2:12-cv-01179 MCE KJN; Barroga 0v. Bd. of Admin. CalPERS,  
19 No. 2:19-cv-921-MCE-KJN.

19 **Appeals to the Ninth Circuit Court of Appeals:** Barroga v. Bd. of Admin. CalPERS, No. 06-  
20 56415; Barroga v. Bd. of Admin. CalPERS, No. 09-55595; Barroga v. Bd. of Admin. CalPERS,  
21 No. 13-15084; Barroga v. Bd. of Admin. CalPERS, No. 18-15574.

21 <sup>3</sup> See Motions filed in 2:12-cv-01179-MCE-KJN: ECF No. 8 (Motion for Default Judgment);  
22 ECF No. 11 (Motion for Default Judgment); ECF No. 28 (Motion for Judgment); ECF No. 29  
23 (“Request for Observance of Cal. Code of Civ. Proc. Sec. 1062.5(2) for Precedence Consideration  
24 of Case”); ECF No. 30 (“Request to Know Email Address So That I Can File Electronically”);  
25 ECF No. 33 (Motion for Judgment); ECF No. 37 (Motion for Judgment); ECF No. 52 (Motion for  
26 Miscellaneous Relief); ECF No. 54 (Motion for Miscellaneous Relief); ECF No. 59 (Motion for  
27 Miscellaneous Relief); ECF No. 61 (Motion for Miscellaneous Relief); ECF No. 64 (Motion for  
28 Miscellaneous Relief); ECF No. 68 (Motion for Reconsideration); ECF No. 74 (Motion for  
Miscellaneous Relief).

27 **Motions filed in 2:19-cv-00921-MCE-KJN:** ECF No. 14 (Request for Entry of Default); ECF  
28 No. 17 (Request for Entry of Default); ECF No. 19 (“Request for a Copy of Order Declining  
Request for Entry of Default and Granting Defendant Extension of Time to File a Response).

1 This collection of Barroga’s complaints and motions presents a more–than–adequate  
2 record for review. See Molski, 500 F. 3d at 1059 (finding the district court compiled a proper  
3 record for review where “[t]he record before the district court contained a complete list of the  
4 cases filed by Molski in the Central District of California, along with the complaints from many  
5 of those cases,” and where “[a]lthough the district court's decision entering the pre-filing order  
6 did not list every case filed by Molski, it did outline and discuss many of them.”).

7 **C. The Frivolous or Harassing Nature of Barroga’s Litigation**

8 “[B]efore a district court issues a pre-filing injunction . . . it is incumbent on the court to  
9 make substantive findings as to the frivolous or harassing nature of the litigant's actions.” De  
10 Long, 912 F. 2d at 1148. Under the Ninth Circuit’s framework, the court considers the following:

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

20 Molski, 500 F. 3d at 1052 (quoting Safir, 792 F.2d at 24). The weight of these considerations  
21 supports a substantive finding that Barroga has engaged in frivolous and harassing behavior by  
22 filing the lawsuits (see fn. 2, *infra*) and repeated motions (see fn. 3, *infra*), such that the third De  
23 Long factor favors instituting a pre–filing order.

24 *(1) Barroga’s history of vexatious, harassing lawsuits.*

25 Barroga has filed ten legal actions against CalPERS since 1991, after an administrative  
26 law judge (“ALJ”) found he was not entitled to retirement benefits. (ECF No. 21 at p. 23.) On  
27 February 14, 1991, Barroga filed his first complaint with the Los Angeles County Superior Court,  
28 arguing that CalPERS wrongfully deprived him of retirement benefits stemming from his  
employer’s contributions to his retirement account. (Id. at p. 9.) Barroga further contended that  
CalPERS deprived him of his lifetime pension by failing to offer him options alternative to  
withdrawing all of his personal contributions at once. Barroga prayed for relief in the form of his

1 employer's past contributions, a redeposit of his withdrawn contributions, a reinstatement of his  
2 pension, and the cost of bringing his suit. (Id. at p. 9.) The trial court granted CalPERS's Motion  
3 for Judgment on the Pleadings because Barroga did not follow the proper procedure in  
4 challenging the ALJ's decision. After unsuccessfully moving for reconsideration, Barroga filed  
5 an untimely, unsuccessful appeal. (Id. at p. 123, 125.) In 1994, the California Supreme Court  
6 declined to review the lower court's decision. (Id. at p. 127.)

7 In 1997, Barroga filed a second complaint with the Los Angeles Superior Court. (Id. at p.  
8 19.) This time, Barroga sought declaratory relief that his employer contributions were "normal  
9 contributions" under a provision of the California Government Code, as well as damages in the  
10 amount of the unpaid balance of employer contributions, plus ten percent interest. (Id. at p. 20.)  
11 However, the complaint ultimately repeated Barroga's previous contention that he was still "a  
12 member of CalPERS and entitled to [a] monthly pension and redeposit of withdrawn  
13 contributions." (Id.) The parties cross-moved for summary judgment and the court ruled in  
14 CalPERS's favor, reasoning that Barroga's complaint was barred by the doctrine of res judicata  
15 because "he seeks to relitigate the same factual and legal issues which were the subject of the  
16 prior [administrative] proceeding." (Id. at p. 23.) Importantly, the court further found that  
17 Barroga's motion "**lack[ed] merit because the undisputed facts establish that upon**  
18 **separation from [his employment with] the City of El Segundo he received all of his normal**  
19 **contributions and thus ceased being a PERS member."** (Id.) The court thus granted  
20 CalPERS's motion and denied Barroga's motion. (Id.) Barroga unsuccessfully moved to vacate  
21 the court's ruling. (Id. at p. 138.)

22 Barroga appealed, contending that his second suit was not barred by res judicata because  
23 was seeking declaratory relief. The California appellate court rejected this argument, explaining  
24 that both complaints concerned Barroga's "primary right" to his pension; the second suit was thus  
25 barred by res judicata. (Id. at p. 142.) Barroga unsuccessfully petitioned for rehearing. (Id. at pp.  
26 29-30.) The California Supreme Court once again declined to review the lower courts' findings.  
27 (Id. at p. 30.) Barroga then filed an unsuccessful Petition for Writ of Certiorari with the Supreme  
28 Court of the United States. (Id. at p. 79.)



1           Despite the state court’s repeated rejection of his claims, Barroga filed yet another  
2 complaint with the Los Angeles Superior Court in 1999. (Id. at p. 40.) His complaint grappled  
3 with the same underlying facts; he sought a declaration that CalPERS violated the Government  
4 Code, as well as damages based on the value of his pension. (Id. at p. 41.) The state court again  
5 dismissed the complaint as barred by res judicata, and issued an order declaring Barroga a  
6 vexatious litigant. (Id. at pp. 43-44, 78.)

7           Barroga then shifted to the federal courts, filing the first of four complaints (eventually  
8 followed by fourteen subsequent, unsuccessful filings) with the Central District of California.  
9 (Id. at p. 46.) Barroga reiterated his claim that CalPERS violated the Government Code, once  
10 again seeking damages in the amount of his unpaid retirement balance. (Id. at p. 51.) The  
11 Central District granted CalPERS’s motion to dismiss on two grounds: (1) as a federal court, the  
12 Central District lacked jurisdiction to pass upon an “identical question of law” already decided by  
13 the Los Angeles Superior Court; and (2) CalPERS, a state agency, was entitled to immunity under  
14 the Eleventh Amendment to the United States Constitution. (Id. at p. 53-54.)

15           In 2003, nearly four years after the dismissal, Barroga filed a second complaint with the  
16 Central District, contending that the “Cal[ifornia] courts wrongly interpreted” California  
17 “retirement laws,” and recycling his arguments that (1) CalPERS violated the Government Code;  
18 and (2) his employer’s contributions to his retirement account were “normal contributions.” (Id.  
19 at pp. 156-57.) After failing to properly file an application for entry of default, Barroga brought  
20 five unsuccessful motions for default judgment. (Id. at p. 59.) The court ordered Barroga to file a  
21 default application, and dismissed his complaint without prejudice when he failed to comply with  
22 that order. (Id. at pp. 59-60.) Barroga then brought a third complaint in the Central District, this  
23 time failing to properly serve CalPERS; he once again unsuccessfully moved for default  
24 judgment. Due to the improper service, the court dismissed Barroga’s complaint without  
25 prejudice for a second time in June 2006. (Id. at p. 65.)

26           Less than two weeks later, on June 14, 2006, Barroga filed yet another complaint against  
27 CalPERS in the Central District. (Id. at p. 73.) CalPERS moved to dismiss the case and sanction  
28 Barroga by prohibiting him from filing future actions against CalPERS. (Id. at pp. 75-76.) The

1 court held (1) that CalPERS was entitled to Eleventh Amendment immunity; and (2) that  
2 Barroga's claims were barred by res judicata because they were already decided on the merits.  
3 (Id. at pp. 80-83.) The court further granted CalPERS's motion to sanction Barroga, reasoning  
4 that he "has demonstrated a pattern of filing harassing and frivolous lawsuits" by "filing repetitive  
5 and harassing lawsuits against CalPERS despite being told time and time again that his claims are  
6 without merit." (Id. at p. 86.) The Ninth Circuit affirmed the decision on July 16, 2007. (Id. at p.  
7 90.) Barroga unsuccessfully moved to vacate this order in 2008. (Id. at p. 88.)

8 Ignoring the Central District's explicit order, Barroga filed yet another complaint against  
9 CalPERS in January 2009. (Id. at p. 92.) The court responded with an order declaring Barroga a  
10 vexatious litigant, reiterating that he was "barred from filing future lawsuits in the Central District  
11 of California against CalPERS without first obtaining leave of court pursuant to the 2006 Order."  
12 (Id. at p. 208.) The Ninth Circuit affirmed the decision. (Id. at p. 210.) In the three years  
13 following the issuance of the vexatious litigant order, Plaintiff requested leave to file an  
14 additional fourteen complaints against CalPERS, all of which were denied. He also filed several  
15 motions for reconsideration of these denials, which were also denied. (Id. at pp. 330-43, 362-65,  
16 370-406, 419-29, 431-38, 444-64, 471-77, 482-84, 488-90.) Dissatisfied with this result,  
17 Barroga filed a complaint of judicial misconduct against the Central District judge who issued the  
18 vexatious litigant order. (Id. at pp. 344-52.) The Ninth Circuit dismissed this complaint. (Id. at  
19 p. 366.) Barroga wrote the Judicial Conference of the United States four times seeking to  
20 overturn the Ninth Circuit's decision. (Id. at pp. 407-18, 439-42, 465-66, 485-86.)

21 In 2012, Barroga turned to this District, filing a complaint substantively identical to those  
22 previously rejected by the Los Angeles Superior Court and Central District. (Id. at pp. 215-44.)  
23 That case was assigned to the undersigned, who issued findings and recommendations,  
24 recommending that the complaint be dismissed because CalPERS was entitled to Eleventh  
25 Amendment immunity. (Id. at pp. 502-05.) The undersigned further warned Barroga that:

26 [G]iven [Barroga's] history of repeatedly attempting to re-litigate the same case ...  
27 all without any possible legal basis for doing so, and given [his] apparent  
28 disregard for court orders issued in the Central District requiring him to seek  
leave before filing documents ... the undersigned *shall* sanction [Barroga] if he

1 continues to attempt to re-litigate the same case before the undersigned.  
2 (Id. at p. 509, emphasis in original.) Judge England adopted the undersigned’s findings and  
3 recommendations on December 19, 2012. (Id. at pp. 512–13.) Throughout the case, including  
4 after judgment was entered, Barroga battered the court with fourteen frivolous motions, including  
5 two unwarranted motions for default, five motions for judgment, two motions for reconsideration  
6 of the court’s denials. (See footnote 3, *supra*.) He also brought his frivolous appeal to the Ninth  
7 Circuit, where the panel affirmed in a memorandum disposition. (Id. at pp. 515–17.)

8 On May 22, 2019, Barroga filed the instant suit, once again rehashing the same claims  
9 regarding his pension that have been repeatedly rejected. (ECF 1.) He also filed two frivolous  
10 requests for default and a frivolous “notice” regarding the undersigned. (See fn. 3 *supra*.)

11 The above summary of Barroga’s nearly thirty-year history of relitigating the same case  
12 demonstrates a record of duplicative, harassing, and vexatious litigation. See Molski, F. 3d at  
13 1052. For instance, the fact that the Los Angeles Superior Court and Central District have  
14 deemed Barroga’s claims barred by res judicata highlights the duplicative and vexatious nature of  
15 his actions. See Cell Therapeutics, Inc. v. Lash Group, Inc., 586 F. 3d 1204, 1212 (9th Cir. 2009)  
16 (noting that doctrine of “res judicata[] bars any subsequent suit on claims that were raised or  
17 could have been raised in a prior action”); Hamblou v. Fortress Investment Group, 2017 WL  
18 1833265, \*3 (N.D. Cal. May 8, 2017) (“Notably, one of the purposes underlying the doctrine [of]  
19 res judicata is the need to protect against vexatious litigation.”) (citing Brown v. Felsen, 442 U.S.  
20 127, 131 (1979)). Further, the Los Angeles County Superior Court explained—over twenty years  
21 ago—that Barroga’s claims lack merit because he ceased being a CalPERS member in 1979 when  
22 he withdrew his retirement contributions. (ECF No. 21 at p. 23.) His unending attempts to  
23 relitigate this same claim is a textbook example of frivolousness. See, e.g., Nothwang v. Payless  
24 Drug Stores Northwest, Inc., 139 F.R.D. 675, 676 (D. Or. 1991) (holding complaint frivolous  
25 where prior decision had res judicata effect on claims raised in complaint).

26 Further, Barroga’s repeated attempts—fourteen, to be exact—to file the same complaint  
27 with the Central District, despite being declared a vexatious litigant, in addition to his repeated  
28 motions for reconsideration, demonstrate the harassment to which he has subjected numerous

1 court employees. See Hamblou, 2017 WL 1833265 at \*4 (plaintiff who brought “same factual  
2 case over and over again, in spite of repeated dismissals by a court,” filed “not only duplicative  
3 lawsuits but also, necessarily, frivolous and harassing ones). (See also ECF 21 at pp. 330–43,  
4 362–65, 370–406, 419–29, 431–38, 444–64, 471–77, 482–84, 488–90.)

5 In 2012, the Eastern District specifically warned Barroga that he would be sanctioned  
6 should he file the same suit against CalPERS in this court. (Id. at p. 509.) Nevertheless, in 2019  
7 Barroga completely disregarded this admonition and filed yet another complaint against  
8 CalPERS. (ECF 1.) This filing is duplicative of Barroga’s prior nine suits because it solely  
9 concerns his entitlement to a pension. (Id.) This filing is also harassing because it directly  
10 ignores and disregards the undersigned’s prior warning regarding future filings. Finally, the  
11 complaint is frivolous, as the federal court has already dismissed the case due to CalPERS’s  
12 Eleventh Amendment immunity from suit. See Nothwang, 139 F.R.D. at 676.

13 Given the above record, the undersigned has no trouble finding that Barroga has a history  
14 of frivolous, duplicative, and harassing lawsuits.

15 *(2) Barroga’s motive and the lack of objective good faith expectation of*  
16 *prevailing.*

17 Barroga has filed ten lawsuits against CalPERS in three different courts; each time his  
18 claims and subsequent appeals have been rejected. Moreover, the Central District has barred  
19 Barroga’s fourteen additional attempts to file complaints containing those same claims, as well  
20 as his petitions for review. (See Section II.C.1. above.) Thus, the undersigned sees no possible  
21 way a litigant in Barroga’s position could maintain a good–faith expectation of prevailing in his  
22 serial actions against CalPERS. See Endsley v. California, 2014 WL 5335857 (C.D. Cal. Oct.  
23 16, 2014) (civil detainee declared a vexatious litigant after bringing numerous cases alleging the  
24 same constitutional violations; the court found Plaintiff could not have had an “objective good  
25 faith expectation of prevailing” on claims he had already been told were not cognizable),  
26 (reversed on other grounds, 627 Fed App'x 644 (9th Cir. 2015)).

27 Further, at the August 29 hearing, the undersigned questioned Barroga about his motives  
28 in filing so many causes of action, despite the numerous dismissals, judgments, and affirmances

1 from courts in this district and at the Ninth Circuit. Barroga stated that the courts have yet to  
2 “say no” regarding the merits of his claims. However, as previously discussed, the issue was  
3 indeed decided in the 90s—as multiple courts in this state have continually informed Barroga.  
4 (See Section II.C.1. above.)

5 The Court finds this factor supports a substantive finding of frivolous and harassing  
6 behavior by Barroga, favoring a finding that he is a vexatious litigant.

7 *(3) Barroga’s lack of counsel.*

8 In each of Barroga’s actions, he has proceeded without counsel. (See ECF No. 21.)  
9 Though courts are generally protective of pro se litigants, the undersigned finds this factor cannot  
10 outweigh Barroga’s abusive litigation tactics. This is so especially since courts in both this  
11 district and across the state have attempted to inform Barroga that his claims against CalPERS  
12 have no merit—information he has obviously disregarded.

13 *(4) The needless expense to CalPERS and the unnecessary burden on the*  
14 *court and its personnel.*

15 As demonstrated above, Barroga’s litigation tactics have imposed a tremendous burden on  
16 CalPERS, who since 1991 has had to respond to multiple frivolous complaints and motions on an  
17 issue that was decided decades ago. Barroga’s abusive tactics have also imposed an unnecessary  
18 burden on the personnel of this court. Employees in the Clerk’s office continually scan and file  
19 his frivolous complaints and motions, which judges in this court must review (and given his  
20 assertions, dismiss). (See fn’s 2-3, supra).

21 Thus, unless the Court halts Barroga’s actions, his abusive tactics will pose an  
22 unnecessary burden on CalPERS as well as the court and its personnel. See Spain v. EMC Mortg.  
23 Co., 2010 WL 3940987, at \*12 (D. Ariz. Sept. 27, 2010), aff’d sub nom., 487 F. App’x 411 (9th  
24 Cir. 2012) (finding unnecessary burden where the litigant persistently filed motions and other  
25 submissions that were baseless, causing unnecessary expense to the parties and needless burden  
26 on the courts).

27 *(5) The inadequacy of lesser sanctions.*

28 In 2012, the undersigned warned Barroga that he would be sanctioned “if he

1 continues to attempt to re-litigate the same case before the undersigned.” (ECF No. 21 at p. 509.)  
2 However, despite this admonition, Barroga filed the present suit, repeating the same claims that  
3 he has asserted for nearly thirty-years. (See ECF No. 1.) Further, the undersigned notes that,  
4 prior to declaring Barroga a vexatious litigant, the Central District first attempted to merely  
5 sanction him by prohibiting him from filing any further actions against CalPERS. Despite that  
6 order, Barroga once again filed the same suit. (See Section II.1.C. above.) This history suggests  
7 that lesser sanctions would not deter Barroga from filing another action with this court.

8 Thus, the undersigned has concluded that the only way to end Barroga’s abusive and  
9 frivolous litigation in this district is to institute a restrictive pre-filing order. See Warren v.  
10 Guelker, 29 F.3d 1386, 1390 (9th Cir. 1994) (“[W]hen there is ... conduct in the course of  
11 litigation that could be adequately sanctioned under the Rules, the court ordinarily should rely on  
12 the Rules rather than the inherent power.”); but see Spain, 2010 WL 3940987, at \*12 (“Especially  
13 because plaintiff has not heeded any of this court’s prior warnings regarding the manner in which  
14 he has conducted this litigation, the need for a carefully circumscribed pre-filing order is readily  
15 apparent.”).

#### 16 **D. Narrowly Tailored Vexatious Litigant Order**

17 CalPERS requests that the Court bar Barroga from filing any new cases in the Eastern  
18 District, and requests that he be required to post security alongside any complaint. This strikes  
19 too broadly, however, as the Court’s vexatious findings merely concern Barroga’s vexatious  
20 behavior as it relates to CalPERS and to his state pension. Further, as the Court is recommending  
21 dismissal of this claim with prejudice, the institution of security is unnecessary.

22 Instead, the undersigned recommends the following pre-filing order:

- 23 a.) Any future filing, of any kind, by Plaintiff in the United States District Court for the  
24 Eastern District of California shall contain the following words in all capital letters at  
25 the top of the front page: “PLAINTIFF HAS BEEN DECLARED A VEXATIOUS  
26 LITIGANT, AS PER CASE NO. 2:19-cv-921-MCE-KJN (PC).” If a proposed filing  
27 does not contain that heading, the Clerk of the Court shall lodge, not file, the proposed  
28 filing, nor shall the Court review it—any incomplete filings shall be returned to Mr.

1 Barroga without further action of the court;

2 b.) The Clerk of the Court shall not file any future filings from Plaintiff against Defendant  
3 CalPERS or their related entities, nor shall the Clerk file any lawsuit initiated by  
4 Plaintiff concerning his defunct pension, unless and until the filing is reviewed and  
5 determined by the Court to constitute a non-frivolous claim;

6 c.) If Mr. Barroga submits an action as a self-represented plaintiff accompanied by the  
7 required declaration, the Clerk shall open the matter as a miscellaneous case to be  
8 considered by the General Duty Judge of this court. The Duty Judge will issue  
9 necessary orders after making a determination whether the case is in fact related to a  
10 previous case filed by Mr. Barroga, and whether it is non-frivolous; and

11 d.) The requirements of subparagraphs (b) and (c) shall be waived if Plaintiff's filing is  
12 made on Plaintiff's behalf by a licensed attorney at law in good standing who signs the  
13 filing as the attorney of record for Plaintiff.

14 **FINDINGS AND RECOMMENDATIONS, ORDER**

15 Accordingly, IT IS HEREBY RECOMMENDED that:

- 16 1. Defendant's Motion to Dismiss (ECF No. 20) be GRANTED;  
17 2. Defendant's Motion to Declare Plaintiff Vexatious (ECF No. 21) be GRANTED  
18 IN PART and DENIED IN PART;  
19 3. Plaintiff be DECLARED a vexatious litigant; and  
20 4. The Court ISSUE a pre-filing order as described in Section II.D. above.

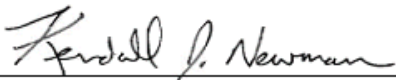
21 These findings and recommendations are submitted to the United States District Judge  
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
23 days after being served with these findings and recommendations, any party may file written  
24 objections with the court and serve a copy on all parties. Such a document should be captioned  
25 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
26 shall be served on all parties and filed with the court within fourteen (14) days after service of the  
27 objections. The parties are advised that failure to file objections within the specified time may  
28 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th

1 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

2 In light of those recommendations, IT IS ALSO HEREBY ORDERED that all pleading,  
3 discovery, and motion practice in this action are stayed pending resolution of the findings and  
4 recommendations. With the exception of objections to the findings and recommendations and  
5 any non-frivolous motions for emergency relief, the court will not entertain or respond to any  
6 motions and other filings until the findings and recommendations are resolved.

7 IT IS SO ORDERED AND RECOMMENDED.

8 Dated: September 9, 2019

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10 \_\_\_\_\_  
11 KENDALL J. NEWMAN  
12 UNITED STATES MAGISTRATE JUDGE

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