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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 SALLY STEINHART,

No. C -11-03497 EDL

9 Plaintiff,

**ORDER GRANTING BARKELA
DEFENDANTS' MOTION FOR ORDER
DECLARING PLAINTIFF A
VEXATIOUS LITIGANT**

10 v.

11 JOSEPH BARKELA, et al.,

12 Defendants.
13 _____/

14 On May 16, 2013, the Barkela Defendants filed a Motion for Order Declaring Plaintiff a
15 Vexatious Litigant. On June 13, 2013, the Court issued an order requiring further briefing on the
16 motion, and vacating the June 25, 2013 hearing date. On June 20, 2013, Defendants filed a
17 declaration of counsel, William Joost, in response to the Court's June 13, 2013 order. On June 28,
18 2013, Plaintiff timely filed a brief objecting to the Joost declaration. On July 1, 2013, the Court
19 issued an order requiring Plaintiff to file a declaration stating whether she disputed any of the facts
20 in the June 20, 2013 Joost declaration describing the nature of, the rulings made in, and/or the
21 outcome of any of the superior court cases cited by Joost. The Court ordered Plaintiff to support her
22 declaration with court records as she was a party to those cases. On July 11, 2013, Plaintiff filed a
23 declaration disputing the Joost declaration, but did not provide any supporting documentation. For
24 the reasons stated in this order, Defendants' Motion for Order Declaring Plaintiff a Vexatious
25 Litigant is granted.

26 **Discussion**

27 Plaintiff's history in this and other courts shows that she is a vexatious litigant. Indeed, the
28 Superior Court for the County of Sonoma, on May 6, 2013, declared Plaintiff a vexatious litigant in
that forum. See Joost Decl. Ex. A. In its order, the Superior Court stated that Plaintiff had filed at

1 least five lawsuits in the Sonoma County Superior Court in the preceding seven-year period that had
2 been finally determined adversely to her.¹ Specifically, the Superior Court pointed to the following
3 cases that were determined adversely to her: (1) Steinhart v. Curria, No. SCV-234918; (2) Steinhart
4 v. Barkela, No. SCV-247328; (3) Steinhart v. Boucher, No. 238310; (4) Steinhart v. Boucher, No.
5 SCV-240701; (5) Steinhart v. Heringer, No. SCV-238310; and (6) Steinhart v. Sonoma County
6 Superior Court, No. SCV-252698. In this forum, Plaintiff has filed two pro se actions in the
7 preceding three years, including this case. See also Steinhart v. County of Sonoma, C-10-841 RS.

8 The All Writs Act, 28 U.S.C. § 1651(a), provides district courts with the inherent power to
9 enter pre-filing orders against vexatious litigants. Weissman v. Quail Lodge Inc., 179 F.3d 1194,
10 1197 (9th Cir.1999). The Ninth Circuit has cautioned that such pre-filing orders are an extreme
11 remedy that should rarely be used. De Long v. Hennessey, 912 F.2d 1144, 1147 (9th Cir. 1990).
12 However, “[f]lagrant abuse of the judicial process cannot be tolerated because it enables one person
13 to preempt the use of judicial time that properly could be used to consider the meritorious claims of
14 other litigants.” Id. at 1148. The Ninth Circuit has established four factors for district courts to
15 examine before entering pre-filing orders. First, the litigant must be given notice and a chance to be
16 heard before the order is entered. Id. at 1147. Second, the court must compile “an adequate record
17 for review.” Id. at 1148. Third, the district court must make substantive findings about the frivolous
18 or harassing nature of the plaintiff’s litigation. Id. Finally, the vexatious litigant order “must be
19 narrowly tailored to closely fit the specific vice encountered.” Id.; see also Molski v. Evergreen
20 Dynasty Corp., 500 F.3d 1047, 1057 (9th Cir. 2007) (discussing DeLong factors).²

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

22
23 ¹ Plaintiff argues extensively that the Sonoma County Superior Court exceeded its
24 authority in issuing its order. That issue, however, is not before the Court on this motion.

25 ² In the briefing on this matter, the parties have cited California law as the standard for
26 determining whether Plaintiff is a vexatious litigant. Defendant argues that “several trial courts [in the
27 Ninth Circuit] have adopted a vexatious litigant rule that ‘provides that the court may proceed by
28 reference to the Vexatious Litigants statute of the State of California’” Weissman v. Quail Lodge, Inc.,
179 F.3d 1194, 1197 (9th Cir. 1999). In Weissman, the court proceeded under federal law, and in the
context of a discussion of whether an attorney could be declared a vexatious litigant, the court noted that
the Central District of California had adopted a local rule that “the court may ‘proceed by reference to
the Vexatious Litigants statute of the State of California, Cal. Code Civ. Proc. §§ 391 –391.7.’ Cent.
Dist. of Calif. Local R. 27A.4.” Id. at 1197. There is no Northern District local rule adopting the state
vexatious litigant rule. Therefore, federal law applies.

1 This motion was noticed pursuant to Civil Local Rule 7-2, and Plaintiff was served with a
2 copy of the Motion at least thirty-five days in advance of the scheduled hearing. Plaintiff filed an
3 opposition and has filed additional materials as ordered by the Court. The notice requirement is
4 satisfied. See Molski, 500 F.3d at 1058.

5 **B. Adequate Record for Review**

6 An adequate record for review should include a listing of all cases and motions that led the
7 court to conclude that a vexatious litigant order is needed. See DeLong, 912 F.2d at 1147 (“At the
8 least, the record needs to show, in some manner, that the litigant’s activities were numerous or
9 abusive.”). An order outlining and discussing many of the cases filed by a plaintiff has been deemed
10 sufficient to satisfy this requirement. Molski, 500 F.3d at 1059.

11 Plaintiff’s history includes the following cases, relied upon by the Sonoma County Superior
12 Court in declaring her a vexatious litigant:

- 13 • Steinhart v. Curria No. SCV-234918. Plaintiff’s cross-complaint to a Request for Order to
14 Stop Harassment was voluntarily dismissed. Tokerud v. Capitolbank Sacramento, 38
15 Cal.App.4th 775, 779 (1995) (“An action which is ultimately dismissed by the plaintiff, with
16 or without prejudice, is nevertheless a burden on the target of the litigation and the judicial
17 system, albeit less of a burden than if the matter had proceeded to trial. A party who
18 repeatedly files baseless actions only to dismiss them is no less vexatious than the party who
19 follows the actions through to completion. The difference is one of degree, not kind.”).
20 Plaintiff argues that she dismissed her case because she had already obtained the relief she
21 sought when the court dismissed the defendant’s petition for order to stop harassment, but as
22 in Tokerud, Plaintiff’s action was a burden on the defendant in that case and the judicial
23 system.
- 24 • Steinhart v. Barkela No. SCV-247328. Plaintiff filed this petition for writ of mandate in
25 response to an unlawful detainer matter. The writ of mandate was denied. See Fink v.
26 Shemtov, 180 Cal.App.4th 1160, 1168 (2010) (“‘Litigation’ for purposes of vexatious
27 litigant requirements encompasses civil trials and special proceedings, but it is broader than
28 that. It includes proceedings initiated in the Courts of Appeal by notice of appeal or by writ

1 petitions other than habeas corpus or other criminal matters.”) (internal citation omitted).

2 • Steinhart v. Boucher No. SCV-238310. Plaintiff filed this action, which was dismissed by
3 the court for her failure to appear. See Fink, 180 Cal.App.4th at 1173-74 (dismissals can
4 constitute final determinations adverse to the litigant).

5 • Steinhart v. Boucher No. SCV-240701. Plaintiff re-filed the same action as she filed in
6 SCV-238310 after the dismissal of SCV-238310. Plaintiff dismissed this action.

7 • Steinhart v. Heringer No. SCV-246305. Plaintiff filed this civil harassment action, which
8 was denied by the court.

9 • Steinhart v. Sonoma County Superior Court No. SCV-252698. Plaintiff filed this Petition
10 for Alternative Writ of Mandate for an emergency stay to prevent execution of a writ of
11 possession after her motion for summary judgment had been denied in the underlying action.
12 The court denied the Petition. Although Plaintiff has stated that this action is on appeal
13 (July 11, 2013 Steinhart Decl. ¶ 2(F)), the Superior Court stated in its May 6, 2013 order that
14 the court’s record does not show an appeal, and Plaintiff did not provide any court records to
15 the contrary to support her declaration as ordered by the Court.

16 In addition, Plaintiff delayed and made frivolous filings in the following cases:

17 • Steinhart v. Curria No. SCV-246662. Plaintiff delayed settling the pleadings by late filings
18 and by failing to serve all defendants until over one year after the action was filed.

19 • Steinhart v. Kaiser Permanente, et al., No. SCV-246005. Plaintiff filed an amended
20 complaint without leave of court over one year after the court sustained a demurrer.

21 • Steinhart v. Curria No. SCV-244253. Plaintiff was given until September 7, 2012 to file an
22 amended complaint, but failed to do so. Plaintiff then filed a request to enter default against
23 defendant Cresswell on October 29, 2012. Plaintiff’s appeal of the court’s order sustaining
24 defendant Curria’s demurrer was dismissed as premature and her appeal was dismissed for
25 failure to file a brief.

26 Further, in this case, on April 11, 2012, Plaintiff filed an unsolicited letter in further
27 support of her opposition to Ms. Madrigal’s motion to dismiss, which the Court declined to consider
28 because Plaintiff did not have leave to file it. See Steinhart v. Barkela, et al., C-11-3497 EDL

1 Docket No. 49 (N.D. Cal. Apr. 11, 2012). In addition, Plaintiff's amended complaint did not remedy
2 the failure to allege facts supporting claimed statutory violations and her false imprisonment claim.
3 See Steinhart v. Barkela, et al., C-11-3497 EDL Docket No. 51 (N.D. Cal. Apr. 20, 2012). The
4 record thus establishes Plaintiff's history of filing numerous actions and pleadings.

5 **C. Findings of Frivolous or Harassing Nature of the Litigation**

6 This factor requires the Court to examine both the number and content of Plaintiff's filings
7 for indicia of frivolousness. DeLong, 912 F.2d at 1148; Molski, 500 F.3d at 1059. Under the third
8 DeLong prong, the Court must "look at both the number and content of the filings as indicia of the
9 frivolousness of the litigant's claims." Molski v. Evergreen Dynasty Corp., 500 F.3d 1047, 1059 (9th
10 Cir.2007) (citations and quotation marks omitted). "An injunction cannot issue merely upon a
11 showing of litigiousness. The plaintiff's claims must not only be numerous, but also be patently
12 without merit." Id. (citations and quotation marks omitted).

13 Here, Plaintiff has filed numerous actions within at least the last seven years. She has
14 received little, if any, damages or equitable relief from any of those actions. In the present case,
15 Plaintiff has made unsolicited filings, and has not filed a sufficient amended complaint after being
16 given an opportunity to do so. Plaintiff's litigious history provides justification for this Court to
17 declare her to be a vexatious litigant and require pre-filing review of any action she attempts to take
18 to prosecute this case. Plaintiff's actions have required, and continue to require, defendants,
19 including a public entity in this case, to expend limited resources in responding to her complaint.
20 Plaintiff's continued filings are unduly burdensome to the public at large and to the judicial system.

21 **D. Narrowly Tailored Order**

22 The fourth DeLong prong requires that the pre-filing order be narrowly tailored to the
23 specific vexatious conduct exhibited by the litigant. Defendant proposes the following pre-filing
24 Order:

25 Plaintiff shall post security in the sum of \$25,000 before Plaintiff shall be allowed to
26 take any further action to prosecute this case. After posting the required security,
27 Plaintiff shall take no action to prosecute this case unless and until Plaintiff has
28 sought, via formal noticed motion, and obtained from this Court an order approving
any action Plaintiff proposes to take to prosecute this action.

See Proposed Order at ¶¶ 2, 3. With the exception of the amount of the security, the proposed pre-

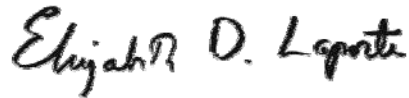
1 filing order is narrowly tailored to satisfy the fourth DeLong factor.

2 **Conclusion**

3 Accordingly, Defendant's Motion for Order Declaring Plaintiff to be a Vexatious Litigant is
4 granted. Based on the Court's inherent power, the Court orders Plaintiff to post security in the
5 amount of \$10,000 for costs before Plaintiff shall be allowed to take any further action to prosecute
6 this case. See Simulet East Associates v. Ramada Hotel Operating Co., 37 F.3d 573, 574 (9th Cir.
7 1994) (district courts have the inherent power to require a plaintiff to post security for costs). After
8 posting the required security, Plaintiff shall take no action to prosecute this case unless and until
9 Plaintiff has sought, via formal noticed motion, and obtained from this Court an order approving any
10 action Plaintiff proposes to take to prosecute this action. If Plaintiff fails to post security by August
11 9, 2013, the Court will dismiss Plaintiff's case.

12 **IT IS SO ORDERED.**

13 Dated: July 19, 2013



ELIZABETH D. LAPORTE
United States Chief Magistrate Judge