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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 BAMIDELE HAMBOLU, et al.,

8 Plaintiffs,

9 v.

10 FORTRESS INVESTMENT GROUP, et al.,

11 Defendants.

Case No. [17-cv-01039-EMC](#)

**ORDER DECLARING BAMIDELE
HAMBOLU A VEXATIOUS LITIGANT**

12
13 Plaintiffs Bamidele Hambolu and his mother, Lynn Gavin, initiated this putative class
14 action in the Central District of California, *see* Docket No. 1 (Complaint), but it was subsequently
15 transferred to this District. *See* Docket No. 9 (Order at 2). On April 19, 2017, the Court issued an
16 order in which it barred Ms. Gavin from asserting her claims because they were, in effect, the
17 same as those that had led Ms. Gavin to being declared a vexatious litigant and subject to a
18 prefiling review. *See* Docket No. 16 (Order at 8). In the same order, the Court granted Mr.
19 Hambolu's application to proceed in forma pauperis but dismissed his federal claims with
20 prejudice and declined to exercise supplemental jurisdiction over his state claims. *See* Docket No.
21 16 (Order at 8). The Court also ordered Mr. Hambolu to show cause as to why he should not be
22 declared a vexatious litigant subject to the same prefiling order to which Ms. Gavin is currently
23 subject. *See* Docket No. 16 (Order at 7).

24 Mr. Hambolu has failed to timely respond to the Court's order to show cause ("OSC").
25 Based on the lack of an opposition, and for the reasons discussed below, the Court hereby
26 **DECLARES** Mr. Hambolu a vexatious litigant. Future pleadings that Mr. Hambolu files shall be
27 subject to a prefiling review by the general duty judge for this District, the terms of which are
28 specified in this order below.

1 process right of access to the courts.” *Id.* Nevertheless, such prefiling orders are sometimes
2 appropriate because “[f]lagrant abuse of the judicial power . . . enables one person to preempt the
3 use of judicial time that properly could be used to consider the meritorious claims of other
4 litigants.” *De Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990).

5 B. De Long Factors

6 In *De Long*, the Ninth Circuit set forth the requirements for entering prefiling orders
7 against vexatious litigants:

8 1. The litigant must be given notice and opportunity to be heard before the order is
9 entered, *see id.* at 1147;

10 2. The court must compile an adequate record for review, including a list of all cases
11 and motions leading to the conclusion that an individual is a vexatious litigant, *see id.* at 1147-48;

12 3. The court must make substantive findings that the litigant’s filings are frivolous or
13 harassing, *see id.* at 1148; and

14 4. The pre-filing order may not be overly broad, and must be “narrowly tailored to
15 closely fit the specific vice encountered.” *Id.*

16 1. Notice and Opportunity to be Heard

17 The first *De Long* factor simply requires that the litigant be given an opportunity to oppose
18 the order before it is entered. *See id.* at 1147. Oral argument is not required. *See, e.g., Reddy v.*
19 *MedQuist, Inc.*, No. 12-cv-1324-PSG, 2012 U.S. Dist. LEXIS 171421, at *3 (N.D. Cal. Dec. 3,
20 2012) (“The requirement that the plaintiff receive an opportunity to be heard; the opportunity to
21 brief the issue fully satisfies due process requirements.”) (internal quotation marks omitted);
22 *Fiechtner v. Young*, No. CV 13-9-M-DLC, JCL, 2013 U.S. Dist. LEXIS 31086, at *3 (D. Mont.
23 Feb. 6, 2013) (“An opportunity to be heard is satisfied by providing an opportunity to file a brief,
24 and does not necessarily require an oral or evidentiary hearing in court.”), *report and*
25 *recommendation adopted by* 2012 U.S. Dist. LEXIS 31158 (D. Mont. Mar. 4, 2013); *see also*
26 *Tripati v. Beaman*, 878 F.2d 351, 354 (10th Cir. 1989) (“The notice and opportunity requirement
27 does not, however, require an in-person hearing in the district court.”).

28 The Court finds that the first *De Long* factor has been met because the Court issued an

1 OSC, and Mr. Hambolu had an opportunity to file a written opposition. *See Martin v. Redwood*
2 *City Dental Care*, Case No. 15-cv-3151-JST, 2015 U.S. Dist. LEXIS 173275, at *3-4 (N.D. Cal.
3 Dec. 29, 2015) (finding that plaintiff was given an opportunity to be heard despite not responding
4 to the OSC or appearing at the hearing); *Adams v. Currie*, No. EDCV 14-1838 PSG (SS), 2015
5 U.S. Dist. LEXIS 100684, at *14 (C.D. Cal. July 6, 2015) (same), *report and recommendation*
6 *adopted by* 2015 U.S. Dist. LEXIS 100617, at *1-2 (C.D. Cal. July 30, 2015).

7 2. Adequate Record for Review

8 The second factor is merely procedural. *See De Long*, 912 F.2d at 1147 (“An adequate
9 record for review should include a listing of all the cases and motions that led the district court to
10 conclude that a vexatious litigant order was needed.”). It requires only that the court compile a list
11 of actions and filings by the litigant. *See, e.g., Hurt v. All Sweepstakes Contests*, No. C-12-4187-
12 EMC, 2013 U.S. Dist. LEXIS 4802, at *5 (N.D. Cal. Jan. 11, 2013) (finding the second *De Long*
13 factor met where the court “compiled a list of all the actions Plaintiff filed”). This factor is met
14 here as the Court has listed and discussed each of the seven actions that Mr. Hambolu has filed.
15 *See* Docket No. 16 (Ex. A).

16 3. Frivolous or Harassing Filings

17 The third factor “gets to the heart of the vexatious litigant analysis,” *see Molski*, 500 F.3d
18 at 1059, and requires the district court to look to “both the number and content of the filings as
19 indicia” of the frivolousness or harassing nature of the litigant’s claims. *De Long*, 912 F.2d at
20 1148; *see also Molski*, 500 F.3d at 1059 (stating that “[a]n injunction cannot issue merely upon a
21 showing of litigiousness”).

22 In considering the third *De Long* factor – as well as the fourth (*i.e.*, narrow tailoring of the
23 vexatious litigant order) – the Ninth Circuit has found the following considerations helpful, as
24 outlined by the Second Circuit in *Safir v. U.S. Lines, Inc.*, 792 F.2d 19 (2d Cir. 1986):

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

1 whether other sanctions would be adequate to protect the courts and
2 other parties.”

3 *Molski*, 500 F.3d at 1058 (citing *Safir*, 792 F.2d at 24); *see also Boustred v. Gov’t*, No. C-08-
4 00546 RMW, 2008 U.S. Dist. LEXIS 111090, at *2-4 (N.D. Cal. Sept. 17, 2008) (considering all
5 five *Safir* factors). These considerations lead the Court to the following conclusions.

6 First, because Mr. Hambolu is a self-represented litigant, the Court treads carefully in
7 considering whether and how to fashion an appropriate prefiling order. *See De Long*, 912 F.2d at
8 1147 (noting use of prefiling orders to curb access to courts should be done with care where a pro
9 se litigant is involved yet recognizing the courts are also free to enjoin litigants with “abusive and
10 lengthy histories”).

11 Second, while the number of filings (seven) itself does not establish Mr. Hambolu as
12 vexatious per se, the duplicative and harassing nature of his filings do. The Court is not presented
13 here with a plaintiff who is filing the same *type* of action over and over again. *See In re Powell*,
14 851 F.2d 427, 431 (D.C. Cir. 1988) (“[T]he district court should be careful not to conclude that
15 particular types of actions filed repetitiously, *i.e.*, FOIA actions, in and of themselves warrant a
16 finding of harassment. Instead, the district court should attempt to discern whether the filing of
17 several similar types of actions constitutes an intent to harass the defendant or the court.”).

18 Rather, the plaintiff is filing the same *factual* case over and over again. The different lawsuits
19 filed by Mr. Hambolu may have different legal theories but the legal theories are all based on the
20 same set of facts – *i.e.*, his family’s allegedly wrongful eviction from the Parkmerced apartments
21 in 2012 because of his family’s failure to pay allegedly usurious utility bills.

22 In fact, it was this circumstance that led the Court to conclude that the case at bar should be
23 dismissed based on claim preclusion, *i.e.*, res judicata. *See* Docket No. 16 (Order at 5-6).
24 Notably, one of the purposes underlying the doctrine is res judicata is the need to protect against
25 vexatious litigation. *See Brown v. Felsen*, 442 U.S. 127, 131 (1979) (noting that “[r]es judicata
26 ensures the finality of decisions” and that it “encourages reliance on judicial decisions, bars
27 vexatious litigation, and frees the courts to resolve other disputes”).

28 Because Mr. Hambolu is bringing the same factual case again and again, in spite of
repeated dismissals by a court, he is filing not only duplicative lawsuits but also, necessarily,

1 frivolous and harassing ones. In this respect, it is worth emphasizing that, in several cases, Mr.
2 Hambolu was given an opportunity to amend his complaint but he failed to do so, which
3 eventually resulted in the dismissal of his case for failure to prosecute. Rather than accept the
4 consequences of his failure to litigate, Mr. Hambolu would simply file another lawsuit.² Given the
5 above circumstances, a declaration of vexatiousness is particularly appropriate. *See Broemer v.*
6 *Bush*, No. CV 10-05193 MMM (RZX), 2014 U.S. Dist. LEXIS 190424, at *23 (C.D. Cal. Feb. 6,
7 2014) (stating that, “[i]f a litigant has a pattern of vexatious or harassing litigation, especially in
8 derogation of the doctrine of res judicata, a district court has authority under 28 U.S.C. § 1651 to
9 enter an order sua sponte enjoining the litigant from filing papers without obtaining leave of
10 court”); *see also Harrelson v. United States*, 613 F.2d 114, 116 (5th Cir. 1980) (upholding district
11 court’s injunction of future litigation on any cause of action arising from the fact situation at issue
12 in the case; noting that “[s]uch orders are generally unnecessary, as res judicata and collateral
13 estoppel are usually more than adequate to protect defendants against repetitious litigation” but
14 finding injunction was not an abuse of discretion because plaintiff had “forced defendants in and
15 out of court for almost five years and has had a full opportunity to present and litigate his
16 claims”); *Martin v. Redwood City Dental Care*, No. 15-CV-03151-JST, 2015 WL 9489898, at *5
17 (N.D. Cal. Dec. 29, 2015) (“find[ing] that Martin’s conduct is harassing because she has continued
18 to file frivolous lawsuits against various defendants despite the fact that many, if not most, of her
19 previous complaints have been screened for failure to state a legally cognizable federal claims”);
20 *Sepehry-Fard v. Select Portfolio Servicing, Inc.*, No. 14-CV-05142-LHK, 2015 U.S. Dist. LEXIS
21 29989, at *27, 29 (N.D. Cal. Mar. 10, 2015) (stating that “[t]he first [*Safir*] factor weighs heavily
22 in favor of declaring Plaintiff vexatious” because “Plaintiff has filed at least eight lawsuits aimed
23 at delaying nonjudicial foreclosure proceedings on the two properties he owns in Saratoga,

24 _____
25 ² *See, e.g., Gavin et al. v. FCOF PM EQ LLC et al.*, No. 14-cv-4582-RS (N.D. Cal. Jan. 21, 2015)
26 (dismissed with prejudice for failure to prosecute, noting that “Plaintiffs were advised to file an
27 amended complaint or complaints no later than December 17, 2014. To date, plaintiffs have filed
28 no amended complaint or complaints and appear to have abandoned these actions. This is not the
first time plaintiffs have initiated litigation in this court and then failed to pursue it.”); *Hambolu v.*
PCOF PM EQ, LLC, No. 15-cv-2780-RS (N.D. Cal. Sept. 16, 2015) (“Like the highly-similar
complaints dismissed on past occasions by courts in this district, plaintiffs’ present pleadings fail
to state any viable claim. They must therefore be dismissed.”).

1 California,” “Plaintiff has not prevailed in any,” and, “[d]espite repeated warnings from judges in
2 this district that Plaintiff’s meritless theory of liability has been rejected, Plaintiff continues to file
3 lawsuits premised on the same allegations”); *cf. Stone v. Baum*, 409 F. Supp. 2d 1164, 1171 (D.
4 Ariz. 2005) (in the Rule 11 context, stating that, “[b]ecause the action filed here involves the same
5 parties and the same transactional nucleus of facts as the prior suits and it seeks to relitigate issues
6 that have been conclusively resolved in the prior suits, and because Plaintiffs have been repeatedly
7 informed that such repetitive suits are barred by res judicata, there can be no conclusion except
8 that Plaintiffs filed this case for an improper purpose, such as to harass Albertsons and/or cause
9 Albertsons undue litigation costs”).

10 Moreover, it is unlikely that other sanctions would be adequate to protect Defendants or
11 the courts because any attempt to obtain and collect monetary sanctions from the unrepresented
12 pro se like Mr. Hambolu would likely increase court proceedings and the financial burden on
13 Defendants. Nor does it seem likely, in light of the litigation history here, that nonmonetary
14 directives would deter Mr. Hambolu (and his mother) from continuing to harass Defendants and
15 from abusing judicial resources. *See Patterson v. Goncalves*, No. C 14-01311 CRB, 2014 WL
16 4683222, at *4 (N.D. Cal. Sept. 19, 2014) (finding that monetary and nonmonetary sanctions
17 would be unlikely to deter vexatious pro se litigant in light of Plaintiffs’ harassing litigation
18 history). Having considered alternative sanctions, a prefiling order is warranted to deter Mr.
19 Hambolu’s harassing actions and filings of frivolous claims.

20 4. Narrowly Tailored

21 The fourth and final factor requires that the prefiling order be narrowly tailored to the
22 vexatious litigant’s wrongful behavior. *See Molski*, 500 F.3d at 1061. “Narrowly tailored orders
23 are needed ‘to prevent infringement of the litigator’s right of access to the courts.’” *De Long*, 912
24 F.2d at 1148 (citing *Woods v. Santa Barbara Chamber of Commerce, Inc.*, 705 F.2d 1515, 1525
25 (9th Cir. 1983)).

26 As discussed above, Mr. Hambolu has brought multiple lawsuits before multiple judges in
27 this District and in the Central District of California based on previously rejected facts and
28 theories. Thus, the Court finds it appropriate to deem Mr. Hambolu a vexatious litigant and to

1 fashion a narrowly tailored pre-filing order.


2 Accordingly, like his mother (Ms. Gavin), Mr. Hambolu must obtain leave of court before
3 filing any further suits based on his allegations that he was wrongfully evicted from the
4 Parkmerced apartments in 2012. The Clerk of this Court shall not accept for filing any further
5 complaints filed by Mr. Hambolu or on behalf of Mr. Hambolu alleging any claims described
6 herein until that complaint has first been reviewed by the general duty judge of this Court and
7 approved for filing.

8 **III. CONCLUSION**

9 For the foregoing reasons, Mr. Hambolu is hereby **DECLARED** a vexatious litigant. The
10 Clerk of this Court shall not file or accept any further complaints filed by or on behalf of Mr.
11 Hambolu alleging any claims of wrongful eviction from the Parkmerced apartment in 2012 unless
12 and until that complaint has first been reviewed by the general duty judge of this Court and
13 approved for filing. If Mr. Hambolu wishes to file a complaint alleging any such claims, he shall
14 provide a copy of any such complaint, a letter requesting that the complaint be filed, and a copy of
15 this Order to the Clerk of this Court. The Clerk shall then forward the complaint, letter, and copy
16 of this Order to the general duty judge for a determination whether the complaint should be
17 accepted for filing. Any violation of this Order will expose Mr. Hambolu to a contempt hearing
18 and appropriate sanctions, and any action filed in violation of this Order will be subject to
19 dismissal.

20
21 **IT IS SO ORDERED.**

22
23 Dated: May 8, 2017

24 
25 _____
26 EDWARD M. CHEN
27 United States District Judge
28