

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4            KIARA ROBLES,  
5                                    Plaintiff,

6                                    v.

7            IN THE NAME OF HUMANITY, WE  
8            REFUSE TO ACCEPT A FASCIST  
9            AMERICA, et al.,

9                                    Defendants.

Case No. 17-cv-04864-CW

NOTICE OF TENTATIVE RULING ON  
MOTION TO REVOKE PRO HAC VICE

(Dkt. Nos. 7, 15)

10  
11            Plaintiff Kiara Robles filed this suit against Defendants In  
12            the Name of Humanity, We REFUSE to Accept a Fascist America, The  
13            Regents of the University of California, University of California  
14            Police Department, City of Berkeley (Berkeley), Ian Dabney  
15            Miller, Raha Mirabdal, and DOES 1-20. On October 2, 2017,  
16            Berkeley filed a motion to revoke pro hac vice admission of Larry  
17            Klayman, Robles' attorney. Docket No. 15. Having reviewed the  
18            papers and the record, the Court issues a tentative ruling  
19            granting Berkeley's motion to revoke the pro hac vice admission.

20                                    BACKGROUND

21            I.    Klayman's history of judicial reprimands and sanctions

22                                    Over the years, numerous courts have sanctioned Klayman,  
23            called his behavior into question, or revoked his pro hac vice  
24            admission. Two courts have banned Klayman from their courts for  
25            life.

26                                    For example, the Second Circuit affirmed a Southern District  
27            of New York court's revocation of Klayman's pro hac vice status,  
28            denial of any future application to appear before the district

1 court on a pro hac vice basis, and order to provide a copy of the  
2 district court's opinion imposing sanctions when applying for pro  
3 hac vice admission before any other judge in the Southern  
4 District of New York. MacDraw, Inc. v. CIT Grp. Equip. Fin.,  
5 Inc., 157 F.3d 956, 960 n.3 (2d Cir. 1998). The Second Circuit  
6 noted that Klayman made "claims of partisan and racial basis with  
7 no factual basis," which were "discourteous, degrading to the  
8 court, and prejudicial to the administration of justice." Id. at  
9 960 (internal punctuation and brackets omitted).

10 Similarly, the Federal Circuit upheld a Central District of  
11 California court's decision permanently barring Klayman from  
12 appearing before it pro hac vice and requiring him to attach a  
13 copy of the order to any pro hac vice applications filed in the  
14 same district. Baldwin Hardware Corp. v. FrankSu Enter. Corp.,  
15 78 F.3d 550, 561-62 (Fed. Cir. 1996), as modified on reh'g (May  
16 22, 1996). The Federal Circuit affirmed the district court's  
17 finding that Klayman had acted in bad faith and had made several  
18 misrepresentations to the court, including that he had never been  
19 sanctioned or denied pro hac vice privileges. Id. at 562.

20 In addition, the Ninth Circuit affirmed the District of  
21 Nevada's decision to deny Klayman's application for pro hac vice:

22 Under our decisions, the district court had more than  
23 ample cause to turn down Klayman's application: he is  
24 involved in an ethics proceeding before the District of  
25 Columbia Bar, and he was not candid with the court  
26 about the status of those proceedings; he disclosed  
27 that he was twice barred *in perpetuity* from  
28 appearing *pro hac vice* before judges in the Central  
District of California and the Southern District of New  
York, but he failed to list numerous cases—all  
available on Westlaw or LEXIS—in which he has been  
reprimanded, denied *pro hac vice* status, or otherwise  
sanctioned for violating various local rules; and he  
has a record of going after judges personally, and

1 shortly after Chief Judge Gloria Navarro denied his  
2 application, Bundy filed a frivolous *Bivens* action  
3 against her in her own court. This litany of reasons  
4 for denying Klayman *pro hac vice* status demonstrates  
5 that the district court did not abuse its discretion,  
6 much less commit clear error.

7 In re Bundy, 840 F.3d 1034, 1036 (9th Cir. 2016), subsequent  
8 mandamus proceeding, 852 F.3d 945 (9th Cir. 2017). The Ninth  
9 Circuit collected the following examples of Klayman's  
10 "sanctioned, sanctionable, or questionable behavior":

- 11 • The Federal Circuit affirmed the district court's  
12 revocation of Klayman's ability to appear before  
13 the district court *pro hac vice* in perpetuity and  
14 its sanctioning of Klayman for accusing the trial  
15 judge of anti-Asian bias and "unreasonably and  
16 vexatiously multiplying the proceedings." Baldwin  
17 Hardware Corp. v. FrankSu Enter. Corp., 78 F.3d  
18 550, 555 (Fed. Cir. 1996).
- 19 • The Second Circuit affirmed the district court's  
20 revocation of Klayman's ability to appear before  
21 the district court *pro hac vice* in perpetuity and  
22 its sanctioning of Klayman for "undignified and  
23 discourteous conduct that was degrading to the  
24 [district court] and prejudicial to the  
25 administration of justice" by, among other things,  
26 making accusations of racial and political bias  
27 and acting "abusive[ly] an obnoxious[ly]." MacDraw, Inc. v. CIT Grp. Equip. Fin., Inc., 994  
28 F.Supp. 447, 455 (S.D.N.Y. 1997), aff'd, 138 F.3d  
33 (2d Cir. 1998).
- Klayman was sanctioned for filing an untimely  
complaint and opposing the government's motion  
with "frivolous filings" that "wasted time and  
resources of defendants as well as of the  
court." Wire Rope Importers' Ass'n v. United  
States, 18 C.I.T. 478, 485 (Ct. Int'l Trade 1994).
- Klayman exhibited "often highly inappropriate  
behavior" and his performance "was episodically  
blighted by rude and unprofessional behavior which  
was directed toward the presiding judge and  
opposing counsel." Material Supply Int'l, Inc. v.  
Sunmatch Indus., Co., No. Civ. A. 94-1184, 1997 WL  
243223 at \*8, \*10 n.7 (D.D.C. May 7, 1997), aff'd  
in part and reversed in part, 146 F.3d 983 (D.C.  
Cir. 1998).
- Klayman "apparently misread (or never read) the  
local rules" and the district court threatened  
sanctions for any future failures to comply with  
local rules. Alexander v. FBI, 186 F.R.D. 197,  
199 (D.D.C. 1999). The district court "gr[ew]

1 weary of [Klayman's] use—and abuse—of the  
2 discovery process" and "ha[d] already sanctioned  
3 [Klayman] for making misrepresentations to the  
4 court, allowing the court to rely upon those  
5 representations in a favorable ruling, and then  
6 later contravening those very  
7 (mis)representations." Alexander v. FBI, 186  
8 F.R.D. 188, 190 (D.D.C. 1999).

- Klayman responded to the district court's orders with a "forked tongue" and made arguments with "malicious glee." Judicial Watch of Fla., Inc. v. U.S. Dep't of Justice, 159 F. Supp. 2d 763, 764 (D.D.C. 2001).
- Klayman made arguments regarding the conduct of the district court that were "bizarre" and "beyond the far-fetched." Dely v. Far E. Shipping Co., 238 F. Supp. 2d 1231, 1241 (W.D. Wash. 2003).

9 [ . . . ]

- Klayman's "fail[ure] to comply with even the most basic of discovery requirements" was "not simply an unexplained hiccup in an otherwise diligently prosecuted case" and thus warranted sanctions. Klayman v. Barmack, No. 08-1005 (JBD), 2009 WL 4722803, at \*1 (D.D.C. Dec. 4, 2009).
- After "the patent failure of the Court's use of lesser sanctions in the past to have any discernible effect on Klayman's conduct," Klayman's "consistent pattern of engaging in dilatory tactics, his disobedience of Court-ordered deadlines, and his disregard for the Federal Rules of Civil Procedure and the Local Rules of this Court" necessitated further, more severe, sanctions. Klayman v. Judicial Watch, Inc., 802 F. Supp. 2d 137, 138-39 (D.D.C. 2011).
- Klayman repeatedly did not "attempt to comply" with local rules, and the district court threatened sanctions for any further violations. Montgomery v. Risen, No. 15-cv-02035-AJB-JLB, 2015 WL 12672703, at \*1 (S.D. Cal. Oct. 2, 2015).

23 Id. at 1045-46.

24 II. Disciplinary proceedings in Florida and the District of  
25 Columbia

26 Klayman is a member of both the Florida and District of  
27 Columbia bar associations. Both bar associations have brought  
28 proceedings against him for violating rules of professional

1 conduct.

2 On June 19, 2017, the Board of Professional Responsibility  
3 of the District of Columbia Court of Appeals issued a Report and  
4 Recommendation finding by clear and convincing evidence that  
5 Klayman violated D.C. Rule of Professional Conduct 1.9 in two  
6 matters and Florida Rule of Professional Conduct 4-1.9(a) in  
7 another matter. See Declaration of Lynne Bourgault (Bourgault  
8 Decl.), Ex. A (District of Columbia Court of Appeals, Board on  
9 Professional Responsibility, Hearing Committee Number Nine,  
10 Report and Recommendation (June 19, 2017)). The Board found that  
11 Klayman's conduct during the proceeding before it "was dishonest  
12 and lacked candor in further aggravation of his misconduct." Id.  
13 at 37. The Board cited the following examples of what it deemed  
14 to be the "most egregious examples": Klayman "testified falsely  
15 that he acted under the advice of counsel" when in fact "[h]e did  
16 not," his brief "repeatedly mischaracterized" a witness'  
17 testimony, and he lacked "the candor required of an attorney in a  
18 disciplinary proceeding." Id. The Board found by "clear and  
19 convincing evidence" that Klayman's conduct "raises a serious  
20 doubt as to his ability to practice in conformance with the  
21 rules." Id. at 41. Thus, the Board recommended that Klayman be  
22 "suspended for 90 days, with reinstatement only upon showing his  
23 fitness to practice law." Id. at 41-42; see also id. at 43.

24 In 2011, the Supreme Court of Florida reprimanded Klayman  
25 for violating four of Florida's rules of professional conduct.  
26 See Bourgault Decl., Ex. B (Supreme Court of Florida Order (Aug.  
27 29, 2011)). Klayman's client alleged that he failed to provide  
28 her with legal services after receiving a \$25,000 retainer.

1 Bourgault Decl., Ex. C (July 4, 2011 Consent Judgment). Klayman  
2 settled the matter with his client. Id. Pursuant to the  
3 agreement, Klayman admitted his conduct violated Florida Rules of  
4 Professional Conduct, but agreed to a public reprimand. Id.

5 III. The instant action

6 On June 15, 2017, Plaintiff filed a complaint in this Court  
7 against sixteen Defendants, including Berkeley, alleging that she  
8 was subjected to violence and infringement of her constitutional  
9 rights during a protest at a February 1, 2017 event on the UC  
10 Berkeley campus featuring speaker Milo Yiannopoulos. Robles v.  
11 The Regents of the University of California, Berkeley et al.,  
12 Case No. 17-3235-CW (Robles I), Docket No. 1. Plaintiff was  
13 represented by Klayman and Michael Kolodzi, who serves as local  
14 counsel. See id. Klayman filed a motion to disqualify the  
15 undersigned based on the undersigned's graduation from the  
16 University of California, Berkeley, and nomination by former  
17 President William J. Clinton. Robles I., Docket No. 50. On July  
18 25, 2017, this Court denied the motion, noting it was "both  
19 unsworn and legally insufficient." Docket No. 56 at 2. On the  
20 same day, Plaintiff voluntarily dismissed the case. Docket No.  
21 57.

22 Plaintiff filed this action on August 22, 2017, alleging  
23 nearly identical facts and claims. Docket No. 1. Plaintiff was  
24 again represented by Klayman and Kolodzi. Klayman filed a motion  
25 for pro hac vice on the same day. Docket No. 2. The magistrate  
26 judge originally assigned to this case granted Klayman's motion  
27 for pro hac vice admission. Docket No. 6. On November 20, 2017,  
28 Berkeley filed a motion to revoke Klayman's pro hac vice

1 admission before the then-assigned magistrate judge.<sup>1</sup> See Docket  
2 No. 7. Shortly thereafter, this Court issued an order relating  
3 the present action to Robles I, which resulted in the  
4 reassignment of this case to the undersigned. Docket No. 8.  
5 Berkeley then brought the present motion to revoke pro hac vice  
6 admission. Docket No. 15.

7 LEGAL STANDARD

8 Pursuant to Civil Local Rule 11-3, an "attorney who is not a  
9 member of the bar of this Court may apply to appear pro hac vice  
10 in a particular action in this district" by submitting a written  
11 application, a certificate of good standing issued no more than  
12 one year prior to the date of application, and an oath  
13 certifying:

14 (1) That he or she is an active member in good  
15 standing of the bar of a United States Court or of the  
16 highest court of another State or the District of  
Columbia, specifying such bar;

17 (2) That he or she agrees to abide by the Standards of  
18 Professional Conduct set forth in Civil L.R. 11-4, and  
19 to become familiar with the Local Rules and Alternative  
Dispute Resolution Programs of this Court and, where  
applicable, with the Bankruptcy Local Rules;

20 (3) That an attorney, identified by name and office  
21 address, who is a member of the bar of this Court in  
good standing and who maintains an office within the  
State of California, is designated as co-counsel.

22 The district court has the power to deny or revoke an  
23 attorney's pro hac vice status, which is grounded within the  
24 court's inherent power "to control admission to its bar and to  
25 discipline attorneys who appear before it." Lasar v. Ford Motor

26  
27 \_\_\_\_\_  
28 <sup>1</sup> Because that motion is duplicative of the present motion,  
that motion is terminated as moot.

1 Co., 399 F.3d 1101, 1118 (9th Cir. 2005). The court's decision  
2 to do so is reviewed for abuse of discretion. See id. "[A]  
3 court's decision to deny pro hac vice admission must be based on  
4 criteria reasonably related to promoting the orderly  
5 administration of justice or some other legitimate policy of the  
6 courts." Bundy, 840 F.3d at 1042 (citation omitted).

7 DISCUSSION

8 As an initial matter, Klayman's motion for leave to appear  
9 in pro hac vice did not attach a certificate of good standing  
10 issued no more than one year prior to the date of application, as  
11 required by Civil Local Rule 11-3. See Docket No. 2. This alone  
12 justifies revoking Klayman's pro hac vice admission.

13 More importantly, however, Klayman continues to demonstrate  
14 a lack of candor and respect for the orderly administration of  
15 justice. In opposition to this motion, Klayman asserts that the  
16 District of Columbia proceeding is still pending and that he "has  
17 never been actually found to have acted unethically in this  
18 matter." Opp. at 4; see also id. at 1 ("Mr. Klayman has never  
19 been found by any bar association--whose function it is to govern  
20 attorney conduct--to have acted unethically or improperly for his  
21 conduct before any judge."). Klayman does not even attempt to  
22 address the June 19, 2017 Report and Recommendation of the Board  
23 of Professional Responsibility of the District of Columbia Court  
24 of Appeals. He instead states that "the prior attempted  
25 negotiated discipline never entered into effect because [he]  
26 chose to withdraw it after having thought the better of having  
27 signed the affidavit and agreeing to negotiated discipline since  
28 he felt strongly that he acted ethically at all times." Id.



1 This is the same argument Klayman advanced in Bundy, which the  
2 Ninth Circuit noted was "woefully misleading" because Klayman's  
3 affidavit was not withdrawn, it was rejected. Bundy, 840 F.3d at  
4 1044. The Court explained:

5 Klayman was not forthcoming with the district court. In  
6 his "renewed application," Klayman corrected the  
7 record—but only in part. He told the district court  
8 that the stipulation was of no effect because he had  
9 "thought the better of having signed the affidavit and  
10 agreeing to negotiated discipline." Klayman may have  
11 had second thoughts about stipulating to his "public  
12 censure," but his statement was woefully misleading. In  
13 fact, a Hearing Committee for the D.C. Bar had rejected  
14 that stipulation on behalf of the Bar because it was  
15 "unduly lenient." That prompted the hearings in  
16 January 2016, a Hearing Committee recommendation, and  
17 Klayman's March 2016 brief to the D.C. Bar.

18 Id. The fact that Klayman has again provided false information  
19 about the District of Columbia Bar Proceeding, even after the  
20 Ninth Circuit's reprimand in Bundy, indicates that he continues  
21 to take no responsibility for his actions and is likely to  
22 continue to present false and misleading information to the  
23 Court. This justifies denying Klayman's application for pro hac  
24 vice admission. Id. at 1045.

25 It is clear that Klayman has engaged in a pattern of  
26 flouting local and federal rules, making misrepresentations and  
27 omissions, and accusing judges of bias without adequate factual  
28 basis. Id. Based on this behavior, "numerous" courts have found  
"that he is unfit to practice based on his 'inappropriate and  
unethical behavior.'" Id. Klayman has continued his pattern in  
this case. As discussed previously, he has made the same  
misrepresentations he made in other cases. He also voluntarily  
dismissed Robles I, on the same day that the Court denied his

1 disqualification motion, only to file essentially the same case  
2 less than a month later. Klayman did not file a motion to  
3 consider whether the present case should be related to Robles I,  
4 as required by Civil Local Rule 3-12. This evinces both a  
5 failure to follow the court's local rules, as well as an attempt  
6 at "judge shopping, a practice that abuses the integrity of the  
7 judicial system by impairing public confidence in the  
8 impartiality of judges." Keilholtz v. Superior Fireplace Co.,  
9 No. C 08-00836 SI, 2008 WL 5411497, at \*2 (N.D. Cal. Dec. 29,  
10 2008). Klayman also failed to follow the local rules when he  
11 failed to file Plaintiff's opposition to Berkeley's motion to  
12 dismiss by the deadline and then filed a motion to extend time  
13 that was not compliant with Civil Local Rule 6-1. See Docket No.  
14 25. And, even after the Court denied the disqualification motion  
15 as "legally insufficient," Klayman continues to suggest the  
16 undersigned is biased. See Opp. at 1 (asserting that Berkeley  
17 brought the present motion "only because they believe that Judge  
18 Wilken will favor them and grant it" because she "attended UC  
19 Berkeley's Boalt Hall School of Law and taught there for six  
20 years"). In sum, Klayman has demonstrated "a pattern of  
21 disregard for local rules, ethics, and decorum; and he has  
22 demonstrated a lack of respect for the judicial process," which  
23 justifies revoking his pro hac vice admission. Bundy, 840 F.3d  
24 at 1049.

25 Klayman argues that he is merely zealously advocating for  
26 the right of his client to secure counsel of choice under the  
27 Sixth Amendment. But the Sixth Amendment does not apply to civil  
28 cases. See City and County of San Francisco v. Cobra Solutions,

1 Inc., 38 Cal. 4th 839, 846 (2006) (in considering  
2 disqualification motion as involving "a conflict between the  
3 clients' right to counsel of their choice and the need to  
4 maintain ethical standards of professional responsibility"). And  
5 the "Sixth Amendment right to chosen counsel is not absolute,"  
6 but "can be abrogated to serve a 'compelling purpose,'" which  
7 includes "[e]nsuring the ethical and orderly administration of  
8 justice." United States v. Ries, 100 F.3d 1469, 1471 (9th Cir.  
9 1996). Additionally, as the Ninth Circuit noted in Bundy, which  
10 was a criminal case, Klayman has every right to be "persistent,  
11 vociferous, contentious, and imposing, even to the point of  
12 appearing obnoxious when acting in [his] client's behalf," but  
13 does not have the right to "cross[] the line," which he had done  
14 on multiple occasions. Id. at 1047.

15 CONCLUSION

16 The Court issues a tentative ruling granting Berkeley's  
17 motion to revoke pro hac vice admission of Larry Klayman (Docket  
18 No. 15). Klayman has seven days to request a hearing on this  
19 motion by filing a request for hearing on the docket, at which  
20 point the Court will set a hearing date and briefing schedule.  
21 If Klayman does not timely file a request for a hearing, then the  
22 Court's tentative ruling shall become final.

23 IT IS SO ORDERED.

24  
25 Dated: May 23, 2018



26 CLAUDIA WILKEN  
27 United States District Judge  
28