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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Franz A. Wakefield,

NO. C 09-05420 JW

Plaintiff,

v.

Apple, Inc., et al.,

Defendants.

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS WITH
PREJUDICE; REQUIRING PRE-FILING
REVIEW FOR ALL FUTURE *PRO SE*
COMPLAINTS FILED BY PLAINTIFF**

I. INTRODUCTION

Franz A. Wakefield (“Plaintiff”) brings this action against Apple, Inc. (“Apple”), Steve Jobs (“Jobs”), and Sarah Jessica Parker (“Parker”) (collectively, “Defendants”), alleging, *inter alia*, misappropriation of trade secrets and breach of contract. Plaintiff alleges that Defendants misappropriated Plaintiff’s trade secrets for the iPod, iPhone, and iTunes, and conspired to commercialize them without compensating Plaintiff.

Presently before the Court is Defendants Apple and Jobs’ Motion to Dismiss and for an Order Enjoining Further *Pro Se* Complaints Without Prior Judicial Authorization.¹ The Court conducted a hearing on May 10, 2010. Based on the papers submitted to date and oral argument, the Court GRANTS Defendants’ Motion.

¹ (hereafter, “Motion,” Docket Item No. 22.)

1 **II. BACKGROUND**

2 **A. Factual Allegations**

3 In a Complaint filed on January 29, 2010,² Plaintiff alleges as follows:

4 In August, 1989, Plaintiff won the Congressional Art Award in the Seventeenth
5 Congressional District Arts Competition sponsored by Congressman William Lehman.
6 (Complaint at 3.) A reception was held for Plaintiff in Washington, D.C., where he was
7 honored by Congressman Lehman and film stars Robert Downey, Jr. and Defendant Parker.
8 (Id. at 3-4.) At the reception, Plaintiff confided in the Congressman that Plaintiff would be
9 contacting the Federal Bureau of Investigation (“FBI”) to disclose his trade secrets, which
10 Plaintiff believed to constitute issues of national security. (Id. at 4.) Plaintiff requested that
11 the Congressman invest in him by providing oversized canvases, a professional sketch book,
12 supplies, and shatterproof framing in which Plaintiff could record the trade secrets. (Id.)
13 Plaintiff’s trade secrets included, among other things, the portable digital media device iPod,
14 the music management software application process iTunes, what Plaintiff referred to as an
15 iPhone, and iBOONKA!, a cartoon character used as a mobile Smart Toy. (Id.) Plaintiff
16 also requested that the FBI seize the art that he created at New World School of the Arts
17 between 1990 and 1991 that portrayed these trade secrets. (Id.) Plaintiff then created the
18 oversized art and sketch book of his trade secrets during 1990 to 1991, which persons
19 representing themselves as FBI agents then seized. (Id. at 5.) Many years between 1990 and
20 2002, Plaintiff continued to contact the FBI to document and report his trade secrets,
21 business intentions, planned alliances to commercialize, and the theft of his intellectual
22 property rights. (Id.) Defendants misappropriated Plaintiff’s trade secrets created from 1990
23 to 1991 to create a sleek and “sexy” bundle of digital media devices and software
24 applications. (Id. at 10.)

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27 ² (Complaint for Trade Secret Misappropriation, RICO, Copyright Infringement, Injunctive
28 Relief, and Breach of an Oral Contract Made in Florida, hereafter, “Complaint,” Docket Item No. 1.)

1 City of Los Angeles, 828 F.2d 556, 561 (9th Cir. 1987). Any existing ambiguities must be resolved
2 in favor of the pleading. Walling v. Beverly Enters., 476 F.2d 393, 396 (9th Cir. 1973).

3 However, mere conclusions couched in factual allegations are not sufficient to state a cause
4 of action. Papasan v. Allain, 478 U.S. 265, 286 (1986); see also McGlinchy v. Shell Chem. Co., 845
5 F.2d 802, 810 (9th Cir. 1988). The complaint must plead “enough facts to state a claim for relief
6 that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim is
7 plausible on its face “when the plaintiff pleads factual content that allows the court to draw the
8 reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 129
9 S. Ct. 1937, 1949 (2009). Thus, “for a complaint to survive a motion to dismiss, the non-conclusory
10 ‘factual content,’ and reasonable inferences from that content, must be plausibly suggestive of a
11 claim entitling the plaintiff to relief.” Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009).
12 Courts may dismiss a case without leave to amend if the plaintiff is unable to cure the defect by
13 amendment. Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000).

14 “[D]ocuments whose contents are alleged in a complaint and whose authenticity no party
15 questions, but which are not physically attached to the pleading, may be considered in ruling on a
16 Rule 12(b)(6) motion to dismiss.” Fecht v. Price Co., 70 F.3d 1078, 1080 (9th Cir. 1995).

17 **IV. DISCUSSION**

18 Defendants move to dismiss Plaintiff’s Complaint on multiple grounds. Since Section
19 1915(e) may be dispositive, the Court considers this ground first.

20 **A. 28 U.S.C. § 1915(e)**

21 Defendants move to dismiss Plaintiff’s claims on the ground, *inter alia*, that they are
22 frivolous under 28 U.S.C. 1915(e). (Motion at 3.) Plaintiff responds that the government certifies
23 the existence of information and records proving Plaintiff’s case.³

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26 ³ (Response in Opposition to the Defendants “Apple” and “Jobs” Motion to Dismiss and
27 Motion for an Order Enjoining further *Pro Se* Complaints without Prior Judicial Authorization at 27,
28 hereafter, “Opposition,” Docket Item No. 52.)

1 Pursuant to 28 U.S.C. § 1915(e)(2)(B), the court must dismiss an *in forma pauperis*
2 complaint at any time if the court determines that it “is frivolous or malicious, fails to state a claim
3 on which relief may be granted, or seeks monetary relief against a defendant who is immune from
4 such relief.” “[A] finding of factual frivolousness is appropriate when the facts alleged rise to the
5 level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts
6 available to contradict them.” Denton v. Hernandez, 504 U.S. 25, 33 (1992). When reviewing a
7 complaint for frivolity, a trial court may “pierce the veil of the complaint’s factual allegations and
8 dismiss those claims whose factual contentions are clearly baseless.” Neitzke v. Williams, 490 U.S.
9 319, 325 (1989).

10 Here, Plaintiff alleges:

11 In 1989 and years after, Plaintiff developed a friendship with Parker and was graced
12 with her appearance at New World School of the Arts, Norland Senior High School, the
University of Florida, and on Plaintiff’s internships while he attended college.

13 Plaintiff made a trade secret deal with Parker to commercialize his trade secrets iPod,
iTunes, the iPhone, and other products and brands that Plaintiff created.

14 Defendants’ actions by transmitting, manufacturing, and selling Plaintiff’s trade
secrets has threatened the financial stability of the broadcasting, digital media device, and
software industries and has undermined the Constitution of the United States.

15 Plaintiff’s trade secret ergonomic designs, techniques and processes were
16 misappropriated and incorporated in the products to create a sleek and “sexy” bundle of
digital media devices and software applications that would make it effortless to
17 communicate, carry, manage, access, and use digital information. Plaintiff’s detailed trade
secret product specifications and marketing method was communicated by Parker to Jobs,
and employed in the open market by Apple.

18 (Complaint at 5-8.)

19 Based on the allegations above and similar factual allegations throughout the Complaint, the
20 Court finds that Plaintiff’s Complaint is frivolous. Plaintiff’s allegations rise to the level of the
21 irrational and wholly unbelievable.⁴ Even if the Court construes Plaintiff’s allegations liberally and
22 take as true that Plaintiff has talent, as evidenced by his art award at age fifteen, it is wholly
23 unbelievable that from 1989 to 1991 he was able to befriend Parker, contact the FBI, and create the
24 entire line of iPods and iPhones, including their respective marketing campaigns. (See Complaint.)
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26
27 ⁴ See Denton, 504 U.S. at 33.

1 It is also unbelievable that the FBI, after being contacted by Plaintiff, confiscated his trade secrets
2 for national security purposes. (See id.)

3 Plaintiff's allegations are similar to those that have been found frivolous by multiple district
4 courts within the Ninth Circuit.⁵ In these actions, the court labeled a complaint frivolous when there
5 were multiple unbelievable or delusional elements.⁶ Similar to these cases, Plaintiff alleges a string
6 of unbelievable facts that grows with each successive pleading. Not only has Plaintiff claimed that
7 he invented the iPod, but also that he had a contract with a major film star to sell the idea to Apple
8 ten years after the agreement. (Complaint at 6.) In his Opposition, Plaintiff now claims that in 1992
9 he created a computer game that could track terrorists and that he warned the FBI of a plan to attack
10 the United States using commercial airliners. (Opposition at 11 n.1.) Further, in his Opposition,
11 Plaintiff represents that he has a secret deal with the FBI based on his creation of the algorithm
12 behind Google's web search. (Opposition at 11-12.) Since these claims are all unbelievable and
13 irrational, the Court must dismiss Plaintiff's claims as frivolous. 28 U.S.C. § 1915(e)(2)(B)(i).

14 Accordingly, the Court GRANTS Defendants' Motion to Dismiss. Since Plaintiff's claims
15 are patently frivolous, the Complaint is dismissed with prejudice.⁷

17 ⁵ Disney v. Brown, 2006 U.S. Dist. LEXIS 87595 (E.D. Cal. Dec. 1, 2006) (labeling as
18 frivolous plaintiff's claim that he designed and patented the Great Seal of California in 1972; that
19 Jerry Brown, the governor, was impressed with his design and offered to pardon plaintiff if he ever
20 went to prison, in exchange for a sum of money); Griffin v. Metro. Det. Ctr., No. CV 10-1658-PA,
21 2010 U.S. Dist. LEXIS 32650 (C.D. Cal. Apr. 2, 2010) (labeling as frivolous plaintiff's claims that
22 federal agents are using a chemically implanted device to torture, rape and otherwise harm him);
23 Wollner v. Bush, 2009 U.S. Dist. LEXIS 41953 (D. Ariz. Apr. 29, 2009) (labeling as frivolous
24 plaintiff's claim that he should have been compensated for the plan he sent to Laura Bush, entitled
25 "The Ultimate Solution for Terrorism," that would defeat and subdue terrorism); Watkins v. Nippy,
26 Inc., 1993 U.S. Dist. LEXIS 17025 (D. Haw. Mar. 26, 1993) (labeling as frivolous plaintiff's claims
27 of copyright infringement of her poems by multiple recording artists after filing nineteen actions in
28 two weeks).

⁶ See note 5.

⁷ Plaintiff's claims, even if non-frivolous, would be barred. Under California's Uniform
Trade Secrets Act, an action for misappropriation of a trade secret must be brought "within three
years after the misappropriation is discovered or by the exercise of reasonable diligence should have
been discovered." Cal. Civ. Code § 3426.6. Since Plaintiff would have been on notice that his trade
secrets were being used when the first iPod was released in 2001, his trade secret misappropriation
claims are time-barred.

1 **B. Vexatious Litigant**

2 Defendants move the Court to enter an order prohibiting Plaintiff from filing *pro se* cases in
3 this district on the ground that he is a vexatious litigant. (Motion at 23.) Plaintiff responds that his
4 losing every one of his previous cases does not mean that they were without merit. (Opposition at
5 28.)

6 The All Writs Act, 28 U.S.C. § 1651, vests federal courts with the discretion to enjoin certain
7 litigants from engaging in wasteful litigation. Clinton v. United States, 297 F.2d 899, 901 (9th Cir.
8 1961). A court may exercise its discretion to prevent litigants from subjecting others to “repeated,
9 baseless and vexatious suits at law on some particular subject matter.” Id. at 901 (quoting First State
10 Bank v. Chicago R.I. & P.R. Co., 63 F.2d 585 (8th Cir. 1933) and Lee v. Bickell, 292 U.S. 415, 421
11 (1934)). Under the statute, a court may restrict litigants with abusive and lengthy histories from
12 submitting future filing of actions or papers provided that the court: (1) gives the litigant an
13 opportunity to oppose the order before it is entered; (2) creates an adequate record for review; (3)
14 makes substantive findings as to the frivolous or harassing nature of the litigant’s actions; and (4)
15 drafts a sufficiently detailed order. De Long v. Hennessey, 912 F.2d 1144, 1145-48 (9th Cir. 1990).

16 **1. Opportunity to Oppose Order**

17 Defendants contend that Plaintiff has had an opportunity to oppose this Order on the ground
18 that he has been served with the Motion which has the specific request for the Court to declare
19 Plaintiff vexatious. (Motion at 23.)

20 The De Long court has emphasized that a litigant must be given an opportunity to oppose the
21 order before it is entered. See De Long, 912 F.2d at 1147.

22 _____
23 The limitations period for a RICO claim is four years. Grimmett v. Brown, 75 F.3d 506, 511
24 (9th Cir. 1996). Here, assuming a RICO claim existed, Plaintiff should have known of his injury on
25 October 27, 2006, when he received the letter from Parker’s attorney communicating Parker’s lack
26 of recollection of an agreement with Plaintiff after the iPod had been released. (Complaint at 6.)
27 Thus, Plaintiff’s RICO claim is time barred.

28 Further, Plaintiff’s contract claim is barred by the statute of frauds. An oral agreement
lasting beyond one year is unenforceable under Florida’s Statute of Frauds. Fla. Stat. § 725.01.
Here, Plaintiff alleges he made an oral agreement with Parker that was to last from 1999 until at
least 2007. (See Complaint at 6, 10-12.)

1 Here, Plaintiff was given an opportunity to oppose the Order. On April 19, 2010, Plaintiff
2 filed an Opposition with the Court. (See Docket Item No. 52.) In his Opposition, Plaintiff
3 specifically addresses Defendants' Motion, contending that losing a lawsuit does not mean that the
4 suit was meritless. (Opposition at 28.) Thus, the Court finds that Plaintiff has been afforded an
5 opportunity to oppose the Motion.

6 **2. Adequate Record for Review and Substantive Findings**

7 Defendants contend that a record exists showing that Plaintiff has a history of filing frivolous
8 or harassing litigation. (Motion at 30.)

9 The De Long court indicated that the record for review needs to show in some manner "the
10 litigant's activities were numerous or abusive." De Long, 912 F.2d at 1147. Before the court can
11 issue a pre-filing injunction against a *pro se* litigant, it must make "substantive findings as to the
12 frivolous or harassing nature of the litigant's actions." Id. at 1148. A court is not limited to the
13 consideration of a litigant's activities within its district. See Molski v. Evergreen Dynasty Corp.,
14 500 F.3d 1047, 1059 (9th Cir. 2007) (finding that a district court in the Central District of California
15 court created a proper record by discussing suits filed in the Northern District of California to find
16 plaintiff vexatious); Buesgens v. Travis County, Texas, No. 07-0427-SS, 2007 U.S. Dist. LEXIS
17 98146 (W.D. Texas June 20, 2007) (considering suits filed in Oregon, Maryland, Washington, D.C.
18 and Texas to find plaintiff vexatious).

19 Here, Plaintiff has already been sanctioned and labeled a vexatious litigant in the Southern
20 District of Florida.⁸ Plaintiff began filing his actions in 2005 and has filed numerous frivolous
21 actions in the district courts, appealing all cases to the point of seeking writs of certiorari. (See RJN,

22
23 ⁸ (Request for Judicial Notice in Support of Defendants Apple, Inc. and Steve Jobs' Motion
24 to Dismiss and for an order Enjoining Further *Pro Se* Complaints without Prior Judicial
25 Authorization, Ex. 6, hereafter, "RJN," Docket Item No. 23-6 (Plaintiff was levied with over
26 \$20,000 in sanctions before being labeled vexatious).) The Court GRANTS Defendants' Request
27 for Judicial Notice on the ground that Exhibits 1-45 attached to Defendants' Request for Judicial
28 Notice are public documents that are capable of accurate and ready determination by resort to
sources whose accuracy cannot reasonably be questioned. See Fed. R. Evid. 201(b).

Plaintiff has also filed a suit identical to the one at bar in the Central District of California
that has been transferred to this Court and dismissed as duplicative. (See Case No.
09-cv-05779-HRL, Docket Item No. 8.)

1 Exs. 1-45.) Plaintiff has a history of filing actions against individuals that he comes into contact
2 with in person or sees on film or television, claiming harm to himself and his companies.⁹ In fact,
3 based on Plaintiff's prior pattern of litigation, in his Opposition, he seems to be planning an action
4 against Google. (See Opposition at 11-12.) This is apparent because Plaintiff has sued companies
5 mentioned in his declaration from a prior case, in which he stated his intentions to sue Apple,
6 Disney, and numerous other defendants that he believes to have stolen his ideas for software,
7 hardware, television shows, and songs.¹⁰ None of Plaintiff's actions have been decided in his favor.
8 (See RJN, Exs. 1-45.) Further, Plaintiff's damages claims have been frivolous because his requests,
9 even for the most minimal harm, are all for at least thirty-five million dollars, with most reaching
10 near or over a billion dollars.¹¹ (RJN, Exs. 2, 12, 23, 28, 31, 35; see also Complaint.)

11 In sum, the Court finds there is an adequate record for its review and to make substantive
12 findings as to the frivolous and harassing nature of Plaintiff's claims here and in prior actions.
13 Plaintiff's actions are all based in a world of fantasy, where Plaintiff's ideas do not match up with
14 reality. (See RJN, Exs. 2, 12, 23, 28, 31, 35; Complaint; Opposition.)

15 3. Breadth of the Order

16 The De Long court emphasized that a court's order limiting a litigant's access to the courts
17 "must be narrowly tailored to closely fit the specific vice encountered." De Long, 912 F.2d at 1148.
18 More recently, the Ninth Circuit has held that when prefiling requirements are imposed, a court can
19 "preclude a litigant from proceeding . . . when it is clear from the face of the [plaintiff]'s pleadings
20 that . . . the facts presented are fanciful or in conflict with facts of which the court may take judicial
21 notice." In re Thomas, 508 F.3d 1225, 1227 (9th Cir. 2007) (upholding the Circuit's prefiling

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23 ⁹ (See, e.g., RJN, Exs. 11-21 (Plaintiff brought suit against Disney implicating Eva
24 Longoria, a star of ABC's "Desperate Housewives," as a confidant of Plaintiff's to whom he
allegedly trusted such secrets as the idea for "Desperate Housewives" itself).)

25 ¹⁰ (Declaration of Plaintiff Franz A. Wakefield in Support of his Response in Opposition,
26 Ex. 4, Docket Item No. 33.)

27 ¹¹ Plaintiff requested \$30,500,000.00 in a case where Plaintiff alleged that a police officer
28 should not have given him a traffic ticket for an expired vehicle registration. (RJN, Ex. 28.)

1 requirements as narrowly tailored when the appellant could not file an appeal unless he (1) appeared
2 through counsel, (2) the district court certified that his appeal was taken in good faith, or (3) the
3 Circuit determined that the appeal or petition had sufficient merit to proceed). Here, the Court finds
4 that monetary sanctions are insufficient to deter Plaintiff from filing frivolous suits. (See RJN, Ex.
5 6.)

6 Accordingly, the Court GRANTS Defendants' Motion for an Order Enjoining Further *Pro Se*
7 Complaints without prior judicial authorization.

8 **V. CONCLUSION**

9 The Court GRANTS Defendants' Motions to Dismiss and for an Order Enjoining Further
10 *Pro Se* Complaints Without Prior Judicial Authorization. For the reasons stated above, Plaintiff
11 Franz A. Wakefield is declared a vexatious litigant.¹²

12 Accordingly, the Court hereby orders that the Clerk of this Court shall not accept for filing
13 any *pro se* action by Plaintiff Franz A. Wakefield in the United States District Court for the
14 Northern District of California until such complaint has been subjected to pre-filing review by a
15 Judge of this Court. To obtain the approval of the Court to file a *pro se* action, Plaintiff must first
16 file with the Court an application which shall include the proposed complaint and (i) the evidence
17 that supports the allegations in the complaint or (ii) in the absence of such evidence, a declaration
18 setting forth a good faith basis for concluding that Plaintiff could obtain the evidence necessary to
19 support his allegations. In deciding whether to allow Plaintiff to proceed with any new action, the
20 Court will consider whether the new action raises any non-frivolous or plausible issues. The Court
21 may, in its discretion, require that Plaintiff post a bond in the amount of the fees and costs that the
22 defendants will likely incur in defending against the action. This Order shall remain in effect for ten
23 (10) years unless further modified by this Court upon duly noticed motion or Order to Show Cause.

24 _____
25 ¹² In light of this Order, the Court DENIES as moot Defendant Sarah Jessica Parker's
26 Motion to Dismiss and for an Order Enjoining Further *Pro Se* Complaints Without Prior
27 Authorization. (Docket Item No. 45.) Accordingly, the Court VACATES the hearing on Defendant
28 Parker's Motion set for June 21, 2010. Defendant Parker's Motion to Appear by telephone is
DENIED as moot. (Docket Item No. 73.)

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Judgment shall be entered in favor of Defendants against Plaintiff.

Dated: June 15, 2010



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Emily L. Maxwell Maxwelle@howrey.com
3 Ronald D. Arena rarena@arenahoffman.com

4 Franz A Wakefield
5 17731 North West 14th Court
6 Miami, FL 33169

7
8 **Dated: June 15, 2010**

Richard W. Wieking, Clerk

9
10 **By: /s/ JW Chambers**
11 **Elizabeth Garcia**
12 **Courtroom Deputy**

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