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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JEREMIAH W. BALIK,  
Plaintiff,  
v.  
CITY OF CEDAR FALLS, et al.,  
Defendants.

Case No. 16-CV-04070-LHK  
**ORDER DENYING MOTION TO  
RECUSE, QUASHING ALL  
SUBPOENAS, AND DISMISSING CASE  
WITH PREJUDICE**  
Re: Dkt. Nos. 10, 14, 16, 19, 21, 23, 29, 31,  
32, 34, 40, 44, 45, 46, 51, 53, 54, 55, 61 &  
62, 65

Plaintiff Jeremiah Balik (“Plaintiff”) brings this action against the City of Cedar Falls, Iowa; the City of San Jose, California; the City of Ventura, California; the City of Santa Clara, California; the Los Angeles County Sheriff’s Department; the Santa Barbara County Sheriff’s Department; the San Diego County Sheriff’s Department; and Next Generation Wireless (collectively, “Defendants”).

The crux of Plaintiff’s complaint is that Chicago Mayor Rahm Emanuel (“Emanuel”) and U.S. Congressman Fred Upton (“Upton”) have led a nationwide scheme to deter Plaintiff from pursuing his girlfriend, supermodel Samantha Hoopes (“Hoopes”). ECF No. 1 at 9. Emanuel,

1 Upton, and Hoopes are not parties in the instant action.

2 Before the Court is Plaintiff’s motion to recuse, which Plaintiff filed on August 31, 2016.  
3 ECF No. 61 (“Mot.”). Plaintiff also filed on August 31, 2016 a proposed subpoena to an  
4 unidentified Los Angeles Police Department officer and on September 1, 2016 a proposed  
5 subpoena to Instagram HQ. ECF Nos. 62, 65.

6 Having considered the motion and proposed subpoenas, the relevant law, and the record in  
7 this case, the Court DENIES Plaintiff’s motion to recuse and QUASHES Plaintiff’s two  
8 subpoenas. The Court also reiterates that the previous 18 subpoenas that Plaintiff filed in this  
9 action are QUASHED and are thus without any legal effect. Finally, the Court DISMISSES the  
10 instant action with prejudice.

11 **I. BACKGROUND**

12 On July 20, 2016, Plaintiff filed the complaint in this action. ECF No. 1. On this same  
13 date, Plaintiff also filed an application to proceed in forma pauperis. ECF No. 2.

14 On August 26, 2016, the Court denied Plaintiff’s in forma pauperis application. The Court  
15 determined that Plaintiff was both (1) able to pay the \$400.00 fee to file a civil action in the  
16 Northern District of California and (2) that Plaintiff’s complaint was factually and legally  
17 frivolous. ECF No. 58. On the issue of frivolousness, the Court explained that Plaintiff had “filed  
18 five other actions in federal courts in California. Like the instant case, the crux of these five  
19 actions has been that Emanuel and Upton have worked together to prevent or deter Plaintiff from  
20 pursuing his alleged girlfriend, Hoopes.” *Id.* at 8. “In these five actions, Plaintiff provided no  
21 evidence of this nationwide scheme, and all five district courts found Plaintiff’s claims to be  
22 meritless.” *Id.* “Plaintiff likewise has pointed to no such evidence of a nationwide scheme by  
23 Emanuel and Upton in the instant case.” *Id.*

24 In addition to denying Plaintiff’s application to proceed in forma pauperis, the Court also  
25 noted that Plaintiff’s complaint appeared to implicate issues of misjoinder and improper venue.  
26 Accordingly, the Court directed Plaintiff to contact Kevin Knestrick, the staff attorney for the  
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1 Federal Pro Se Program, to file an amended complaint “that cures its factual and legal  
2 frivolousness and addresses the misjoinder, venue, and other issues raised” in the Court’s August  
3 26, 2016 Order. *Id.* at 10.

4 The Court’s August 26, 2016 Order also denied Plaintiff’s motion for an injunction against  
5 California Governor Jerry Brown and Plaintiff’s motion for an order of removal of a traffic ticket  
6 that Plaintiff received in Santa Clara County. *Id.* at 11. The Court also quashed 18 proposed  
7 subpoenas that Plaintiff had filed. These subpoenas, like Plaintiff’s complaint, were legally and  
8 factually frivolous. *See id.* (describing subpoena directed to Piquito Mas Chatsworth, a Mexican  
9 restaurant).

10 Finally, the Court noted that Plaintiff had “repeatedly attempted to set hearing dates on  
11 motions and other matters without the Court’s permission or approval,” in violation of the Court’s  
12 standing order. Moreover, Plaintiff had sent postcards and multiple emails daily to the Courtroom  
13 Deputy and Clerk’s Office. Many of these communications were ex parte and addressed  
14 substantive case matters, in violation of Civil Local Rule 11-4(c). *See* Civil L.R. 11-4(c) (“[A]n  
15 attorney or party to an action must refrain from making telephone calls or writing letters or  
16 sending copies of communications between counsel to the assigned Judge or the Judge’s law  
17 clerks or otherwise communicating with a Judge or the Judge’s staff regarding a pending matter,  
18 without prior notice to opposing counsel.”); *see id.* (allowing parties to contact Courtroom Deputy  
19 solely for non-substantive scheduling matters).

20 The Court’s August 26, 2016 Order was not the first time that the Court had warned  
21 Plaintiff that his actions violated the Civil Local Rules and the Court’s standing order—the Court  
22 had already done so on three prior occasions.

23 Indeed, Plaintiff has repeatedly sent improper communications to the Courtroom Deputy  
24 and Clerk’s Office ever since Plaintiff filed his case on July 20, 2016. Thus, on August 9, 2015,  
25 the Court issued an order which stated that Plaintiff’s emails were ex parte communications and  
26 that Plaintiff should contact the Courtroom Deputy only for non-substantive scheduling

1 communications. Moreover, any such contact must, consistent with the Civil Local Rules, include  
2 opposing counsel.

3 Plaintiff did not comply with the Court’s August 9, 2016 Order, and continued to send ex  
4 parte communications daily to the Courtroom Deputy. Accordingly, on August 16, 2016, the  
5 Court issued a second order reiterating that Plaintiff could not send ex parte communications to  
6 the Courtroom Deputy, and that Plaintiff should only communicate with the Courtroom Deputy on  
7 non-substantive scheduling matters. ECF No. 36 at 1.

8 Plaintiff continued to send improper emails to the Courtroom Deputy. The only apparent  
9 change that Plaintiff made was to include Santa Clara City government officials on his emails to  
10 the Courtroom Deputy. *See, e.g.*, ECF No. 42-1 at 2. The City of Santa Clara, although named as  
11 a Defendant in Plaintiff’s complaint, has not been served, and no counsel has appeared on the City  
12 of Santa Clara’s behalf. Moreover, Plaintiff’s emails did not address non-substantive scheduling  
13 matters, but instead were “substantive correspondences about case management.” ECF No. 42 at  
14 1. Accordingly, the Court issued a third order on August 23, 2016 which emphasized that  
15 Plaintiff’s “communications with the Courtroom Deputy should be limited in scope to non-  
16 substantive scheduling communications that include opposing counsel.” *Id.*

17 Notwithstanding the Court’s August 9, 16, and 23, 2016 Orders, Plaintiff continued to send  
18 the Courtroom Deputy improper emails. Thus, on August 26, 2016, the Court reiterated that  
19 Plaintiff was “to only contact the Courtroom Deputy for non-substantive scheduling matters, and  
20 to include opposing counsel on all such communications.” ECF No. 58 at 13. Moreover, the  
21 Court warned Plaintiff that “[i]f Plaintiff continue[d] to violate the Court’s orders, the Court can  
22 and will, in its discretion, dismiss this action with prejudice.” *Id.* (citing *Ferdik v. Bonzelet*, 963  
23 F.2d 1258, 1260 (9th Cir. 1992) (“[T]he district court may dismiss an action for failure to comply  
24 with any order of the court.”)).

25 **II. DISCUSSION**

26 **A. Motion to Recuse**

1 After acknowledging receipt of the Court’s August 26, 2016 Order, ECF No. 59, Plaintiff  
2 continued to send the Courtroom Deputy improper emails. On August 28, 2016, for instance,  
3 Plaintiff sent the following email:

4 Gov. Brown/Santa Clara City Attny,  
5 See you October 6th per motion hearing.  
6 San Jose City Attorney, nothing wrong with my process service—made Sen  
7 Feinstein aware of situation. See reply – plus Twitter post. Thanks  
8 Respectfully submitted,

9 ECF No. 59-3. Plaintiff included the following email addresses in his August 26, 2016 email:  
10 richard.doyle@sanjoseca.gov, governor@governor.ca.gov, CityAttorney@santaclaraca.gov,  
11 lhkcrd@cand.uscourts.gov, claudia.ericksen@cco.sccgov.org, jlyons@schronicle.com,  
12 jltorders@caed.uscourts.gov, carson\_niello@feinstein.senate.gov, BChoi@cityofsantacruz.com.  
13 None of these emails belong to parties in this case, and there is no October 6 motion hearing.

14 Next, on August 30, 2016, Plaintiff sent the following email:

15 [https://en.m.wikipedia.org/wiki/Mariano-Florentino\\_Cuellar](https://en.m.wikipedia.org/wiki/Mariano-Florentino_Cuellar)  
16 Stacy this seems like a conflict to me, im at odds with President Obama. (he wrote  
17 a letter of recommendation for me) Additionally I’m not dating Samantha  
18 Hoopes per SBSC #15cv02604 & Rahm Emanuel & FRED Upton are implicated  
19 in LASC cases #15K05516 & #15K04655.  
20 Perhaps a different Judge would be best. Thanks  
21 Best,

22 Plaintiff included the following email addresses in his August 30, 2016 email:

23 lhkcrd@cand.uscourts.gov, gary\_fisher@grassley.senate.gov,  
24 zachariah\_beck@grassley.senate.gov. None of these emails belong to parties in this case.<sup>1</sup>

25 On August 31, 2016, Plaintiff filed a motion to recuse the undersigned judge. ECF No. 61.  
26 Plaintiff states that he is prejudiced because the undersigned judge is married to a California  
27 Supreme Court justice, the undersigned judge has been nominated to the Ninth Circuit, and  
28 Plaintiff is connected with President Barack Obama, U.S. Senator Dick Durbin, and U.S. Senator

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<sup>1</sup> Plaintiff has sent at least seven other improper emails since August 26, 2016. See ECF No. 59; ECF No. 63.

1 Charles Grassley. *Id.* at 2.

2 Plaintiff's motion to recuse is improper. First, the Court has denied Plaintiff's application  
3 to proceed in forma pauperis. In order to proceed with this case, Plaintiff was required to pay the  
4 \$400.00 filing fee. Plaintiff had not done so at the time Plaintiff filed the motion to recuse.<sup>2</sup> Thus,  
5 as a matter of law, Plaintiff could not have filed the motion to recuse when he did so. Second,  
6 Plaintiff's motion is without merit. Moreover, no member of the California Supreme Court is a  
7 party to this case, nor are President Obama, Senator Durbin, and Senator Grassley parties to this  
8 case. For all of these reasons, Plaintiff's motion to recuse is DENIED.

9 **B. Subpoenas**

10 In the Court's August 26, 2016 Order, the Court quashed all 18 proposed subpoenas that  
11 Plaintiff had filed. As the Court explained, these subpoenas were factually and legally frivolous.  
12 The subpoenas refer to the nationwide scheme orchestrated by Emanuel and Upton against  
13 Plaintiff. In a proposed subpoena to Instagram HQ, for instance, Plaintiff stated that "Samantha  
14 Hoopes posted photo could be construed as a 'Hate Crime' under California PC 422.55, although  
15 super model Samantha Hoopes was probably just an expression of her protected 'free speech'  
16 [clause] under the 1st Amendment – See Attachment 1." ECF No. 55 at 1; *see also id.* at 2  
17 (Attachment 1, which reads that "Plaintiff was dating Samantha Hoopes – conspirators Mayor  
18 Rahm Emanuel and US Rep Fred Upton et al had Plaintiff locked out of Plaintiff's Instagram  
19 account and censored."). These proposed subpoenas also commanded parties to appear at the  
20 Court's courtroom on a particular date and time. The Court has never granted Plaintiff access to  
21 its Courtroom for subpoena-related matters.

22 In spite of the Court's August 26, 2016 Order, Plaintiff has continued to file frivolous  
23 subpoenas. On August 31, 2016, Plaintiff filed a proposed subpoena for an "unidentified Los  
24 Angeles Police Dept." officer. ECF No. 62 at 1. Plaintiff's proposed subpoena reads: "Did Mayor  
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26 <sup>2</sup> Plaintiff filed the motion to recuse on August 31, 2016. ECF No. 61. Plaintiff paid the filing fee  
27 on September 1, 2016. ECF No. 66.

1 Rahm Emanuel/Rep Fred Upton prompt officer to unlawfully patrol Plaintiff August 22nd, 2106  
2 [sic] at or around 5 AM – 5:15 AM Topanga Canyon (27) and Roscoe Blvd? What was were you  
3 doing early in AM?” *Id.* This August 31, 2016 subpoena requests that the party appear in this  
4 Court’s courtroom on October 20, 2016, at 2:00 p.m. *Id.*

5 On September 1, 2016, Plaintiff filed another proposed subpoena, this time again to  
6 Instagram HQ. ECF No. 65. This subpoena requests the party to “[s]end requested photo from  
7 Samantha Hoopes IG archives.” *Id.* at 1. The subpoena also refers to the scheme by Emanuel and  
8 Upton to deter Plaintiff from pursuing Hoopes. *Id.* at 2. The September 1, 2016 subpoena  
9 requests that the party appear in this Court’s courtroom on October 20, 2016, at 2:00 p.m. *Id.*

10 Plaintiff’s August 31, 2016 and September 1, 2016 subpoenas, just like his previous  
11 subpoenas, are frivolous and are therefore QUASHED. As with the other 18 subpoenas, the Court  
12 has never granted Plaintiff access to the Court’s courtroom for subpoena-related matters. The  
13 Court also reiterates that all proposed subpoenas in this case are QUASHED and are without legal  
14 effect. *See* ECF Nos. 10, 14, 16, 19, 21, 23, 29, 31, 32, 34, 40, 44, 45, 46, 51, 53, 54, 55, 62, 65.

15 **C. Dismissal with Prejudice**

16 Finally, under Ninth Circuit precedent, “the district court may dismiss an action for failure  
17 to comply with any order of the court.” *Ferdik*, 936 F.2d at 1260. “In determining whether to  
18 dismiss a case for failure to comply with a court order, the district court must weigh five factors  
19 including: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to  
20 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
21 disposition of cases on their merits; and (5) the availability of less drastic alternatives.” *Id.* at  
22 1260–61. As discussed below, these factors favor dismissal of this action with prejudice.

23 **1. Expeditious Resolution of Litigation**

24 As to the first factor, the expeditious resolution of litigation, Plaintiff has now filed six  
25 lawsuits in federal district courts across California. All of these lawsuits allege a nationwide  
26 scheme by Chicago Mayor Rahm Emanuel and U.S. Congressman Fred Upton to prevent Plaintiff  
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1 from pursuing his super model girlfriend, Samantha Hoopes. Every court to have reviewed these  
2 allegations has found them to be meritless.

3 In the instant case, the Court advised Plaintiff to file an amended complaint curing its  
4 factual and legal frivolousness and addressing misjoinder, improper venue, and other issues. The  
5 Court denied Plaintiff’s various motions and quashed Plaintiff’s proposed subpoenas, finding  
6 these motions and subpoenas to be improper and meritless. The Court also instructed Plaintiff, on  
7 four separate occasions, to cease sending the Clerk and the Courtroom Deputy emails in violation  
8 of the Civil Local Rules and the Court’s standing order. The Court invited Plaintiff to contact a  
9 staff attorney at the Federal Pro Se Program to assist Plaintiff with this litigation. The Court’s  
10 actions have all sought to move this litigation forward in a judicious and efficient manner.

11 Plaintiff, however, has repeatedly failed to comply with the Court’s rulings. Plaintiff has  
12 continued to send emails to the Clerk and Courtroom Deputy which violate the Civil Local Rules  
13 and the Court’s standing order. Plaintiff has continued to file frivolous subpoenas—on August 31,  
14 2016 and September 1, 2016, to an “unidentified Los Angeles Police Dept.” officer and Instagram  
15 HQ, respectively. Both of these subpoenas refer to the nationwide scheme allegedly organized by  
16 Emanuel and Upton. Plaintiff has also filed a meritless motion to recuse the undersigned judge.  
17 ECF No. 61. The foregoing actions, along with the numerous subpoenas and motions that  
18 Plaintiff has previously filed, demonstrate that Plaintiff has thwarted the Court’s efforts to  
19 efficiently adjudicate this case.

20 **2. Docket Management**

21 Second, the Court’s need to manage its own docket weighs strongly in favor of dismissal.  
22 This is now at least the sixth time that a federal court has dedicated resources to addressing  
23 Plaintiff’s factually and legally frivolous claims. As the Ninth Circuit has noted, “[f]lagrant abuse  
24 of the judicial process cannot be tolerated because it enables one person to preempt the use of  
25 judicial time that properly could be used to consider the meritorious claims of other litigants.” *De*  
26 *Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990). It is clear that allowing Plaintiff to  
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1 proceed with this action would only result in additional abuse of the judicial process and take up  
2 valuable and scarce judicial resources.

3 Indeed, in the six weeks since Plaintiff filed the complaint in the instant case, Plaintiff has  
4 already filed 3 meritless motions and 20 meritless subpoenas. Plaintiff has already sent numerous  
5 emails, postcards, and other correspondence to the Clerk and Courtroom Deputy which violate the  
6 Civil Local Rules and the Court’s standing order. The Court has warned Plaintiff on four separate  
7 occasions—on August 9, 16, 23, and 26, 2016—of Plaintiff’s non-compliance with the Civil Local  
8 Rules and the Court’s standing order. The Court expressly warned, on August 26, 2016, that  
9 continued non-compliance would result in a dismissal of this action with prejudice. Nevertheless,  
10 Plaintiff has continued to send the Courtroom Deputy improper correspondence, has continued to  
11 file meritless subpoenas, and has continued to file meritless motions. These filings tax the Court’s  
12 time and divert the Court’s attention from other matters. *Johns v. Town of Los Gatos*, 834 F.  
13 Supp. 1230, 1232 (N.D. Cal. 1993) (“[F]rivolous claims by a litigious plaintiff may be extremely  
14 costly to defendants and can waste valuable court time.”).

15 **3. Risk of Prejudice to Defendants**

16 Turning to the risk of prejudice to defendants, although Plaintiff paid the filing fee on  
17 September 1, 2016, no defendants have been served. Plaintiff has filed 20 proposed subpoenas.  
18 These subpoenas have prompted some third parties to file a response. *See* ECF No. 62 at 2  
19 (response by Los Angeles Police Department); ECF No. 60 at 5 (response by San Jose City  
20 Attorney’s Office); *id.* at 6 (response by San Diego County Sheriff’s Department). It is  
21 burdensome for these parties to take time to respond to Plaintiff’s factually and legally frivolous  
22 subpoenas. Accordingly, based on the record in this case, Defendants would likely have to  
23 respond to numerous frivolous filings should Plaintiff proceed with this case. Dismissal saves  
24 Defendants from spending time, energy, and resources addressing frivolous matters.

25 **4. Public Policy Favoring Disposition of Case on the Merits**

26 Fourth, the public policy favoring disposition of this case on the merits points towards  
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1 dismissal. The Court has urged Plaintiff to correct the deficiencies in his complaint, which  
2 include, at the very least: (1) factual and legal frivolousness, (2) misjoinder, (3) and improper  
3 venue. The Court has advised Plaintiff to reach out to the Federal Pro Se Program. The Court has  
4 informed Plaintiff that Plaintiff must comply with the Civil Local Rules and the Court's standing  
5 order. The Court has, in short, encouraged Plaintiff to cure the issues with his complaint, to work  
6 within the rules of this District, and to pursue whatever claims he might have on the merits.

7 Plaintiff, however, has ignored the Court's rulings. Plaintiff has repeatedly violated the  
8 Civil Local Rules, has repeatedly filed frivolous subpoenas, and has repeatedly filed frivolous  
9 motions. Nearly all of Plaintiff's filings with the Court and correspondences with the Courtroom  
10 Deputy and Clerk's Office involve a nationwide scheme led by Emanuel and Upton to prevent  
11 Plaintiff from pursuing his super model girlfriend, Hoopes. This Court and other courts have  
12 found such allegations to lack merit, yet Plaintiff has continued to pursue them without pause.

13 **5. Availability of Less Drastic Measures**

14 Finally, the Court has considered the availability of less drastic measures. Since this case  
15 was opened on July 20, 2016, the Court has issued four orders. These orders have admonished  
16 Plaintiff for violating the Civil Local Rules and the Court's standing order. The Court's August  
17 26, 2016 order stated that Plaintiff's allegations were factually and legally frivolous; that there  
18 were a number of deficiencies with Plaintiff's complaint; and that failure to cure these  
19 deficiencies, failure to pay the \$400.00 filing fee, or failure to adhere to the Civil Local Rules or  
20 the Court's standing order would result in a dismissal of this action with prejudice. In addition,  
21 the Court expressly encouraged Plaintiff to reach out to Kevin Knestrick, a staff attorney at the  
22 Federal Pro Se Program, to receive legal assistance. Although Plaintiff has paid the filing fee,  
23 Plaintiff has continued to file meritless motions and frivolous subpoenas and has continued to  
24 violate the Civil Local Rules and the Court's standing order.

25 In sum, having considered the five factors set forth by the Ninth Circuit in *Ferdik*, the  
26 Court finds that dismissal of this action with prejudice is appropriate. The instant case is thus

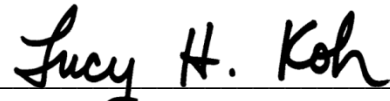
1 DISMISSED WITH PREJUDICE.

2 **III. CONCLUSION**

3 For the foregoing reasons, Plaintiff's motion to recuse, ECF No. 61, is DENIED.  
4 Plaintiff's 20 proposed subpoenas, ECF Nos. 10, 14, 16, 19, 21, 23, 29, 31, 32, 34, 40, 44, 45, 46,  
5 51, 53, 54, 55, 62, 65, are QUASHED. The instant action is DISMISSED WITH PREJUDICE.  
6 The Clerk shall close the file. The Clerk shall not sign any proposed subpoenas in this closed  
7 case.

8 **IT IS SO ORDERED.**

9 Dated: September 1, 2016.



10 \_\_\_\_\_  
11 LUCY H. KOH  
12 United States District Judge