

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

10 | Charles B. Phillips,

11 || Plaintiff,

12 | v.

13 || VA Administration, et al,

14 Defendants.

Case No. 2:15-cv-02024-LDG-GWF

ORDER

16 The plaintiff, Charles Phillips, alleged a number of civil rights violations by
17 defendants. His claims were dismissed in this court when he failed to properly serve the
18 defendants. ECF. No. 112. Phillips has continued to file documents with the court after
19 dismissal, including documents he has titled “Declaration of Rights Biven Agents / Plaintiff
20 as the Appellant’s Opposition to Motion to Dismiss / Motion of Orders to Show Good
21 Cause” (ECF No. 114) and “Declaration of Rights Federal Clerks in Default Summary
22 Judgment / Plaintiff as the Appellant to its Compliance in Motion of Order to Show Cause
23 Based upon the Sudden On Set [sic] Medical Exhibits Evidence Rule 56” (ECF No. 115).
24 Defendants Kevin Collmar, Joseph Lombardo, and J McCrimmon move to strike (ECF No.
25 116) both of these documents as the matter has been closed and judgment has been
26 entered. Defendant Kevin Hagerty joins in this motion (ECF No. 117). Phillips has filed a

1 document in response (ECF No. 118) as well as a document suggesting, in a line above
2 the caption, that it is a motion to strike the defendants' reply (ECF No. 121). The
3 defendants have, in turn, moved to strike this additional document (ECF No. 122), which
4 motion Hagerty has joined (ECF No. 124). Phillips has filed a document in response (ECF
5 No. 126). As with every document filed by Phillips to date, the grounds or basis of the
6 documents are, at best, unclear and largely incoherent.

7 The defendants have moved to deem the plaintiff as a vexatious litigant. ECF No.
8 123). Phillips filed a document in response to the motion. However, as with every
9 document he has filed, Phillips' response does not make clear on what grounds he
10 opposes the motion. ECF No. 126.

11 The Court will grant the defendants' motions to strike and will grant the defendants'
12 motion to deem the plaintiff a vexatious litigant. Consistent with the latter motion, the Court
13 will prohibit Phillips from filing future documents on this case.

14 Defendants' Motions To Strike

15 The defendants move to strike the documents that Phillips has filed subsequent to
16 the court's dismissal of his complaint and entry of judgment. The documents filed by
17 Phillips are largely unintelligible. Construed extremely broadly, they appear to be very
18 untimely, and irrelevant, responses to this Court's order that Phillips to show cause why
19 certain defendants should not be dismissed for his failure to timely serve them. As
20 correctly noted by the defendants, the documents filed by Phillips do not seek relief from
21 the judgment entered by the Court.

22 The defendants also move to strike Phillips' document in which he asserts, above
23 the caption, that the document is a motion to strike defendants' reply to their motion to
24 strike. The defendants broadly construe the contents of this document as a sur-reply filed
25 without leave of the court, and ask that it be stricken as such. The defendants'
26

1 construction of the document is generous, as the Court has difficulty identifying any
2 coherent purpose to the document.

3 The Court will grant the motions to strike. Given the present posture of the case, in
4 which judgment has been entered, the documents filed by Phillips subsequent to the entry
5 of judgment are irrelevant and immaterial, have no purpose, and do not request proper
6 relief.

7 Motion to Deem Plaintiff a Vexatious Litigant

8 The Ninth Circuit has held that the court has “inherent power to enter pre-filing
9 orders against vexatious litigants.” *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047,
10 1057 (9th Cir. 2007) (citing 28 U.S.C. §1651(a)). The Court must consider four factors in
11 determining whether such an order is appropriate: (1) the litigant must be given notice and
12 chance to be heard; (2) the court must compile an adequate record for review; (3) the court
13 must make substantive findings about the frivolous or harassing nature of the plaintiff’s
14 litigation; and (4) any pre-filing order must be narrowly tailored to closely fit the specific vice
15 encountered. *Id.*

16 First, the litigant must be given notice and chance to be heard. This factor clearly
17 favors the defendants, who filed a motion that was clear and unambiguous as to the relief
18 sought. The defendants’ motion was only eight pages long and was not hard to interpret.
19 The plaintiff was provided notice and an opportunity to respond to a clearly written motion
20 seeking to have him declared a vexatious litigant.

21 The Court notes that Phillips filed a document in response to this motion. ECF No.
22 126. The Court must also note that the response does not address the defendants’ motion
23 in any way. Instead he continues to re-allege confusing and largely incoherent claims
24 against Las Vegas Metro police officers. Below are the first two paragraphs from his
25 response:

1 SHERIFF JOESPH LOMBARDO IS THE "REPONDANT
2 SUPERIOR" METROPOLICE ET.AL/METRO JOINTER PATTER
3 OF DISCRIMINATION AND SINGLOUT OFFER OF
4 PERFORMANCE IN THE SAME MANNER BROADCAST

5 EXHIBIT EVIDENCE ***PROVE-UP OFTHIS OFTHIS MATERIAL
6 FACT OF PREJUDICE BYTHIS HOSTILE METROPOLICE IN THE
7 STREET OF LAS VEGAS NEVEADA WITH THIS PUBLIC AND
8 REAL INJURE AND THIS PREJUDICE OF THIS INJUSTICE AND
9 ACTING UNDER THE COLOR OF LAW WITH THIS PATTER
10 OFLEWD AND LASCOIUS MERETRICOUS OBSCENE BI-
11 SEXUAL/HOMO HARASSMENT AND INDECENT LIBERTIES
12 AND THREATS IN THE SAME MANNER TO DEPAVE THIS
13 PLAINTIFF WITH HIS INDIRECT HARASSMENT FOR THE
14 PUBLIC AND SELFDEALING PRIVATE NECESSITY 8-12-
15 16/FOX5 LOCAL PHOTO DICPICTION/RETROPECTANT
16 EVIDENCE. (ECF. No. 126. Transcribed exactly as it appears in
17 the record).

18 Ignoring the obvious spelling and typographical errors, the paragraphs are entirely
19 irrelevant to the motion presented by the defendants. Phillips continues by citing at
20 least 35 court cases without providing an explanation of the meanings of the cases or
21 how they are relevant to the present motion. Phillips' response to the motion
22 suggests that he did not understand that defendants have requested that he be
23 precluded from filing any further documents in this matter. Phillips' failure to
24 understand the relief sought by the defendants, however, does not alter the Court's
25 conclusion that the defendants' motion was clear and concise and provided notice of
26 the relief sought. Further, while Phillips may not have responded to the merits of the
motion, he was provided the opportunity to respond to the merits of the motion. The
Court finds that Phillips was provided notice and a chance to be heard as to whether,
in the context of the present matter, he has become a vexatious litigant who should
be precluded from filing further documents in this matter without first obtaining
approval from the Court.

Second, the court must compile an adequate record for review. The Ninth
Circuit has held that "an adequate record for review should include a listing of all the

1 cases and motions that led the district court to conclude that a vexatious litigant order
2 was needed." *De Long v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990). The relief
3 sought by the defendants is limited to the present matter. The defendants have
4 provided a list of every motion that Phillips has filed as evidence of Phillips' vexatious
5 nature. Prior to this motion, Phillips had filed 54 documents in this case. Four of these
6 filings occurred after the case was dismissed. The record for review consists of all of
7 Phillips' filings in this matter, as they constitute a more than adequate record that can
8 be reviewed regarding the nature of Phillips' conduct of the present litigation.

9 Third, the court must make substantive findings about the frivolous or
10 harassing nature of the plaintiff's litigations. In doing so, the court must "look at 'both
11 the number and content of the filing as indicia' of the frivolousness of the litigant's
12 claims." *Id.* at 1148. Phillips' filings have been extremely confusing. Beginning with
13 the original complaint, he has never clearly and concisely stated claims for relief.
14 Phillips initiated this matter with a complaint that is 577 pages long, is often
15 incoherent, and plainly does not comport with the requirements of Rule 8 that the
16 complaint contain a short and plain statement of the claim showing that the pleader is
17 entitled to relief. While some of Phillips' language in the complaint is coherent,¹ much
18 of it is consistent with the following excerpt from the complaint demonstrating the
19 confusing language of the complaint:

20 claim of owership [sic] and this replevin and constructive force and
21 this tile [sic] and claims collection act and this claims and delivery and this
22 probable-desistance on this once in jeopardy effective day of the overt act
23 on Oct. 25th -2006 the inchoate crime of oppression all done knowingly
and willfully from the conspiractor [sic] in restrain of trade and this clear
and present danger doctrine of this public contracted agreement at the
defacto government agency (ECF No. 1, at 10).

24
25 ¹ The Court notes that the complaint contains passages that simply quote
language written by someone other than Phillips. Such quoted language is, itself,
26 comprehensible. Nevertheless, such quoted language is often irrelevant, provided without
explanation, and is inconsistent with Rule 8.

1 Further, the document appears to concern events that occurred nearly a decade prior
2 to the filing of the complaint.

3 The Court has previously noted a portion of Phillips' response to the instant
4 motion and the failure of that response to address the instant motion. A review of all
5 of all of Phillips' filings establishes that each largely consists of similar language best
6 characterized as confusing and with no clear purpose other than to suggest a broad
7 conspiracy.

8 The defendants have had to wade through incredibly long documents to see if
9 there is anything of substantive value they need to respond to. He has filed motions
10 that are duplicative and frivolous. The defendants have provided a table of Phillips'
11 numerous filings that shows the random nature of his filings. ECF. No. 123 at 3. The
12 documents Phillips has filed are all documented in the ECF system and are easily
13 seen to be confusing and incomprehensible. The Court finds that Phillips' filings are
14 frivolous and, given their number, harassing. The Court further finds that Phillips'
15 continued filing of frivolous documents after judgment has been entered is harassing.

16 Fourth, any pre-filing order must be narrowly tailored to closely fit the specific
17 vice encountered. The defendants seek only a determination that Phillips be
18 prohibited from continuing to file documents in this already dismissed case without
19 prior approval from the Court. An order granting that request is narrowly tailored as
20 required by the Ninth Circuit's standard. Judgment has been entered in this case.
21 The case has been dismissed and there is no need for further filings. An order
22 deeming Phillips as a vexatious litigant in this matter and prohibiting him from filing
23 anything further in this matter without court approval is narrowly tailored to the
24 problem that the court encounters at this time.

25 The Court recognizes that Phillips is a *pro se* plaintiff and his pleadings should
26 be interpreted liberally. *Karim-Panahi v. Los Angeles Police Dep't.*, 839 F.2d 621, 623

1 (9th Cir. 1988). But even interpreted very liberally, and in the context of Phillips' filings
2 prior to the dismissal of this matter, the Court cannot conclude that his filings
3 subsequent to the dismissal of the case are other than frivolous. The Court
4 recognizes that it may not be Phillips' intent to abuse the judicial process.
5 Nevertheless, given the nature of his filings, and that Phillips continues to file
6 incoherent and irrelevant material, and that Phillips' filings require the defendants to
7 expend resources to file responses, the Court finds that continued, unfettered filings
8 by Phillips will amount to an abuse of the judicial process. Accordingly,

9 **THE COURT ORDERS** that Defendants' Motions To Strike (ECF Nos. 116 and
10 122) are GRANTED; The Clerk of the Court shall STRIKE the documents docketed at
11 ECF No. 114, 115, and 121.

12 **THE COURT FURTHER ORDERS** that Defendants' Motion to Deem Vexatious
13 Litigant (ECF. No. 123) is GRANTED solely as it relates to this matter.

14 **THE COURT FURTHER ORDERS** that the Clerk of this Court shall not accept
15 for filing in this matter any further document from plaintiff Charles B. Phillips until such
16 document has been subjected to pre-filing review by the Court and the Court has
17 approved such document to be filed in this matter.

18
19 DATED this 21 day of September, 2017.



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21 Lloyd D. George
22 United States District Judge
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