

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 ANTHONY K. ANDERSON,)
4)
5 Plaintiff,)
6 vs.)
7 STATE OF NEVADA, *et al.*,)
8 Defendants.)

Case No.: 2:22-cv-00734-GMN-VCF

ORDER

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10 Pending before the Court is Plaintiff Anthony Anderson’s (“Plaintiff’s”) Objection,
11 (ECF No. 10), to the Magistrate Judge’s Report and Recommendation (“R&R”), (ECF No. 5),
12 recommending that the Court dismiss Plaintiff’s Complaint, (ECF No. 1-1), with prejudice for
13 failure to state a claim upon which relief can be granted and deem Plaintiff a vexatious litigant.

14 Also pending before the Court is Plaintiff’s Motion for Temporary Restraining Order,
15 (ECF No. 3), Motion to Compel Prohibitory Injunctive Relief, (ECF No. 4), Motion for Default
16 Judgment, (ECF No. 11), and Motion for Clerk’s Entry of Default, (ECF No. 13).

17 For the reasons discussed below, the Court **DENIES** Plaintiff’s Objection, **ADOPTS in**
18 **full** the Magistrate Judge’s Report and Recommendation, and **DENIES as moot** Plaintiff’s
19 Motion for Temporary Restraining Order, Motion to Compel Prohibitory Injunctive Relief,
20 Motion for Default Judgment, and Motion for Clerk’s Entry of Default.

21 **I. BACKGROUND**

22 This case arises out of Plaintiff’s contention that “Senate Bill No. 182,” which created
23 the Statute Revision Commission (the “Commission”) in 1951, is unconstitutional.¹ (Compl.
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1 Senate Bill No. 182 was enacted by the 45th Session of the Legislature of the State of Nevada of chapter 304, Statutes of Nevada 1951 (subsequently amended by chapter 280, Statutes of Nevada 1953 and chapter 248,

1 1:11–28, ECF No. 1-1). Plaintiff, who is currently incarcerated at Southern Desert Correctional
2 Center, argues that the inclusion of three Nevada Supreme Court Justices to the Commission—
3 Justices Merrill, Badt, and Eather—improperly delegated legislative powers to the judiciary,
4 rendering the Commission unconstitutional. (*Id.* 2:1–3:28). According to Plaintiff, the
5 Commission revised and compiled various statutes, including those on voting ballots. (*Id.* 4:1–
6 27). Plaintiff thereby asserts that he was wrongfully convicted in state court because the judge
7 who presided over his case was “never voted for” due to the Commission’s work on voting
8 ballots. (*Id.*). Plaintiff contends the Commission’s actions violated his constitutional rights to
9 procedural due process, substantive due process, and the Equal Protection Clause of the
10 Fourteenth Amendment, in addition to violating the Judicial Code of Conduct. (*Id.* 4:7–26, 7:1–
11 8:28).

12 On May 9, 2022, Plaintiff filed the instant action, seeking to: (1) vacate his sentence; (2)
13 remove Senate Bill No. 182 so that it can no longer affect anyone; (3) remove any work derived
14 from Senate Bill No. 182; (4) receive payment of a “prevailing wage” for every hour he was
15 incarcerated; and (5) have federal charges brought against every authority that had notice of
16 Senate Bill No. 182’s supposed effects on voting documents in violation pursuant to 42 U.S.C.
17 § 1985. (*Id.* 10:1–27). The Magistrate Judge entered a Report and Recommendation,
18 recommending dismissal of Plaintiff’s Complaint for failure to state a claim upon which relief
19 could be granted and deeming Plaintiff a vexatious litigant. (*See* R&R 4:6–7:18, ECF No. 5).
20 On August 5, 2022, Plaintiff filed the present Objection to the Magistrate Judge’s Report and
21 Recommendation. (*See generally* Obj., ECF No. 10).

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25 Statutes of Nevada 1955). *Legislative Counsel’s Preface* to Nevada Revised Statutes at 1 (Nev. L. Libr.
2014-2020). Legislative Counsel’s Preface to the Nevada Revised Statutes (state.nv.us).

1 **II. LEGAL STANDARD**

2 When reviewing the order of a magistrate judge, the order should only be set aside if the
3 order is clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a); LR IB 3-1(a); 28 U.S.C. §
4 636(b)(1)(A); *Laxalt v. McClatchy*, 602 F. Supp. 214, 216 (D. Nev. 1985). A magistrate
5 judge’s order is “clearly erroneous” if the court has “a definite and firm conviction that a
6 mistake has been committed.” *See United States v. United States Gypsum Co.*, 333 U.S. 364,
7 395 (1948); *Burdick v. Comm’r IRS*, 979 F.2d 1369, 1370 (9th Cir. 1992). “An order is
8 contrary to law when it fails to apply or misapplies relevant statutes, case law or rules of
9 procedure.” *Kennison v. DeCarlo*, No. 2:21-cv-02210, 2022 WL 231763, at *1 (D. Nev. June
10 28, 2022). When reviewing the order, however, the magistrate judge “is afforded broad
11 discretion, which will be overruled only if abused.” *Columbia Pictures, Inc. v. Bunnell*, 245
12 F.R.D. 443, 446 (C.D. Cal. 2007). The district judge “may not simply substitute its judgment”
13 for that of the magistrate judge. *Grimes v. City and Cty. of San Francisco*, 951 F.2d 236, 241
14 (9th Cir. 1991) (citing *United States v. BNS, Inc.*, 858 F.2d 456, 464 (9th Cir. 1988)).

15 **III. DISCUSSION**

16 As stated, the Magistrate Judge recommends that the Court dismiss with prejudice
17 Plaintiff’s Complaint and deem Plaintiff a vexatious litigant. (R&R 4:6–7:18). Plaintiff objects,
18 arguing that the Magistrate Judge erred in concluding that he is challenging the validity of his
19 conviction and committed several procedural errors. (Obj. 2:12–2:21). The Court will first
20 examine the Magistrate Judge’s reasoning.

21 **A. Sections 1983 Claim**

22 In the Report and Recommendation, the Magistrate Judge noted that Plaintiff’s
23 Complaint directly attacks the validity of his criminal conviction. (R&R 4:6–19). The
24 Magistrate Judge further observed that Plaintiff improperly brought a § 1983 claim challenging
25 “the fact or duration of his confinement” because he may only challenge the validity of his

1 arrest, prosecution, and conviction through a writ of habeas corpus. (*Id.*). In response, Plaintiff
2 argues that he is not challenging his underlying conviction, but rather, the facial validity of
3 Senate Bill 182. (Obj. 2:5–8, 3:25–28).

4 If a § 1983 case seeking damages alleges constitutional violations that would necessarily
5 imply the invalidity of a conviction or sentence, the prisoner must establish that the underlying
6 sentence or conviction has been invalidated on appeal, by habeas petition, or through a similar
7 proceeding. *See Heck v. Humphrey*, 512 U.S. 477, 483–84 (1994). Under *Heck*, a party who
8 was convicted of a crime is barred from bringing a suit under § 1983 if a judgment in favor of
9 that party would necessarily imply the invalidity of the conviction or sentence. *See Whitaker v.*
10 *Garcetti*, 486 F.3d 572, 581 (9th Cir. 2007) (citing *Heck*, 512 U.S. at 114); *Wilkinson v.*
11 *Dotson*, 544 U.S. 74, 81–82 (2005) (“[A] state prisoner’s § 1983 action is barred (absent prior
12 invalidation) no matter the relief sought (damages or equitable relief), no matter the target of
13 the prisoner’s suit . . . if success in that action would necessarily demonstrate the invalidity of
14 confinement or its duration.”). *Heck* is grounded in the “strong judicial policy against the
15 creation of two conflicting resolutions arising out of the same or identical transactions.” *Heck*,
16 512 U.S. at 114.

17 Despite Plaintiff’s contention that he is not challenging his underlying conviction, (Obj.
18 2:5–8, 3:25–28), his Objection specifically requests the Court “vacate [his] defective judgment
19 of conviction.” (*Id.* 2:21–22). Moreover, Plaintiff’s Complaint posits that his sentence should
20 be vacated because the judge who presided over his case was “never voted for” due to the
21 Commission’s work on voting ballots. (Compl. 4:1–26, 10:1–5). Plaintiff’s filings confirm that
22 he is attacking the validity of his state criminal conviction. Accordingly, the Magistrate Judge

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1 did not clearly err in recommending that Plaintiff’s Complaint be dismissed pursuant to the
2 *Heck* doctrine.²

3 **B. Senate Bill 182**

4 The Magistrate Judge further found that Plaintiff failed to allege how the three Nevada
5 Supreme Court Justices were unconstitutionally delegated legislative powers. (R&R 4:21–
6 5:18). Including the case at bar, at least ten different actions regarding the Commission have
7 been filed in this District.³ Each of these challenges was unsuccessful.

8 The Magistrate Judge began by observing that the Supreme Court of Nevada recently
9 addressed a similar issue in *State v. Taylor*, 472 P.3d 195 (Nev. 2020) (table). (R&R 5:1–10).
10 In *Taylor*, the appellant claimed that his counsel was ineffective because they failed to
11 challenge the constitutionality of the Statute Revision Commission. *Id.* at 195 at 5. There, the
12 court held that the Justices sitting on the Commission did not violate a constitutional provision
13 because “the Legislative Counsel Bureau — which succeeded the statute revision commission
14 — codifies and classifies” laws “in a logical order, but not itself exercising the legislative
15 function.” *Id.* The Court held that the trial court did not err in denying the appellant’s claim
16 because she failed to show how the Commission “encroached upon the powers of another
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18 ² Moreover, Plaintiff’s § 1985 claim fails for the same reason. “The *Heck* doctrine also applies to a plaintiff’s §
19 1985 claims to the extent they are predicated on a theory that undermines a plaintiff’s convictions.” *Downing v.*
20 *Wolfson*, No. 2:16-cv-02131, 2017 WL 3382562, at *6 (D. Nev. Mar. 27, 2017); *see e.g., Edwards v. Balisok*,
21 520 U.S. 641, 648 (1997) (clarifying that the *Heck* rule applies regardless of the form of remedy sought);
22 *Guerrero v. Gates*, 442 F.3d 697, 703 (9th Cir. 2006) (concluding that *Heck* barred a plaintiff’s § 1985 claims
alleging wrongful arrest, malicious prosecution, and conspiracy among police officers to bring false charges
against him).

23 ³ *See Lucio v. Nevada*, No. 2:22-cv-01088, 2022 WL 3211544 (D. Nev. Aug. 9, 2022); *Brant v. Nevada*, No. 22-
24 cv-01205, 2022 WL 4111002 (D. Nev. Sept. 7, 2022); *Anderson v. State of Nevada*, No. 2:22-cv-00734, 2022
25 WL 4985672 (D. Nev. Oct. 3, 2022); *Willing v. State of Nevada*, No. 2:22-cv-00795-VCM-CDS; *Willing v. State*
of Nevada, No. 2:22-cv-00733, 2022 WL 3084433 (D. Nev. Aug. 3, 2022); *Jones v. State of Nevada*, No. 22-cv-
00935; *Jackson v. State of Nevada*, No. 2:22-cv-00976-MMD-EJY; *Wilson v. State of Nevada*, No. 2:22-cv-
00978, 2022 WL 7553743 (D. Nev. Oct. 13, 2022); *Cardenas v. State of Nevada*, No. 2:22-cv-01055, 2022 WL
3903404 (D. Nev. Aug. 29, 2022); *Downing v. Wilson*, No. 2:16-cv-02132, 2017 WL 3382562 (D. Nev. Mar. 27,
2017).

1 branch of government, violating the separation of powers.” *Id.*; see *Comm’n of Ethics v. Hardy*,
2 212 P.3d 1098, 1103 (2009) (“The purpose of the separation of powers doctrine is to prevent
3 one branch from encroaching on the powers of another branch.”). The Magistrate Judge
4 explained that despite Plaintiff’s “repeated[] assert[ions] that the creation of the Commission
5 was unconstitutional solely because the three Justices were a part of this new Commission[] he
6 fails to show how the Commissions unconstitutionally encroached upon on another branch of
7 government and violated the separation of powers doctrine.” (R&R 5:11–15).

8 The Court finds that the Magistrate Judge did not clearly err in finding that Plaintiff
9 failed to explain how the Commission unconstitutionally encroached upon another branch of
10 government and violated the separation of powers doctrine. (*Id.*). Plaintiff’s Objection contains
11 conclusory assertions which are insufficient to illustrate how Justice Merrill, Justice Badt, and
12 Justice Eather violated the “constitution by serving in a nonjudicial public office” and
13 “improperly encroached upon the powers of another branch of government, violating the
14 separation of powers.” *Taylor*, 472 P.3d at 195 at 5.

15 **C. Plaintiff’s Procedural Objections**

16 As previously mentioned, Plaintiff alternatively argues that the Magistrate Judge
17 committed several procedural errors in the Report and Recommendation.⁴ Plaintiff contends
18 that the Magistrate Judge failed to certify to the Nevada Attorney General the existence of a
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20 ⁴ Plaintiff contends that “Rule 19 procedure on a certificated question must be followed in this action.” (Obj.
21 6:23–24). Liberally construing this assertion, it appears Plaintiff contends this Court is obligated to certify a
22 question of law to the United States Supreme Court. *See* U.S. Sup. Ct. Rule 19(a) (permitting appellate courts to
23 certify questions to the Supreme Court). However, this “Court does not have the authority to certify questions to
24 the U.S. Supreme Court.” *Demos v. United States*, No. 2:22-cv-00488, 2022 WL 2079739, at *1 (W.D. Wash.
25 June 3, 2022). Plaintiff additionally posits that the Ninth Circuit has concurrent jurisdiction with this Court
because Plaintiff “directed his petition for review under 28 U.S.C. § 1343(a)(3) to the Ninth Circuit. (Obj. 7:17–
25). Merely directing a petition for review to the Ninth Circuit does not automatically vest it with jurisdiction.
See 28 U.S.C. §1343(a)(3) (stating that the “*district courts*” shall have original jurisdiction of any civil action to
redress the deprivation of under color of any State law or privilege or immunity secured by the Constitution)
(emphasis added). Plaintiff’s conclusory arguments fail to show that the Magistrate Judge committed a clear
error.

1 constitutional question pursuant to Fed. R. Civ. P. 5.1. (Obj. 1:17–2:4, 6:7–12). Additionally,
2 Plaintiff argues that the Magistrate Judge violated F.R.C.P. 60(b)(3) by misrepresenting his
3 challenge. (*Id.* 3:25–28, 5:9–27). The Court will first examine Plaintiff’s argument under Fed.
4 R. Civ. P. 5.1.

5 **1. Fed. R. Civ. P. 5.1**

6 As stated, Plaintiff contends that the Magistrate Judge failed to certify to the Nevada
7 Attorney General the existence of a constitutional question pursuant to Fed. R. Civ. P. 5.1.
8 (Obj. 1:17–2:4, 6:7–12).

9 Fed. R. Civ. P. Rule 5.1 is intended to give the attorney general (whether of the United
10 States or a state) a chance to intervene to defend the constitutionality of a statute before the
11 Court declares it unconstitutional. *See* Fed. R. Civ. P. 5.1 Advisory Committee Notes (“The
12 notice of constitutional question will ensure that the attorney general is notified of
13 constitutional challenges and has an opportunity to exercise the statutory right to intervene at
14 the earliest possible point in the litigation.”); Fed. R. Civ. P. 5.1(c) (“Before the time to
15 intervene expires, the court may reject the constitutional challenge, but may not enter a final
16 judgment holding the statute unconstitutional.”). Fed. R. Civ. P. 5.1(a)(1)(B) provides that
17 when a plaintiff questions the constitutionality of a state statute and the parties *do not* include
18 the state or one of its agencies or officers in an official capacity, the court must certify to the
19 state’s attorney general that a statute has been constitutionally challenge. Fed. R. Civ. P.
20 5.1(a)(1)(B), (b) (emphasis added). Here, the State of Nevada is a named defendant.
21 Accordingly, the Magistrate Judge did not err by not certifying Plaintiff’s constitutional
22 challenge to the Attorney General of Nevada.

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1 **2. Fed. R. Civ. P. 60(b)(3)**

2 Plaintiff argues that the Magistrate Judge violated Fed. R. Civ. P. 60(b)(3) by incorrectly
3 concluding he was challenging his judgment of conviction. (Obj. 3:25–28, 5:9–27). Pursuant to
4 Rule 60(b)(3), a party may move for reconsideration of a final judgment on the basis of “fraud
5 (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an
6 opposing party.” Fed. R. Civ. P. 60(b)(3). “To prevail [on a Rule 60(b)(3) motion], the moving
7 party must prove by clear and convincing evidence that the verdict was obtained through fraud,
8 misrepresentation, or other misconduct and the conduct complained of prevented the losing
9 party from fully and fairly presenting the defense.” *De Saracho v. Custom Food Machinery,*
10 *Inc.*, 206 F.3d 874, 880 (9th Cir. 2000) (citation omitted).

11 Here, Plaintiff misunderstands the purpose of Fed. R. Civ. P. 60(b)(3). The thrust of
12 Plaintiff’s argument is that the Magistrate Judge misrepresented his claim by construing it as a
13 challenge to the underlying crime which led to his current incarceration. (Obj. 3:25–28, 5:9–
14 27). Contrary to Plaintiff’s Objection, Rule 60(b)(3) is “aimed at judgments which were
15 unfairly obtained, not at those which are factually incorrect.” *De Saracho*, 206 F.3d at 880.
16 The merits of a case are not before the court on a Rule 60(b) motion. *Casey v. Albertston’s Inc.*,
17 362 F.3d 1254, 1261 (9th Cir. 2004). Plaintiff has provided no evidence that the Magistrate
18 Judge’s Report and Recommendation was unfairly obtained. Moreover, for the reasons set
19 forth above, the Court finds that the Magistrate Judge did not clearly err in finding that
20 Plaintiff’s claim is precluded by the *Heck* doctrine.⁵

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⁵ Plaintiff alternatively argues that his Motion for Prohibitory Injunction, (ECF No. 4), is not barred by the *Heck* doctrine. (Obj. 8:7–8, 15:1–9). However, Plaintiff’s Motion for Prohibitory Injunction is mooted by the Court accepting and adopting the Magistrate Judge’s recommendation to dismiss his Complaint with prejudice. *See Doe v. Fed. Dist. Ct.*, 467 Fed. App’x 725, 725 (9th Cir. 2001) (finding that where the plaintiff’s claims had been dismissed, the district court did not abuse discretion in denying the plaintiff’s preliminary injunction motion as moot).

1 Accordingly, the Court denies Petitioner’s Objection and adopts the Magistrate Judge’s
2 recommendation that Plaintiff’s Complaint be dismissed with prejudice for failure to state a
3 claim as a matter of law.

4 **D. Vexatious Litigant**

5 The Magistrate Judge additionally recommended that this Court deem Plaintiff a
6 vexatious litigant. (R&R 6:1–7:18). Plaintiff does not meaningfully address the Magistrate
7 Judge’s recommendation in the Objection. (*See generally* Obj.).

8 The Court is empowered under 28 U.S.C. § 1651(a) to enjoin litigants “with abusive and
9 lengthy histories.” *De Long v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990). “Flagrant
10 abuse of the judicial process cannot be tolerated because it enables one person to preempt the
11 use of judicial time that properly could be used to consider the meritorious claims of other
12 litigants.” *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007) (citing *De*
13 *Long*, 912 F.2d at 1148 (internal alteration omitted)).

14 The Ninth Circuit requires courts to consider four factors before imposing a pre-filing
15 order on a vexatious litigant. *De Long*, 912 F.2d at 1147–48. The four factors are: (1) notice
16 and an opportunity to be heard; (2) the creation of an adequate record; (3) findings of
17 frivolousness or harassment; and (4) that the order be narrowly tailored to prevent the litigant’s
18 abusive behavior. *Molski*, 500 F.3d at 1058. The first two factors are procedural, requiring the
19 court to engage in certain behaviors. *Id.* The latter two factors are substantive, helping the
20 court “define who is, in fact, a ‘vexatious litigant’ and construct a remedy that will stop the
21 litigant’s abusive behavior while not unduly infringing on the litigant’s right to access the
22 courts.” *Id.* (citation omitted).

23 In applying the two substantive factors, the Ninth Circuit has held that a separate set of
24 considerations provide “a helpful framework,” including: (1) the litigant’s history of litigation
25 and whether it entailed vexatious, harassing, or duplicative lawsuits; (2) the litigant’s motive in

1 pursuing the litigation—that is, whether the litigant has an objective good faith expectation of
2 prevailing; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused
3 needless expense to other parties or has posed an unnecessary burden on the courts and their
4 personnel; and (5) whether other sanctions would be adequate to protect the court and other
5 parties. *Ringgold-Lockhart v. City of Los Angeles*, 761 F.3d 1057, 1062 (9th Cir. 2014).

6 The Court will first examine whether the Plaintiff had notice and an opportunity to be
7 heard.

8 **1. Notice and an Opportunity to be Heard**

9 At bottom, this factor stems from due process considerations and simply requires that
10 the party have “an opportunity to oppose the order before it is entered.” *De Long*, 912 F.2d at
11 1147. On July 9, 2022, the Magistrate Judge entered a Report and Recommendation,
12 recommending that the Court deem Plaintiff a vexatious litigant. (R&R 6:1–7:18). Plaintiff
13 responded to the Magistrate Judge’s Report and Recommendation in his Objection. (*See*
14 *generally* Obj.). Accordingly, Plaintiff has been given notice and an opportunity to be heard.
15 *See Ortiz v. Cox*, 759 F. Supp. 2d 1258, 1264 (D. Nev. 2011) (finding that the plaintiff received
16 notice by virtue of the motion to declare him a vexatious litigant and received an opportunity to
17 be heard by filing an opposition to that motion).

18 **2. Creation of an Adequate Record**

19 Next, the record must “show, in some manner, that the litigant’s activities were
20 numerous and abusive.” *De Long*, 912 F.2d at 1147. Further, it “should include a listing of all
21 the cases and motions that led the district court to conclude that a vexatious litigant order was
22 needed.” *Id.*

23 Here, the Magistrate Judge included a record which demonstrates that Plaintiff’s prior
24 actions are numerous and abusive. Specifically, the record shows that in the last ten years,
25 Plaintiff has commenced at least sixteen different actions in this Court. (*See* R&R 6:1–15). All

1 but three active cases have been dismissed and closed, and two of the three active actions are
2 pending dismissal. (*Id.* 6:3–17). Moreover, this Court and the Ninth Circuit have dismissed
3 several of Plaintiff’s lawsuits as frivolous. (*Id.* 6:18–7:10). Finally, the Magistrate Judge
4 observed the “majority of [Plaintiff’s] claims center around challenging his conviction or
5 challenging the conditions of his confinement.” (*Id.* 7:3–4). This Court and the Ninth Circuit
6 have recognized that the repeated filing of lawsuits concerning the same allegations and claims
7 indicates that a plaintiff’s motions are both frivolous and harassing. *See De Long*, 912 F.2d at
8 1148, n.3 (“The filing of several similar types of actions constitutes an intent to harass the
9 defendant or the court.”); *Albanese v. FBI*, No. 2:17-cv-01599, 2017 WL 2838246, at *8 (D.
10 Nev. June 29, 2017) (“Albanese has a history of filing numerous duplicative and frivolous
11 lawsuits concerning the same allegations and claims against the same defendants. Both the
12 number and content of Albanese’s filings serve as an indicia of the frivolousness of her
13 claims.”). Accordingly, the Court finds that the second factor weighs in favor of restricting
14 Plaintiff’s access to the court.

15 **3. Findings of Frivolousness or Harassment**

16 The Court is required to “make substantive findings as to the frivolous or harassing
17 nature of the litigant’s actions.” *De Long*, 912 F.2d at 1148 (quoting *In re Powell*, 851 F.2d
18 427, 431 (D.C. Cir. 1988). In so doing, the Court must look to “both the number and content of
19 the filings as indicia of the frivolousness of the litigant’s claims.” *Id.* (citing *Powell*, 851 F.2d at
20 431). “The plaintiff’s claims must not only be numerous, but also be patently without merit.”
21 *Moy v. United States*, 906 F.2d 467, 470 (9th Cir. 1990).

22 As set forth above, in assessing the substantive factors, the Court should also consider:
23 (1) the litigant’s history of litigation and whether it entailed vexatious, harassing, or duplicative
24 lawsuits; (3) the litigant’s motive in pursuing the litigation—that is, whether the litigant has an
25 objective good faith expectation of prevailing; (3) whether the litigant is represented by

1 counsel; (4) whether the litigant has caused needless expense to other parties or has posed an
2 unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be
3 adequate to protect the court and other parties. *Ringgold-Lockhart v. City of Los Angeles*, 761
4 F.3d 1057, 1062 (9th Cir. 2014).

5 As an initial matter, the Court notes that Plaintiff is *pro se*. “Courts are generally
6 protective of the right of *pro se* litigants to enter the court. Nevertheless, courts are entitled to
7 enjoin *pro se* litigants with ‘abusive and lengthy’ litigation histories.” *Albanese*, 2017 WL
8 2838246, at *8 (citing *De Long*, 912 F.2d at 1147). As explained in the preceding section, the
9 Magistrate Judge documented Plaintiff’s history of filing frivolous duplicative lawsuits
10 concerning his conviction and conditions of confinement. (*See* R&R 6:1–17, 7:3). It bears
11 repeating that this Court and the Ninth Circuit have dismissed several of Plaintiff’s lawsuits as
12 frivolous. (*Id.* 6:18–7:10). Furthermore, Plaintiff, “on at least two prior occasions, has filed
13 second or successive federal habeas petitions without authorization from the court of appeals.”
14 (*Id.* 6:22–23). Here, the Court finds that Plaintiff’s lack of good faith is evidenced by his
15 history of filing lawsuits that are likely to be dismissed. Plaintiff’s frivolous lawsuits pose an
16 unnecessary burden on this Court and are a vexatious abuse of the judicial process. “No one,
17 rich or poor, is entitled to abuse the judicial process.” *Fulkerson v. Allstate Ins.*, No. 3:20-cv-
18 00399, 2020 WL 7353335, at *4 (D. Nev. Oct. 8, 2020) (quoting *Tripati v. Beaman*, 878 F.2d
19 351, 353 (10th Cir. 1989)).

20 **4. Narrowly Tailored Relief**

21 In light of the above, a prefiling order is warranted. The Court must therefore craft a
22 prefiling order that is as narrowly tailored as possible to address the vexatious conduct at issue.
23 An order is narrowly tailored where it preserves the litigant’s right to adequate, effective and
24 meaningful access to the court, while protecting the court from abuse. *See O’Loughlin v. Doe*,
25 920 F.2d 614, 617 (9th Cir. 1990).

1 Here, Plaintiff has demonstrated a pattern of filing frivolous lawsuits challenging his
2 conditions of confinement and validity of his conviction and sentence. (R&R 7:3–4).
3 Accordingly, the Court will impose a prefiling order which prevents Plaintiff from filing in the
4 District of Nevada complaints challenging his conditions of confinement and judgment of
5 conviction without first obtaining permission from the Magistrate Judge assigned to his case.
6 *See Balik v. City of Torence*, No. 2:18-cv-02174, 2020 WL 907559, at *8 (D. Nev. Feb. 25,
7 2020) (instituting a prefiling order against plaintiff which required him to obtain permission
8 from the Magistrate Judge before filing civil rights, harassment, and employment
9 discrimination actions); *Catchings v. City of Santa Monica*, No. 21-cv-9072, 2021 WL 326641,
10 at *5 (C.D. Cal. Feb. 3, 2022) (recommending that a prefiling order be imposed against the
11 plaintiff to require him to obtain permission before filing actions challenging the validity of his
12 conviction and sentence). This will not preclude Plaintiff’s access to the courts when necessary
13 and appropriate but will nonetheless help ensure he no longer abuses the judicial process. *See*
14 *Silver v. Clark Cnty. Nevada*, No. 2:20-cv-00682, 2020 WL 2199611, at *4 (D. Nev. May 6,
15 2020).

16 **E. Enjoining Vexatious Litigant**

17 If a litigant is deemed vexatious, he/she will be enjoined from filing any further action or
18 papers in this district without first obtaining leave of the Chief Judge of this court. In order to
19 file any papers, the vexatious litigant must first file an application for leave. The application
20 must be supported by a declaration of plaintiff stating: (1) that the matters asserted in the new
21 complaint or papers have never been raised and disposed of on the merits by any court; (2) that
22 the claim or claims are not frivolous or made in bad faith; and (3) that he has conducted a
23 reasonable investigation of the facts and investigation supports his claim or claims. A copy of
24 the order deeming the litigant vexatious must be attached to any application. Failure to fully
25 comply will be sufficient grounds for denial of the application. *See De Long*, 912 F.2d at 1146–

1 47. The Clerk of Court is authorized to reject, refuse to file, and discard any new compliant,
2 petition, or other new action in violation of this order.

3 **IV. CONCLUSION**

4 **IT IS HEREBY ORDERED** that Plaintiff's Objection, (ECF No. 10), is **DENIED**.

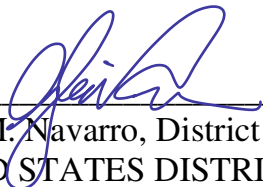
5 **IT IS FURTHER ORDERED** that the Report and Recommendation, (ECF No. 5), is
6 **ADOPTED in full**.

7 **IT IS FURTHER ORDERED** that Plaintiff's Complaint, (ECF No. 1-1), is
8 **DISMISSED** with prejudice.

9 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Temporary Restraining Order,
10 (ECF No. 3), Motion to Compel Prohibitory Injunctive Relief, (ECF No. 4), Motion for Default
11 Judgment, (ECF No. 11), Motion for Clerk's Entry of Default, (ECF No. 13), are **DENIED as**
12 **moot**.

13 **IT IS FURTHER ORDERED** that the Clerk is instructed to close the case.

14 **DATED** this 23 day of November, 2022.

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18 Gloria M. Navarro, District Judge
19 UNITED STATES DISTRICT COURT
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