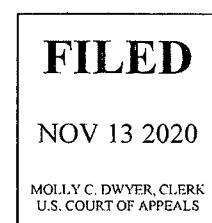


UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT



MICHAEL A. BRUZZONE,

Plaintiff - Appellant,

v.

INTEL CORPORATION, in concerted  
action with ARM Holdings plc & ARM  
Inc. executives and their corporate  
attorneys; et al.,

Defendants - Appellees.

No. 20-15326

D.C. No. 2:18-cv-00865-KJM-DB  
U.S. District Court for Eastern  
California, Sacramento

**MANDATE**

The judgment of this Court, entered July 02, 2020, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule  
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Quy Le  
Deputy Clerk  
Ninth Circuit Rule 27-7

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

NOV 5 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MICHAEL A. BRUZZONE,

No. 20-15326

Plaintiff-Appellant,

D.C. No.

v.

2:18-cv-00865-KJM-DB  
Eastern District of California,  
Sacramento

INTEL CORPORATION, in concerted  
action with ARM Holdings plc & ARM Inc.  
executives and their corporate attorneys; et  
al.,

ORDER

Defendants-Appellees.

Before: GRABER, R. NELSON, and VANDYKE, Circuit Judges.

Appellant's motion to alter or amend the judgment (Docket Entry No. 9) and  
motion to stay the mandate (Docket Entry No. 10) are denied.

No further filings will be entertained in this closed case.

KWH19-/MOATT

## General Docket

## United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 20-15326	Docketed: 02/27/2020		
Nature of Suit: 3410 Antitrust	Termed: 07/02/2020		
Michael Bruzzone v. Intel Corporation, et al			
Appeal From: U.S. District Court for Eastern California, Sacramento			
Fee Status: Paid			
<b>Case Type Information:</b>			
1) civil			
2) private			
3) null			
<b>Originating Court Information:</b>			
District: 0972-2 : <u>2:18-cv-00865-KJM-DB</u>			
Trial Judge: Kimberly J. Mueller, Chief District Judge			
Date Filed: 04/10/2018			
Date Order/Judgment: 02/13/2020	Date Order/Judgment EOD: 02/13/2020	Date NOA Filed: 02/26/2020	Date Rec'd COA: 02/27/2020

MICHAEL A. BRUZZONE,

Plaintiff - Appellant,

v.

INTEL CORPORATION, in concerted action with ARM Holdings plc &amp; ARM Inc. executives and their corporate attorneys; ARM, INC.; ARM HOLDINGS,

Defendants - Appellees.

02/27/2020	<u>1</u>	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL AND PRO SE APPELLANT. SEND MQ: No. The schedule is set as follows: Appellant Michael A. Bruzzone opening brief due 05/04/2020. Appellees ARM Holdings, ARM, Inc. and Intel Corporation answering brief due 06/04/2020. Appellant's optional reply brief is due 21 days after service of the answering brief. [11611454] --[Edited 02/27/2020 by RT] (RT) [Entered: 02/27/2020 02:36 PM]
03/02/2020	<u>2</u>	Filed clerk order (Deputy Clerk: CKP): Order to show cause docket fee due [11614921] (CKP) [Entered: 03/02/2020 01:54 PM]
03/04/2020	<u>3</u>	Filed Appellant Michael A. Bruzzone motion to proceed In Forma Pauperis. Deficiencies: None. [11618044] (RR) [Entered: 03/04/2020 01:33 PM]
03/12/2020	<u>4</u>	Received Appellant Michael A. Bruzzone notice of pending motion to proceed In Forma Pauperis. [11629029] (NAC) [Entered: 03/13/2020 10:23 AM]
03/19/2020	<u>5</u>	Filed Appellant Michael A. Bruzzone motion to proceed In Forma Pauperis. Deficiencies: None. [11637007] (NAC) [Entered: 03/20/2020 02:18 PM]

04/22/2020	<u>6</u>	Filed clerk order (Deputy Clerk: KWH): A review of the record reflects that this appeal may be frivolous. This court may dismiss a case at any time, if the court determines the case is frivolous. See 28 U.S.C. § 1915(e)(2). Within 35 days after the date of this order, appellant must: (1) file a motion to dismiss this appeal, see Fed. R. App. P. 42(b), OR (2) file a statement explaining why the appeal is not frivolous and should go forward. If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. See 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice. If appellant files a statement that the appeal should go forward, appellees may file a response within 10 days after service of appellant's statement. The briefing schedule for this appeal remains stayed. The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, and (2) a form statement that the appeal should go forward. Appellant may use the enclosed forms for any motion to dismiss this appeal or statement that the appeal should go forward. [11668037] (WL) [Entered: 04/22/2020 08:47 AM]
05/14/2020	<u>7</u>	Filed Appellant Michael A. Bruzzone response to order to show cause dated 04/22/2020. Served on 05/13/2020. [11691381] (QDL) [Entered: 05/14/2020 03:58 PM]
07/02/2020	<u>8</u>	Filed order (SUSAN P. GRABER, RYAN D. NELSON and LAWRENCE VANDYKE) Upon a review of the record and the response to the court's April 22, 2020 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry Nos. [3] and [5]), see 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious). DISMISSED. [11741232] (WL) [Entered: 07/02/2020 02:58 PM]
07/14/2020	<u>9</u>	Filed Appellant Michael A. Bruzzone motion to alter or amend judgment pursuant FRCP 59(a)(1)(b) subject to FRCP 60(b). Deficiencies: No certificate of service. [11755244] (RR) [Entered: 07/16/2020 12:13 PM]
07/14/2020	<u>10</u>	Filed Appellant Michael A. Bruzzone motion to stay the mandate. Deficiencies: No certificate of service. [11755246] (RR) [Entered: 07/16/2020 12:14 PM]
07/14/2020	<u>11</u>	Received Appellant Michael A. Bruzzone notice of certificate of service re :FRCP 59. [11755415] (RR) [Entered: 07/16/2020 01:29 PM]
07/14/2020	<u>13</u>	Received notification from Appellant Michael A. Bruzzone re: payment of docket fee in distric court. Amount Paid: USD 505. Date paid: 07/07/2020. [11771948] (LA) [Entered: 07/30/2020 12:15 PM]
07/16/2020	<u>12</u>	Filed Appellant Michael A. Bruzzone letter dated 06/16/2020 re: duplicate submission. Paper filing deficiency: None. [11756042] (RR) [Entered: 07/16/2020 10:35 PM]

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

JUL 2 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MICHAEL A. BRUZZONE,

Plaintiff-Appellant,

v.

INTEL CORPORATION, in concerted  
action with ARM Holdings plc & ARM Inc.  
executives and their corporate attorneys; et  
al.,

Defendants-Appellees.

No. 20-15326

D.C. No.

2:18-cv-00865-KJM-DB  
Eastern District of California,  
Sacramento

ORDER

Before: GRABER, R. NELSON, and VANDYKE Circuit Judges.

Upon a review of the record and the response to the court's April 22, 2020 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry Nos. 3 and 5), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

**DISMISSED.**

KWH19-/MOATT

**June 30, 2020**

**To:** Clerk of the United States Court  
Eastern District of California  
Robert Matsui Federal Courthouse  
501 "I" Street, Room 4-200  
Sacramento, CA 95814

**Fm:** Mike Bruzzone  
3766 Via Verdi  
Richmond, CA 94803  
campmkting@aol.com  
(415) 250-4652

**Re:** Case matter 2:18-cv-00865 KJM DB  
Bruzzone verse Intel Corporation and ARM Inc.  
Ninth Circuit Court of Appeal matter 20-15326  
\$505 ECAD Appeal filing fee enclosed

**To whom it may concern;**

Please find a Wells Fargo Bank Cashier's Check in the amount of \$505 made to  
Office of the Clerk, Eastern District of California Court, pursuant 00865 KJM DB  
Ninth Circuit Appeal filing fee.

Bruzzone, acting in pro se, will subsequently withdraw his 9<sup>th</sup> Circuit motion  
seeking *forma pauperis* status in this meritorious appellate matter.

A post paid, self addressed envelope is attached for paid receipt return.

Thank you,



Mike Bruzzone

A handwritten signature in black ink, appearing to read "MB" with a stylized "B" and "W" below it. The signature is fluid and somewhat abstract.

0001010      11-24  
Office AU #      1210(8)

Remitter:      MICHAEL BRUZZONE  
Purchaser:      MICHAEL BRUZZONE  
Purchaser Account: 2389951431  
Operator I.D.: u693867  
Funding Source: Cash

PAY TO THE ORDER OF

\*\*\*CLERK OF THE COURT EASTERN DISTRICT\*\*\*  
\*\*\*OF CALIFORNIA\*\*\*

\*\*\*Five hundred five dollars and no cents\*\*\*

SERIAL #: 0101012756

ACCOUNT#: 4861-511442

June 30, 2020

\*\*\$505.00\*\*

Payee Address:  
Memo:      APPEAL FILING FEE 2:18-CV-00865 KJM DB

WELLS FARGO BANK, N.A.  
1374 FITZGERALD DR  
PINOLE, CA 94564  
FOR INQUIRIES CALL (480) 394-3122

NOTICE TO PURCHASER—IF THIS INSTRUMENT IS LOST,  
STOLEN OR DESTROYED, YOU MAY REQUEST CANCELLATION  
AND REISSUANCE. AS A CONDITION TO CANCELLATION AND  
REISSUANCE, WELLS FARGO & COMPANY MAY IMPOSE A  
FEE AND REQUIRE AN INDEMNITY AGREEMENT AND BOND.

VOID IF OVER US \$ 505.00

NON-NEGOTIABLE

### Cashier's Check

F8004 (10/19) M4203 90330000

PRINTED ON LINEMARK PAPER - HOLD TO LIGHT TO VIEW. FOR ADDITIONAL SECURITY FEATURES SEE BACK.

0001010      11-24  
Office AU #      1210(8)

Remitter:      MICHAEL BRUZZONE  
Operator I.D.: u693867

PAY TO THE ORDER OF

\*\*\*CLERK OF THE COURT EASTERN DISTRICT\*\*\*  
\*\*\*OF CALIFORNIA\*\*\*

June 30, 2020

\*\*\*Five hundred five dollars and no cents\*\*\*

\*\*\$505.00\*\*

Payee Address:  
Memo:      APPEAL FILING FEE 2:18-CV-00865 KJM DB

WELLS FARGO BANK, N.A.  
1374 FITZGERALD DR  
PINOLE, CA 94564  
FOR INQUIRIES CALL (480) 394-3122

VOID IF OVER US \$ 505.00

*Richard Levy*  
CONTROLLER

0101012756 12100024814861 511442

TO CLERK OF NINTH CIRCUIT

& RP Court Name: Eastern District of California

1a

Division: 2

Receipt Number: CAE200107336

Cashier ID: acoll

Transaction Date: 07/07/2020

Payer Name: Michael A. Bruzzone

NOTICE OF APPEAL/DOCKETING FEE

For: Michael A. Bruzzone

Case/Party: D-CAE-2-18-CV-000865-001

Amount: \$505.00

UNITED STATES DISTRICT COURT  
FOR THE  
STERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK

501 "I" Street  
Sacramento, CA 95814

CHECK

Check/Money Order Num: 2756

Amt Tendered: \$505.00

Total Due: \$505.00

Total Tendered: \$505.00

Change Amt: \$0.00

BILL FOR FEES DUE

RE: MICHAEL A. BRUZZONE vs. INTEL CORPORATION

USDC: 2:18-CV-00865-KJM-DB

A Notice of Appeal has been filed in the above-referenced case without the appropriate fee paid. You are hereby notified that the filing fee of \$505.00 is due immediately.

KEITH HOLLAND  
CLERK OF COURT

By: l. Mena-Sanchez

Deputy Clerk

MIME-Version:1.0 From:caed\_cmecl\_helpdesk@caed.uscourts.gov To:CourtMail@localhost.localdomain Message-Id: Subject:Activity in Case 2:18-cv-00865-KJM-DB (PS) Bruzzone v. Intel Corporation Minute Order. Content-Type: text/html

*This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.*

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**U.S. District Court**

**Eastern District of California – Live System**

**Notice of Electronic Filing**

The following transaction was entered on 3/13/2020 at 8:08 AM PDT and filed on 3/13/2020

**Case Name:** (PS) Bruzzone v. Intel Corporation

**Case Number:** 2:18-cv-00865-KJM-DB

**Filer:**

**WARNING: CASE CLOSED on 02/13/2020**

**Document Number:** 60(No document attached)

**Docket Text:**

MINUTE ORDER issued by Courtroom Deputy C. Schultz for Chief District Judge Kimberly J. Mueller: The court is in receipt of Plaintiff's Motion to Proceed In Forma Pauperis (ECF No. [59]). Having considered Plaintiff's Request, the court finds no reason to reconsider its previous decision (ECF No. [54]) denying Plaintiff's Motion to Proceed In Forma Pauperis. Accordingly, Plaintiff's Motion is DENIED without prejudice. Plaintiff may renew his request in the circuit court upon filing of an appeal.(Text Only Entry) (Schultz, C)

**2:18-cv-00865-KJM-DB Notice has been electronically mailed to:**

Brian M. Affrunti &nbsp &nbsp baffrunti@bwslaw.com, gpaden@bwslaw.com, hlee@bwslaw.com

William Faulkner &nbsp &nbsp wfaulkner@mcmanslaw.com, eschneider@mcmanslaw.com

**2:18-cv-00865-KJM-DB Electronically filed documents must be served conventionally by the filer to:**

Michael A. Bruzzone  
3766 Via Verdi  
Richmond, CA 94803

**2:18-cv-00865-KJM-DB (PS) Bruzzone v. Intel Corporation**

Kimberly J. Mueller, presiding

Deborah Barnes, referral

**Date filed:** 04/10/2018**Date terminated:** 02/13/2020**Date of last filing:** 07/07/2020**Case Summary****Office:** Sacramento**Filed:** 04/10/2018**Jury Demand:** None**Demand:****Nature of Suit:** 410**Cause:** 15:15 Antitrust Litigation**Jurisdiction:** Federal Question**Disposition:** Dismissed - Other**County:** Sacramento**Terminated:** 02/13/2020**Origin:** 1**Reopened:****Lead Case:**

None

**Related Case:**

None

**Other Court Case:** 20-15326[USCA]**Defendant Custody Status:****Pending Status:** Screen**Flags:** PRO\_SE,CIVIL,CLOSED**Plaintiff:** Michael A. Bruzzone**Defendant:** Intel Corporation **represented by** William Faulkner **Phone:** 408-279-8700**Fax:** 408-279-3244**Email:** wfaulkner@mcmanslaw.com**Defendant:** ARM Inc.**represented by** Brian M. Affrunti **Phone:** 650-681-8316**Fax:** 650-688-8333**Email:** baffrunti@bwslaw.com**Defendant:** ARM Holdings plc **represented by** Brian M. Affrunti **Phone:** 650-681-8316**Fax:** 650-688-8333**Email:** baffrunti@bwslaw.com

PACER Service Center			
Transaction Receipt			
08/01/2020 11:57:05			
<b>PACER Login:</b>	BruzzoneSZaW:6478088:0	<b>Client Code:</b>	
<b>Description:</b>	Case Summary	<b>Search Criteria:</b>	2:18-cv-00865-KJM-DB
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.10

**U.S. District Court  
Eastern District of California - Live System (Sacramento)  
CIVIL DOCKET FOR CASE #: 2:18-cv-00865-KJM-DB**

(PS) Bruzzone v. Intel Corporation  
Assigned to: Chief District Judge Kimberly J. Mueller  
Referred to: Magistrate Judge Deborah Barnes  
Case in other court: USCA, 20-15326  
Cause: 15:15 Antitrust Litigation

Date Filed: 04/10/2018  
Date Terminated: 02/13/2020  
Jury Demand: None  
Nature of Suit: 410 Anti-Trust  
Jurisdiction: Federal Question

**Plaintiff**

**Michael A. Bruzzone**

represented by **Michael A. Bruzzone**  
3766 Via Verdi  
Richmond, CA 94803  
415-250-4652  
PRO SE

V.

**Defendant**

**Intel Corporation**

*in concerted action with ARM Holdings plc  
& ARM Inc. executives and their corporate  
attorneys*

represented by **William Faulkner**  
McManis Faulkner  
50 W. San Fernando Street  
10th Floor  
San Jose, CA 95513  
408-279-8700  
Fax: 408-279-3244  
Email: wfaulkner@mcmanslaw.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**ARM Inc.**

represented by **Brian M. Affrunti**  
Burke, Williams & Sorensen, LLP  
2440 West El Camino Real  
Suite 620  
Mountain View, CA 94040  
650-681-8316  
Fax: 650-688-8333  
Email: baffrunti@bwslaw.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**ARM Holdings plc**

represented by **Brian M. Affrunti**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**2:18-cv-00865-KJM-DB (PS) Bruzzone v. Intel Corporation**  
 Kimberly J. Mueller, presiding  
 Deborah Barnes, referral  
**Date filed:** 04/10/2018  
**Date terminated:** 02/13/2020  
**Date of last filing:** 07/07/2020

## History

Doc. No.	Dates	Description
	<i>Filed &amp; Entered:</i> 04/10/2018	• IFP Application
<u>1</u>	<i>Filed &amp; Entered:</i> 04/10/2018	• Complaint
<u>2</u>	<i>Filed &amp; Entered:</i> 04/10/2018 <i>Terminated:</i> 02/13/2020	• Motion to Proceed In Forma Pauperis
	<i>Filed &amp; Entered:</i> 09/28/2018	• Service by Mail
<u>3</u>	<i>Filed &amp; Entered:</i> 09/28/2018	• Order
<u>4</u>	<i>Filed &amp; Entered:</i> 10/17/2018 <i>Terminated:</i> 10/18/2018	• Motion to Dismiss
<u>5</u>	<i>Filed &amp; Entered:</i> 10/17/2018 <i>Terminated:</i> 10/18/2018	• Motion for Miscellaneous Relief
	<i>Filed &amp; Entered:</i> 10/18/2018	• Service by Mail
<u>6</u>	<i>Filed &amp; Entered:</i> 10/18/2018	• Minute Order
<u>7</u>	<i>Filed &amp; Entered:</i> 10/18/2018 <i>Terminated:</i> 10/19/2018	• Motion to Dismiss
<u>8</u>	<i>Filed &amp; Entered:</i> 10/18/2018 <i>Terminated:</i> 10/19/2018	• Motion for Miscellaneous Relief
<u>9</u>	<i>Filed &amp; Entered:</i> 10/18/2018	• Certificate of Service
	<i>Filed &amp; Entered:</i> 10/19/2018	• Service by Mail
<u>10</u>	<i>Filed &amp; Entered:</i> 10/19/2018	• Order on Motion to Dismiss
<u>11</u>	<i>Filed:</i> 10/26/2018 <i>Entered:</i> 10/29/2018	• Amended Complaint
<u>12</u>	<i>Filed:</i> 10/26/2018 <i>Entered:</i> 10/29/2018	• Response to Order to Show Cause
<u>13</u>	<i>Filed:</i> 11/27/2018 <i>Entered:</i> 11/28/2018	• Declaration
<u>14</u>	<i>Filed:</i> 11/27/2018 <i>Entered:</i> 11/28/2018	• Notice - Other
<u>15</u>	<i>Filed:</i> 04/02/2019 <i>Entered:</i> 04/03/2019	• Order
	<i>Filed &amp; Entered:</i> 04/03/2019	• Service by Mail
<u>16</u>	<i>Filed:</i> 04/30/2019 <i>Entered:</i> 05/01/2019	• Response
<u>17</u>	<i>Filed:</i> 04/30/2019 <i>Entered:</i> 05/01/2019	• Amended Complaint

<u>18</u>	<i>Filed:</i> <i>Entered:</i>	04/30/2019 05/01/2019	Response
<u>19</u>	<i>Filed:</i> <i>Entered:</i>	04/30/2019 05/01/2019	Notice - Other
<u>20</u>	<i>Filed:</i> <i>Entered:</i>	04/30/2019 05/01/2019	Certificate of Service
	<i>Filed &amp; Entered:</i>	05/30/2019	CAED Receipt
	<i>Filed &amp; Entered:</i>	05/30/2019	Service by Mail
<u>21</u>	<i>Filed &amp; Entered:</i>	05/30/2019	Summons
<u>22</u>	<i>Filed &amp; Entered:</i>	05/30/2019	Civil New Case Documents for KJM
<u>23</u>	<i>Filed:</i> <i>Entered:</i>	05/30/2019 05/31/2019	Certificate of Service
<u>24</u>	<i>Filed &amp; Entered:</i>	06/24/2019	Decline of Jurisdiction of US Magistrate Judge
<u>25</u>	<i>Filed &amp; Entered:</i>	06/24/2019	Certificate of Service
<u>26</u>	<i>Filed &amp; Entered:</i> <i>Terminated:</i>	06/24/2019 02/13/2020	Motion to Dismiss
<u>27</u>	<i>Filed &amp; Entered:</i>	06/26/2019	Minute Order
<u>28</u>	<i>Filed &amp; Entered:</i> <i>Terminated:</i>	06/26/2019 02/13/2020	Motion for Miscellaneous Relief
<u>29</u>	<i>Filed &amp; Entered:</i>	06/26/2019	Certificate of Service
<u>30</u>	<i>Filed &amp; Entered:</i>	06/27/2019	Notice to Reschedule Hearing on Motion
<u>31</u>	<i>Filed:</i> <i>Entered:</i>	07/01/2019 07/02/2019	Certificate of Service
<u>32</u>	<i>Filed:</i> <i>Entered:</i>	07/01/2019 07/02/2019	Consent to Jurisdiction of US Magistrate Judge
<u>33</u>	<i>Filed:</i> <i>Entered:</i> <i>Terminated:</i>	07/01/2019 07/02/2019 02/13/2020	Motion to Proceed In Forma Pauperis
<u>34</u>	<i>Filed &amp; Entered:</i> <i>Terminated:</i>	07/19/2019 02/13/2020	Motion to Dismiss
<u>35</u>	<i>Filed &amp; Entered:</i> <i>Terminated:</i>	07/19/2019 02/13/2020	Motion for Miscellaneous Relief
<u>36</u>	<i>Filed &amp; Entered:</i>	07/19/2019	Request
<u>37</u>	<i>Filed &amp; Entered:</i>	07/19/2019	Decline of Jurisdiction of US Magistrate Judge
<u>39</u>	<i>Filed:</i> <i>Entered:</i>	07/19/2019 07/22/2019	Opposition to Motion
<u>40</u>	<i>Filed:</i> <i>Entered:</i>	07/19/2019 07/22/2019	Declaration
<u>41</u>	<i>Filed:</i> <i>Entered:</i>	07/19/2019 07/22/2019	Certificate of Service
<u>38</u>	<i>Filed &amp; Entered:</i>	07/22/2019	Certificate of Service
<u>42</u>	<i>Filed &amp; Entered:</i>	08/02/2019	Reply
<u>46</u>	<i>Filed:</i> <i>Entered:</i>	08/02/2019 08/05/2019	Opposition to Motion

	<i>Filed &amp; Entered:</i> 08/05/2019	<input checked="" type="checkbox"/> Service by Mail
	<i>Filed &amp; Entered:</i> 08/05/2019	<input checked="" type="checkbox"/> Service by Mail
43	<i>Filed &amp; Entered:</i> 08/05/2019	<input checked="" type="checkbox"/> Minute Order
44	<i>Filed &amp; Entered:</i> 08/05/2019	<input checked="" type="checkbox"/> Minute Order
45	<i>Filed &amp; Entered:</i> 08/05/2019	<input checked="" type="checkbox"/> Minute Order
47	<i>Filed &amp; Entered:</i> 08/09/2019	<input checked="" type="checkbox"/> Reply
	<i>Filed &amp; Entered:</i> 08/12/2019	<input checked="" type="checkbox"/> Service by Mail
48	<i>Filed &amp; Entered:</i> 08/12/2019	<input checked="" type="checkbox"/> Minute Order
49	<i>Filed:</i> 08/15/2019 <i>Entered:</i> 08/16/2019	<input checked="" type="checkbox"/> Reply
50	<i>Filed:</i> 10/30/2019 <i>Entered:</i> 10/31/2019	<input checked="" type="checkbox"/> Summons Returned Executed
	<i>Filed &amp; Entered:</i> 12/17/2019	<input checked="" type="checkbox"/> Service by Mail
51	<i>Filed &amp; Entered:</i> 12/17/2019 <i>Terminated:</i> 02/13/2020	<input checked="" type="checkbox"/> Findings and Recommendations (Motion)
52	<i>Filed:</i> 12/30/2019 <i>Entered:</i> 12/31/2019	<input checked="" type="checkbox"/> Objections to Findings and Recommendations
53	<i>Filed &amp; Entered:</i> 01/14/2020	<input checked="" type="checkbox"/> Reply
	<i>Filed &amp; Entered:</i> 02/13/2020	<input checked="" type="checkbox"/> Service by Mail
54	<i>Filed &amp; Entered:</i> 02/13/2020	<input checked="" type="checkbox"/> Order Adopting Findings and Recommendations
55	<i>Filed &amp; Entered:</i> 02/13/2020	<input checked="" type="checkbox"/> Judgment
56	<i>Filed:</i> 02/26/2020 <i>Entered:</i> 02/27/2020 <i>Terminated:</i> 07/02/2020	<input checked="" type="checkbox"/> Notice of Appeal
	<i>Filed &amp; Entered:</i> 02/27/2020	<input checked="" type="checkbox"/> Service by Mail
57	<i>Filed &amp; Entered:</i> 02/27/2020	<input checked="" type="checkbox"/> Appeal Processed to USCA
58	<i>Filed &amp; Entered:</i> 02/27/2020	<input checked="" type="checkbox"/> USCA Case Number
59	<i>Filed:</i> 03/02/2020 <i>Entered:</i> 03/03/2020 <i>Terminated:</i> 03/13/2020	<input checked="" type="checkbox"/> Motion to Proceed In Forma Pauperis
	<i>Filed &amp; Entered:</i> 03/13/2020	<input checked="" type="checkbox"/> Service by Mail
60	<i>Filed &amp; Entered:</i> 03/13/2020	<input checked="" type="checkbox"/> Minute Order
61	<i>Filed:</i> 03/16/2020 <i>Entered:</i> 03/17/2020	<input checked="" type="checkbox"/> Motion for Miscellaneous Relief
62	<i>Filed:</i> 07/02/2020 <i>Entered:</i> 07/08/2020	<input checked="" type="checkbox"/> USCA Order/Mandate/Memorandum
	<i>Filed &amp; Entered:</i> 07/07/2020	<input checked="" type="checkbox"/> CAED Receipt

<b>PACER Service Center</b>			
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08/01/2020 11:59:14			
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Description:	History/Documents	Search	2:18-cv-00865-

Notation: Appeal Dismissal is Entered July 8, 2020 and payment of appeal filing fee is Entered July 7, 2020

8/1/2020

LIVE 6.2.4 CM/ECF - U.S. District Court for Eastern California

Date Filed	#	Docket Text
07/02/2020	<u>62</u>	USCA ORDER as to <u>56</u> Notice of Appeal filed by Michael A. Bruzzone: This appeal is dismissed. (Kaminski, H) (Entered: 07/08/2020)
07/07/2020		RECEIPT number #CAE200107336 \$505.00 fbo Michael A. Bruzzone by Michael A. Bruzzone on 7/7/2020. (Coll, A) (Entered: 07/07/2020)

PACER Service Center			
Transaction Receipt			
08/01/2020 11:35:34			
PACER Login:	BruzzoneSzaW:6478088:0	Client Code:	
Description:	Docket Report	Search Criteria:	2:18-cv-00865-KJM-DB Start date: 4/18/2020
Billable Pages:	2	Cost:	0.20

223

11 MICHAEL A. BRUZZONE,  
12 Plaintiff,  
13 v.  
14 INTEL CORPORATION,  
15 Defendant.

No. 2:18-cv-0865 KJM DB PS  
ORDER

17 Plaintiff is proceeding in this action pro se. The matter was referred to a United States  
18 Magistrate Judge as provided by Local Rule 302(c)(21).

19 On December 17, 2019, the magistrate judge filed findings and recommendations, which  
20 were served on all parties and which contained notice to all parties that any objections to the  
21 findings and recommendations were to be filed within fourteen days after service of the findings  
22 and recommendations. Plaintiff has filed objections to the findings and recommendations.

23 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this  
24 court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the  
25 findings and recommendations to be supported by the record and by the proper analysis.

26 | Accordingly, IT IS HEREBY ORDERED that:

27       1. The findings and recommendations filed December 17, 2019 (ECF No. 51) are adopted  
28 in full, including the finding that this action is frivolous;

2. Defendant Intel's June 24, 2019 motion to dismiss (ECF No. 26) is granted;
3. Defendant ARM's July 19, 2019 motion to dismiss (ECF No. 34) is granted;
4. The April 30, 2019 second amended complaint is dismissed without leave to amend;
5. Defendant Intel's June 26, 2019 motion to declare plaintiff vexatious (ECF No. 28) is denied;
6. Defendant ARM's July 19, 2019 motion to declare plaintiff vexatious (ECF No. 35) is denied;
7. Plaintiff's April 10, 2018 motion to proceed in forma pauperis (ECF No. 2) is denied.
8. Plaintiff's July 1, 2019 motion to proceed in forma pauperis (ECF No. 33) is denied;

and

9. This action is closed.

DATED: February 12, 2020.

CHIEF UNITED STATES DISTRICT JUDGE

11 MICHAEL A. BRUZZONE,  
12 Plaintiff,  
13 v.  
14 INTEL CORPORATION,  
15 Defendant.

No. 2:18-cv-0865 KJM DB PS

FINDINGS AND RECOMMENDATIONS

17 Plaintiff Michael Bruzzone is proceeding in this action pro se. This matter was referred to  
18 the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Pending  
19 before the undersigned are defendants' motions to dismiss the second amended complaint and  
20 defendants' motions to declare plaintiff a vexatious litigant. (ECF Nos. 45 & 48.) For the  
21 reasons stated below, the undersigned will recommend that defendants' motions to dismiss be  
22 granted, the second amended complaint be dismissed without leave to amend, and defendants'  
23 motions to declare plaintiff a vexatious litigant be denied.

## BACKGROUND

25 Plaintiff, proceeding pro se, commenced this action on April 10, 2018, by filing a  
26 complaint and a motion to proceed in forma pauperis. (ECF Nos. 1 & 2.) The undersigned  
27 granted plaintiff leave to file an amended complaint on September 28, 2018, and again on April 2,  
28 ////

1 2019. (ECF No. 3 & 15.) On April 30, 2019, plaintiff filed a second amended complaint. (ECF  
2 No. 17.) And on May 30, 2019, plaintiff paid the required filing fee.<sup>1</sup>

3        Although nearly impossible to decipher, the second amended complaint alleges, generally,  
4        that the “[d]efendants portray[ed] Plaintiff’s] claims [as] merit-less appear (sic) a blacklisting  
5        technique on malicious slander, libel, fraud and contract interference[.]” (Sec. Am. Compl. (ECF  
6        No. 17) at 6.<sup>2</sup>) On June 24, 2019, defendant Intel Corporation (“Intel”) filed a motion to dismiss  
7        pursuant to Rule 12(b)(3) and Rule 12(b)(6) of the Federal Rules of Civil Procedure. (ECF No.  
8        26.) On June 26, 2019, defendant Intel filed a motion to declare plaintiff a vexatious litigant.  
9        (ECF No. 28.) On July 19, 2019, defendant ARM, Inc., and ARM Holdings PLC, (“ARM”), also  
10        filed a motion to dismiss pursuant to Rule 12(b)(3) and Rule 12(b)(6), as well as a motion to  
11        declare plaintiff a vexatious litigant. (ECF Nos. 34 & 35.)

12 On July 19, 2019, plaintiff filed an opposition to defendant Intel's motion to dismiss.  
13 (ECF No. 39.) Defendant Intel filed a reply on August 2, 2019. (ECF No. 42.) On August 2,  
14 2019, plaintiff filed an opposition to defendant ARM's motion to declare plaintiff a vexatious  
15 litigant. (ECF No. 46.) Defendant ARM filed a reply on August 9, 2019. (ECF No. 47.)  
16 Plaintiff filed a sur-reply on August 15, 2019.<sup>3</sup> (ECF No. 49.)

## STANDARD

## I. Legal Standards Applicable to Motions to Dismiss Pursuant to Rule 12(b)(3)

Rule 12(b)(3) allows a defendant to challenge a complaint for improper venue. “Once a defendant has challenged venue, the plaintiff has the burden of demonstrating that venue is proper in the chosen district.” *United Tactical Systems LLC v. Real Action Paintball, Inc.*, 108

<sup>22</sup>      <sup>1</sup> Despite having paid the required filing fee plaintiff filed a second motion to proceed in forma  
<sup>23</sup> pauperis on July 1, 2019. (ECF No. 33.) Because plaintiff has paid the required filing fee, and  
<sup>24</sup> because the second amended complaint is frivolous, the undersigned will recommend that  
plaintiff's motions to proceed in forma pauperis be denied.

<sup>25</sup> Page number citations such as this one are to the page number reflected on the court's CM/ECF system and not to page numbers assigned by the parties.

<sup>27</sup> The filing of a sur-reply is not authorized by the Federal Rules of Civil Procedure or the Local  
Rules. See Fed. R. Civ. P. 12; Local Rule 230. Nonetheless, in light of plaintiff's pro se status,  
<sup>28</sup> the undersigned has considered plaintiff's sur-reply in evaluating defendants' motions.

1 F.Supp.3d 733, 751 (N.D. Cal. 2015) (citing Piedmont Label Co. v. Sun Garden Packing Co., 598  
2 F.2d 491, 496 (9th Cir. 1979)). “When there are multiple parties and/or multiple claims in an  
3 action, the plaintiff must establish that venue is proper as to each defendant and as to each claim.”  
4 Allstar Marketing Group, LLC v. Your Store Online, LLC, 666 F.Supp.2d 1109, 1126 (C.D. Cal.  
5 2009) (quotation omitted). Where an action is filed in the wrong division or district the court  
6 “shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in  
7 which it could have been brought.” 28 U.S.C. § 1406(a).

8 **II. Legal Standards Applicable to Motions to Dismiss Pursuant to Rule 12(b)(6)**

9 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal  
10 sufficiency of the complaint. N. Star Int'l v. Ariz. Corp. Comm'n, 720 F.2d 578, 581 (9th Cir.  
11 1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of  
12 sufficient facts alleged under a cognizable legal theory.” Balistreri v. Pacifica Police Dep't, 901  
13 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege “enough facts to state a claim to  
14 relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). “A  
15 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
16 the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v.  
17 Iqbal, 556 U.S. 662, 678 (2009).

18 In determining whether a complaint states a claim on which relief may be granted, the  
19 court accepts as true the allegations in the complaint and construes the allegations in the light  
20 most favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Love v.  
21 United States, 915 F.2d 1242, 1245 (9th Cir. 1989). In general, pro se complaints are held to less  
22 stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519,  
23 520-21 (1972). However, the court need not assume the truth of legal conclusions cast in the  
24 form of factual allegations. United States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th  
25 Cir. 1986). While Rule 8(a) does not require detailed factual allegations, “it demands more than  
26 an unadorned, the defendant-unlawfully-harmed-me accusation.” Iqbal, 556 U.S. at 678. A  
27 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the  
28 elements of a cause of action.” Twombly, 550 U.S. at 555; see also Iqbal, 556 U.S. at 676

1 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory  
2 statements, do not suffice."). Moreover, it is inappropriate to assume that the plaintiff "can prove  
3 facts which it has not alleged or that the defendants have violated the . . . laws in ways that have  
4 not been alleged." Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters,  
5 459 U.S. 519, 526 (1983).

6 In ruling on a motion to dismiss brought pursuant to Rule 12(b)(6), the court is permitted  
7 to consider material which is properly submitted as part of the complaint, documents that are not  
8 physically attached to the complaint if their authenticity is not contested and the plaintiff's  
9 complaint necessarily relies on them and matters of public record. Lee v. City of Los Angeles,  
10 250 F.3d 668, 688-89 (9th Cir. 2001).

## 11 ANALYSIS

### 12 I. Defendants' Motions to Dismiss

#### 13 A. Venue

14 Pursuant to 28 U.S.C. § 1331(b):

15 A civil action may be brought in--

16 (1) a judicial district in which any defendant resides, if all defendants  
17 are residents of the State in which the district is located;

18 (2) a judicial district in which a substantial part of the events or  
19 omissions giving rise to the claim occurred, or a substantial part of  
property that is the subject of the action is situated; or

20 (3) if there is no district in which an action may otherwise be brought  
21 as provided in this section, any judicial district in which any  
defendant is subject to the court's personal jurisdiction with respect  
to such action.

22 In dismissing plaintiff's original complaint with leave to amend the undersigned advised  
23 plaintiff that it appeared that the United States District Court for the Northern District of  
24 California may be the proper venue for this action. In this regard, the undersigned noted that it  
25 appeared that defendant Intel resided in the Northern District and that plaintiff's in forma  
26 pauperis application alleged this action was related to an action filed in the Northern District.<sup>4</sup>

27  
28 <sup>4</sup> It was also noted that plaintiff had been declared a vexatious litigant in the Northern District.  
(ECF No. 3 at 4.)

1 (ECF No. 3 at 4.) Accordingly, plaintiff was ordered to address venue in the first amended  
2 complaint. (Id. at 6.) Plaintiff, however, did not.

3 Plaintiff was again advised about the undersigned's concerns regarding proper venue in an  
4 order dismissing the first amended complaint with leave to amend. (ECF No. 15 at 6.) Despite  
5 these repeated admonishments the second amended complaint fails to contain any allegations  
6 addressing why venue is proper in this judicial district.

7 Defendants have now moved to dismiss arguing that the Eastern District is not the proper  
8 venue for this action. (Def. Intel's MTD (ECF No. 26) at 21; Def. ARM's MTD (ECF No. 34-1)  
9 at 7-8.) And plaintiff's opposition to defendants' motions is nonsensical. In this regard, plaintiff  
10 argues

11 . . . as Northern District has raised question in this worldwide  
12 antitrust and RICO matter where in Santa Clara County sends  
13 plaintiff to burn at the stake, Alameda County are suspect industrial  
14 spy traps and law enforcement questions, and in San Francisco  
County Legal community historically entrenched on Intel Corp.  
Santa Clara Legal Department contract assignments.

15 (Pl.'s Opp.'n (ECF No. 39) at 30.)

16 As noted above, in the face of defendants' motions to dismiss for improper venue plaintiff  
17 has "the burden of showing that venue" is proper in this district. Piedmont, 598 F.2d at 496.  
18 Plaintiff has failed to meet this burden. Moreover, because the undersigned finds that the second  
19 amended complaint should be dismissed without leave to amend, as explained below, the  
20 undersigned finds that it would not be in the interest of justice to transfer this case. See generally  
21 Lemon v. Kramer, 270 F.Supp.3d 125, 140 (D. D.C. 2017) ("The Court finds that it is not in the  
22 interest of justice to transfer this case because there are 'substantive problems' with the  
23 Complaint, which, in its current form, would face dismissal.").

24 Accordingly, the undersigned recommends that defendants' motions to dismiss due to  
25 improper venue be granted and the second amended complaint be dismissed.

26 **B. Failure to State a Claim**

27 As was true of plaintiff's prior complaints, the second amended complaint is unintelligible  
28 and devoid of factual allegations. The second amended complaint also fails to clearly identify a

1 claim against a named defendant. Instead, the second amended complaint consists of vague,  
2 conclusory, and nonsensical sentences.

3 For example, the second amended complaint alleges that “[i]n this action subject 18  
4 U.S.C. § 1962(c) intent on conduct Defendants [CLAIM] do vicariously and maliciously  
5 interfere in Plaintiff business advantage engaged in, and promote his public punishment’s (sic)  
6 harming in reputation and profession unreasonable to reasonable person is cognizable at 18  
7 U.S.C. § 1964(c).” (Sec. Am. Compl. (ECF No. 17) at 3-4.) That “[a]bout a year ago Plaintiff  
8 speculates Intel associate attorneys throw Intel Corp. August 2014 vexatious filing retrospective  
9 into future time, so at some point in time, we can all get out of the middle of this corporate  
10 political mess.” (*Id.* at 5.) And that in “earlier (sic) August 1997 Intel contract for [plaintiff] to  
11 provide his observations of anticompetitive conduct[.]” (*Id.* at 6.) However, plaintiff’s  
12 “[o]bservations are covered up by Intel Corp. . . . fixers portray of (sic) [plaintiff] ‘delusional’,  
13 ‘paranoid’, ‘force violence risk’, unbelievable including 1999 through 2002 utilizing ibansik  
14 conditioning techniques intent to amplify traumatic stress and trigger on defendant key  
15 reactionary response.” (*Id.*)

16 As plaintiff has been repeatedly advised, although the Federal Rules of Civil Procedure  
17 adopt a flexible pleading policy, a complaint must give the defendant fair notice of the plaintiff’s  
18 claims and must allege facts that state the elements of each claim plainly and succinctly. Fed. R.  
19 Civ. P. 8(a)(2); Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). “A  
20 pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of cause of  
21 action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertions’ devoid of  
22 ‘further factual enhancements.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly,  
23 550 U.S. at 555, 557). A plaintiff must allege with at least some degree of particularity overt acts  
24 which the defendants engaged in that support the plaintiff’s claims. Jones, 733 F.2d at 649.

25 **C. Judicial Immunity**

26 The second amended complaint names as a defendant the honorable William Alsup, a  
27 District Judge in the Northern District of California, and seeks to challenge Judge Alsup’s rulings  
28 in prior actions involving plaintiff. (Sec. Am. Compl. (ECF No. 17) at 1.) Specifically, the

1 second amended complaint refers to Judge Alsup's "false portrayal" and seeks a "VOIDING [of]  
2 Judge William Alsup['s] vexation ORDER[.]" (*Id.* at 1,5.)

3 However, Judge Alsup "is absolutely immune for judicial acts." Simmons v. Sacramento  
4 County Superior Court, 318 F.3d 1156, 1161 (9th Cir. 2003); see also Bruzzone v. McManis, 785  
5 Fed. Appx. 503 (9th Cir. 2019) ("The district court properly dismissed Bruzzone's claims against  
6 Judge Alsup as barred by judicial immunity because Judge Alsup's challenged actions were taken  
7 in his judicial capacity."). And "'horizontal appeal' from one district court to another . . . [is]  
8 improper." Mullis v. U.S. Bankruptcy Court for Dist. of Nevada, 828 F.2d 1385, 1392-93 (9th  
9 Cir. 1987).

10 Accordingly, for the reasons stated above, defendants' motions to dismiss should be  
11 granted.

12 **II. Leave to Amend**

13 The undersigned has carefully considered whether plaintiff could further amend the  
14 second amended complaint to state a claim upon which relief can be granted. "Valid reasons for  
15 denying leave to amend include undue delay, bad faith, prejudice, and futility." California  
16 Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988); see also  
17 Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983)  
18 (holding that while leave to amend shall be freely given, the court does not have to allow futile  
19 amendments). However, when evaluating the failure to state a claim, the complaint of a pro se  
20 plaintiff may be dismissed "only where 'it appears beyond doubt that the plaintiff can prove no  
21 set of facts in support of his claim which would entitle him to relief.'" Franklin v. Murphy, 745  
22 F.2d 1221, 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972)); see also  
23 Weilburg v. Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) ("Dismissal of a pro se complaint  
24 without leave to amend is proper only if it is absolutely clear that the deficiencies of the  
25 complaint could not be cured by amendment.") (quoting Schucker v. Rockwood, 846 F.2d 1202,  
26 1203-04 (9th Cir. 1988)).

27 Here, the undersigned has twice granted plaintiff leave to amend while advising plaintiff  
28 about the deficiencies noted above and how to cure those deficiencies. (ECF Nos. 3 & 15.)

1       Nonetheless, despite these repeated advisements plaintiff has been unable to successfully amend  
2       the complaint.<sup>5</sup> Accordingly, the undersigned finds that it would be futile to grant plaintiff further  
3       leave to amend.

4       **III. Defendants' Motions to Declare Plaintiff a Vexatious Litigant**

5       The Ninth Circuit has acknowledged the "inherent power of federal courts to regulate the  
6       activities of abusive litigants by imposing carefully tailored restrictions under the appropriate  
7       circumstances." De Long v. Hennessey, 912 F.2d 1144, 1146 (9th Cir. 1990) (discussing  
8       requirements, pursuant to the All Writs Act, 28 U.S.C. § 1651(a), for issuing an order requiring a  
9       litigant to seek permission from the court prior to filing any future suits); see also Molski v.  
10       Evergreen Dynasty Corp., 500 F.3d 1047, 1057-62 (9th Cir. 2007).

11       Local Rule 151(b) provides that "[t]he provisions of Title 3A, part 2, of the California  
12       Code of Civil Procedure, relating to vexatious litigants, are hereby adopted as a procedural rule of  
13       this Court on the basis of which the Court may order the giving of security, bond, or undertaking,  
14       although the power of the court shall not be limited thereby." California Code of Civil Procedure,  
15       Title 3A, part 2, commences with § 391 and defines a "vexatious litigant" as including those  
16       persons acting in propria persona who "repeatedly files unmeritorious motions, pleadings, or  
17       other papers . . . or engages in other tactics that are frivolous or solely intended to cause  
18       unnecessary delay." Cal. Code Civ. Pro. § 391(b)(3).

19       Pre-filing review orders, in which a complainant is required to obtain approval from a  
20       United States Magistrate Judge or District Judge prior to filing a complaint, can appropriately be  
21       imposed in certain circumstances but "should rarely be filed." DeLong, 912 F.2d at 1147; see  
22       also Molski, 500 F.3d at 1057. "When district courts seek to impose pre-filing restrictions, they  
23       must: (1) give litigants notice and 'an opportunity to oppose the order before it [is] entered'; (2)  
24       compile an adequate record for appellate review, including 'a listing of all the cases and motions  
25       that led the district court to conclude that a vexatious litigant order was needed'; (3) make  
26       substantive findings of frivolousness or harassment; and (4) tailor the order narrowly so as 'to

27  
28       <sup>5</sup> To the contrary, the second amended complaint is arguably less intelligible than the original  
complaint.

1 closely fit the specific vice encountered.”” Ringgold-Lockhart v. County of Los Angeles, 761  
2 F.3d 1057, 1062 (9th Cir. 2014) (quoting DeLong, 912 F.2d at 1147-48).

3 Absent “explicit substantive findings as to the frivolous or harassing nature of the  
4 plaintiff’s filings,” a district court may not issue a pre-filing order. O’Loughlin v. Doe, 920 F.2d  
5 614, 618 (9th Cir. 1990). To make substantive findings of frivolousness, the district court must  
6 look at “both the number and content of the filings as indicia” of the frivolousness of the litigant’s  
7 claims. In re Powell, 851 F.2d 427, 431 (9th Cir. 1988); see also Moy v United States, 906 F.2d  
8 467, 470 (9th Cir. 1990) (a pre-filing “injunction cannot issue merely upon a showing of  
9 litigiousness.”). ““The plaintiff’s claims must not only be numerous, but also be patently without  
10 merit.”” Ringgold-Lockhart, 761 F.3d at 1064 (quoting Molski, 500 F.3d at 1059).

11 Alternatively, “the district court may make [a] finding that the litigant’s filings ‘show a  
12 pattern of harassment.’”” Ringgold-Lockhart, 761 F.3d at 1064 (quoting De Long, 912 F.2d at  
13 1148). However, courts “must be careful not to conclude that particular types of actions filed  
14 repetitiously are harassing, and must [i]nstead . . . discern whether the filing of several similar  
15 types of actions constitutes an intent to harass the defendant or the court.” Id. (quoting De Long,  
16 912 F.2d at 1148) (internal quotation marks omitted).

17 Here, defendants’ motions to declare plaintiff vexatious recount plaintiff’s “20-year  
18 history of unsuccessful, frivolous lawsuits against” the defendants. (Def. Intel’s Vex. Mot. (ECF  
19 No. 28) at 6) (compiling cases). And plaintiff’s repeated and frivolous filings have resulted in  
20 plaintiff being declared a vexatious litigant by the Northern District and the Santa Clara County  
21 Superior Court. See Bruzzone v. McManis, Case No. 18-cv-1235 PJH, 2018 WL 5734546, at \*8  
22 (N.D. Cal. Oct. 31, 2018) (granting motion to declare plaintiff vexatious); Bruzzone v. Intel  
23 Corporation, No. C 14-1279 WHA, 2014 WL 4090470, at \*8 (N.D. Cal. Aug. 19, 2014) (same);  
24 Def. Intel’s Ex. DD (ECF No. 28-32) at 2.<sup>6</sup>

25 <sup>6</sup> The court may take judicial notice of its own files and of documents filed in other courts.  
26 Reyn’s Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n. 6 (9th Cir. 2006) (taking  
27 judicial notice of documents related to a settlement in another case that bore on whether the  
plaintiff was still able to assert its claims in the pending case); Burbank-Glendale-Pasadena  
28 Airport Auth. v. City of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial notice of  
court filings in a state court case where the same plaintiff asserted similar and related claims);

1 closely fit the specific vice encountered.”” Ringgold-Lockhart v. County of Los Angeles, 761  
2 F.3d 1057, 1062 (9th Cir. 2014) (quoting DeLong, 912 F.2d at 1147-48).

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8 467, 470 (9th Cir. 1990) (a pre-filing “injunction cannot issue merely upon a showing of  
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10 merit.”” Ringgold-Lockhart, 761 F.3d at 1064 (quoting Molski, 500 F.3d at 1059).

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21 Superior Court. See Bruzzone v. McManis, Case No. 18-cv-1235 PJH, 2018 WL 5734546, at \*8  
22 (N.D. Cal. Oct. 31, 2018) (granting motion to declare plaintiff vexatious); Bruzzone v. Intel  
23 Corporation, No. C 14-1279 WHA, 2014 WL 4090470, at \*8 (N.D. Cal. Aug. 19, 2014) (same);  
24 Def. Intel’s Ex. DD (ECF No. 28-32) at 2.<sup>6</sup>

25 <sup>6</sup> The court may take judicial notice of its own files and of documents filed in other courts.  
26 Reyn’s Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n. 6 (9th Cir. 2006) (taking  
27 judicial notice of documents related to a settlement in another case that bore on whether the  
28 plaintiff was still able to assert its claims in the pending case); Burbank–Glendale–Pasadena  
Airport Auth. v. City of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial notice of  
court filings in a state court case where the same plaintiff asserted similar and related claims);

1           It appears from the court's records, however, that this action represents plaintiff's lone  
2 filing in this district. While this action has been pending since 2018, plaintiff has not filed a new  
3 action. And in litigating this action pro se, plaintiff's filings have not been inordinate, abusive, or  
4 in reckless disregard of the orders of the court when compared to other pro se actions that come  
5 before the undersigned.

6           Moreover, if plaintiff were to file a future action in this district plaintiff will have to either  
7 seek leave to proceed in forma pauperis or pay the required filing fee. If plaintiff seeks leave to  
8 proceed in forma pauperis the complaint will be subject to screening prior to service on any  
9 defendant. See 28 U.S.C. § 1915(e)(2); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir.  
10 2000) (en banc). Were plaintiff to instead pay the required filing fee other sanctions, including  
11 but not limited to monetary sanctions, would be available and might prove sufficient to prevent  
12 any future frivolous or harassing filings. See Ringgold-Lockhart, 761 F.3d 1057, 1065 (9th Cir.  
13 2014) ("Before entering this broad pre-filing order . . . the district court assuredly should have  
14 considered whether imposing sanctions such as costs or fees on the Ringgolds would have been  
15 an adequate deterrent.").

16           The undersigned, however, will make an explicit finding that this action is frivolous. And  
17 explicitly cautions plaintiff that filing a new lawsuit based on the events related to this action may  
18 result in plaintiff being declared a vexatious litigant, may subject plaintiff to a pre-filing review  
19 order, and may result in plaintiff being ordered to pay a defendant's reasonable attorney fees.  
20 The undersigned anticipates that plaintiff will not file any new frivolous lawsuits related to the  
21 events at issue in this action.

22           For the reasons stated above, the undersigned finds that defendants' motions to declare  
23 plaintiff vexatious should be denied.

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Hott v. City of San Jose, 92 F.Supp.2d 996, 998 (N.D. Cal. 2000) (taking judicial notice of  
28 relevant memoranda and orders filed in state court cases).

## CONCLUSION

Accordingly, for the reasons stated above, IT IS HEREBY RECOMMENDED that:

1. Defendant Intel's June 24, 2019 motion to dismiss (ECF No. 26) be granted;
2. Defendant ARM's July 19, 2019 motion to dismiss (ECF No. 34) be granted;
3. The April 30, 2019 second amended complaint be dismissed without leave to amend;
4. Defendant Intel's June 26, 2019 motion to declare plaintiff vexatious (ECF No. 28) be

denied;

5. Defendant ARM's July 19, 2019 motion to declare plaintiff vexatious (ECF No. 35) be denied;
6. Plaintiff's April 10, 2018 motion to proceed in forma pauperis (ECF No. 2) be denied;
7. Plaintiff's July 1, 2019 motion to proceed in forma pauperis (ECF No. 33) be denied;

and

8. This action be closed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: December 16, 2019

  
DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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