

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 13 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
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

FILED

FOR THE NINTH CIRCUIT

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

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

Eastern District of California,
Sacramento

Defendants-Appellees.

ORDER

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 Nature of Suit: 3410 Antitrust Michael Bruzzone v. Intel Corporation, et al Appeal From: U.S. District Court for Eastern California, Sacramento Fee Status: Paid	Docketed: 02/27/2020 Termed: 07/02/2020								
Case Type Information: 1) civil 2) private 3) null									
Originating Court Information: District: 0972-2 : 2:18-cv-00865-KJM-DB Trial Judge: Kimberly J. Mueller, Chief District Judge Date Filed: 04/10/2018 <table style="width: 100%; border: none;"> <tr> <td style="width: 25%;">Date Order/Judgment:</td> <td style="width: 25%;">Date Order/Judgment EOD:</td> <td style="width: 25%;">Date NOA Filed:</td> <td style="width: 25%;">Date Rec'd COA:</td> </tr> <tr> <td>02/13/2020</td> <td>02/13/2020</td> <td>02/26/2020</td> <td>02/27/2020</td> </tr> </table>		Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:	02/13/2020	02/13/2020	02/26/2020	02/27/2020
Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:						
02/13/2020	02/13/2020	02/26/2020	02/27/2020						

MICHAEL A. BRUZZONE,

Plaintiff - Appellant,

v.

INTEL CORPORATION, in concerted action with ARM Holdings plc & 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
campmktg@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 9th 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

0001010 11-24
Office AU # 1210(8)

CASHIER'S CHECK

SERIAL #: 0101012756
ACCOUNT#: 4861-511442

Remitter: MICHAEL BRUZZONE
Purchaser: MICHAEL BRUZZONE
Purchaser Account: 228951431
Operator I.D.: u693867
Funding Source: Cash

June 30, 2020

PAY TO THE ORDER OF ***CLERK OF THE COURT EASTERN DISTRICT***
OF CALIFORNIA

Five hundred five dollars and no cents

***\$505.00**

Payee Address:
Memo: APPEAL FILING FEE 2:18-CV-00845 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

Purchaser Copy

FB004 (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)

CASHIER'S CHECK

0101012756

Remitter: MICHAEL BRUZZONE
Operator I.D.: u693867

June 30, 2020

PAY TO THE ORDER OF ***CLERK OF THE COURT EASTERN DISTRICT***
OF CALIFORNIA

Five hundred five dollars and no cents

***\$505.00**

Payee Address:
Memo: APPEAL FILING FEE 2:18-CV-00845 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 Lerry
CONTROLLER

⑈0101012756⑈ ⑆121000248⑆4861 511442⑈

TO CLERK OF NINTH CIRCUIT
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

CHECK
Check/Money Order Num: 2756
Amt Tendered: \$505.00

Total Due: \$505.00
Total Tendered: \$505.00
Change Amt: \$0.00

UNITED STATES DISTRICT COURT
FOR THE
STERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK
501 "I" Street
Sacramento, CA 95814

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: /s/ L. Mena-Sanchez
Deputy Clerk

MIME-Version:1.0 From:caed_cmech_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 baffrunti@bwsllaw.com, gpaden@bwsllaw.com, hlee@bwsllaw.com

William Faulkner 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**Jury Demand:** None**Nature of Suit:** 410**Jurisdiction:** Federal Question**County:** Sacramento**Origin:** 1**Lead Case:****Related Case:****Defendant Custody Status:****Pending Status:** Screen**Flags:** PRO_SE,CIVIL,CLOSED**Filed:** 04/10/2018**Demand:****Cause:** 15:15 Antitrust Litigation**Disposition:** Dismissed - Other**Terminated:** 02/13/2020**Reopened:**

None

None

Other Court Case: 20-15326[USCA]**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			
PACER Login:	BruzzoneSZaW:6478088:0	Client Code:	
Description:	Case Summary	Search Criteria:	2:18-cv-00865-KJM-DB
Billable Pages:	1	Cost:	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@mcmanislaw.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 & Entered:</i> 04/10/2018	IFP Application
<u>1</u>	<i>Filed & Entered:</i> 04/10/2018	Complaint
<u>2</u>	<i>Filed & Entered:</i> 04/10/2018 <i>Terminated:</i> 02/13/2020	Motion to Proceed In Forma Pauperis
	<i>Filed & Entered:</i> 09/28/2018	Service by Mail
<u>3</u>	<i>Filed & Entered:</i> 09/28/2018	Order
<u>4</u>	<i>Filed & Entered:</i> 10/17/2018 <i>Terminated:</i> 10/18/2018	Motion to Dismiss
<u>5</u>	<i>Filed & Entered:</i> 10/17/2018 <i>Terminated:</i> 10/18/2018	Motion for Miscellaneous Relief
	<i>Filed & Entered:</i> 10/18/2018	Service by Mail
<u>6</u>	<i>Filed & Entered:</i> 10/18/2018	Minute Order
<u>7</u>	<i>Filed & Entered:</i> 10/18/2018 <i>Terminated:</i> 10/19/2018	Motion to Dismiss
<u>8</u>	<i>Filed & Entered:</i> 10/18/2018 <i>Terminated:</i> 10/19/2018	Motion for Miscellaneous Relief
<u>9</u>	<i>Filed & Entered:</i> 10/18/2018	Certificate of Service
	<i>Filed & Entered:</i> 10/19/2018	Service by Mail
<u>10</u>	<i>Filed & 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 & 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>	Filed: 04/30/2019 Entered: 05/01/2019	☑ Response
<u>19</u>	Filed: 04/30/2019 Entered: 05/01/2019	☑ Notice - Other
<u>20</u>	Filed: 04/30/2019 Entered: 05/01/2019	☑ Certificate of Service
	Filed & Entered: 05/30/2019	☑ CAED Receipt
	Filed & Entered: 05/30/2019	☑ Service by Mail
<u>21</u>	Filed & Entered: 05/30/2019	☑ Summons
<u>22</u>	Filed & Entered: 05/30/2019	☑ Civil New Case Documents for KJM
<u>23</u>	Filed: 05/30/2019 Entered: 05/31/2019	☑ Certificate of Service
<u>24</u>	Filed & Entered: 06/24/2019	☑ Decline of Jurisdiction of US Magistrate Judge
<u>25</u>	Filed & Entered: 06/24/2019	☑ Certificate of Service
<u>26</u>	Filed & Entered: 06/24/2019 Terminated: 02/13/2020	☑ Motion to Dismiss
<u>27</u>	Filed & Entered: 06/26/2019	☑ Minute Order
<u>28</u>	Filed & Entered: 06/26/2019 Terminated: 02/13/2020	☑ Motion for Miscellaneous Relief
<u>29</u>	Filed & Entered: 06/26/2019	☑ Certificate of Service
<u>30</u>	Filed & Entered: 06/27/2019	☑ Notice to Reschedule Hearing on Motion
<u>31</u>	Filed: 07/01/2019 Entered: 07/02/2019	☑ Certificate of Service
<u>32</u>	Filed: 07/01/2019 Entered: 07/02/2019	☑ Consent to Jurisdiction of US Magistrate Judge
<u>33</u>	Filed: 07/01/2019 Entered: 07/02/2019 Terminated: 02/13/2020	☑ Motion to Proceed In Forma Pauperis
<u>34</u>	Filed & Entered: 07/19/2019 Terminated: 02/13/2020	☑ Motion to Dismiss
<u>35</u>	Filed & Entered: 07/19/2019 Terminated: 02/13/2020	☑ Motion for Miscellaneous Relief
<u>36</u>	Filed & Entered: 07/19/2019	☑ Request
<u>37</u>	Filed & Entered: 07/19/2019	☑ Decline of Jurisdiction of US Magistrate Judge
<u>39</u>	Filed: 07/19/2019 Entered: 07/22/2019	☑ Opposition to Motion
<u>40</u>	Filed: 07/19/2019 Entered: 07/22/2019	☑ Declaration
<u>41</u>	Filed: 07/19/2019 Entered: 07/22/2019	☑ Certificate of Service
<u>38</u>	Filed & Entered: 07/22/2019	☑ Certificate of Service
<u>42</u>	Filed & Entered: 08/02/2019	☑ Reply
<u>46</u>	Filed: 08/02/2019 Entered: 08/05/2019	☑ Opposition to Motion

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

PACER Service Center			
Transaction Receipt			
08/01/2020 11:59:14			
PACER Login:	BruzzoneSZaW:6478088:0	Client Code:	
Description:	History/Documents	Search	2:18-cv-00865-

https://ecf.caed.uscourts.gov/cgi-bin/HistDocQry.pl?949346518665989-L_1_0-1

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

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 MICHAEL A. BRUZZONE,

12 Plaintiff,

13 v.

14 INTEL CORPORATION,

15 Defendant.
16

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;

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

12 DATED: February 12, 2020.

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15 CHIEF UNITED STATES DISTRICT JUDGE
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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 MICHAEL A. BRUZZONE,
12 Plaintiff,
13 v.
14 INTEL CORPORATION,
15 Defendant.
16

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.

24 **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.¹

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 6.²) 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, 2019.³ (ECF No. 49.)

17 STANDARD

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

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

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

25 ² Page number citations such as this one are to the page number reflected on the court’s CM/ECF
26 system and not to page numbers assigned by the parties.

27 ³ The filing of a sur-reply is not authorized by the Federal Rules of Civil Procedure or the Local
28 Rules. See Fed. R. Civ. P. 12; Local Rule 230. Nonetheless, in light of plaintiff’s pro se status,
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. § 1391(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
20 property that is the subject of the action is situated; or

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

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

⁴ 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.⁵ 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 ⁵ 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 2.⁶

25 ⁶ 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);

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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
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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).

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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 2.⁶

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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 proceeds 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.

24 ////

25 ////

26 ////

27

28 Hott v. City of San Jose, 92 F.Supp.2d 996, 998 (N.D. Cal. 2000) (taking judicial notice of
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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DB/orders/orders.pro se/bruzzone0865.mtd.f&rs