NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

NAGUI MANKARUSE,
Plaintiff-Appellant

v.

RAYTHEON COMPANY, TRS LLC US, DAVID EARL STEPHENS, JOHN RYAN, JAMES LEROY COTTERMAN, JR., JAMES D. WEBER, MARK P. HONTZ, KIMBERLY R. KERRY, COLIN J. SCHOTTLAENDER, WILLIAM H. SWANSON, THOMAS A. KENNEDY, MATTHEW BREWER, F. KINSEY HAFNER, KEITH PEDEN, BRIAN ARMSTRONG, RICHARD ROCKE,
Defendants-Appellees

2020-2309

Appeal from the United States District Court for the Central District of California in No. 8:19-cv-01904-DOC-ADS, Judge David O. Carter.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Before MOORE, *Chief Judge*, NEWMAN, LOURIE, LINN[1], DYK, PROST, O'MALLEY, REYNA, TARANTO, CHEN, HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

ORDER

Nagui Mankaruse filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue on July 15, 2021.

FOR THE COURT

July 8, 2021
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

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[1] Circuit Judge Linn participated only in the decision on the petition for panel rehearing.

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

NAGUI MANKARUSE,
Plaintiff-Appellant

v.

RAYTHEON COMPANY, TRS LLC US, DAVID EARL STEPHENS, JOHN RYAN, JAMES LEROY COTTERMAN, JR., JAMES D. WEBER, MARK P. HONTZ, KIMBERLY R. KERRY, COLIN J. SCHOTTLAENDER, WILLIAM H. SWANSON, THOMAS A. KENNEDY, MATTHEW BREWER, F. KINSEY HAFNER, KEITH PEDEN, BRIAN ARMSTRONG, RICHARD ROCKE,
Defendants-Appellees

2020-2309

Appeal from the United States District Court for the Central District of California in No. 8:19-cv-01904-DOC-ADS, Judge David O. Carter.

Decided: May 7, 2021

NAGUI MANKARUSE, Huntington Beach, CA, pro se.

ANDREW VALENTINE, DLA Piper LLP (US), East Palo

Alto, CA, for defendants-appellees. Also represented by STANLEY JOSEPH PANIKOWSKI, III, San Diego, CA; NANCY NGUYEN SIMS, Los Angeles, CA.

Before TARANTO, LINN, and CHEN, *Circuit Judges*.

TARANTO, *Circuit Judge*.

Nagui Mankaruse, proceeding *pro se*, brought this action in district court against Raytheon Company, Thales-Raytheon Systems (TRS) LLC, and a host of Raytheon employees in their personal capacity (collectively, Raytheon), alleging patent infringement and trade-secret misappropriation. Having fought similar, and in large part the same, claims by Mr. Mankaruse in California state courts during the previous six years, Raytheon asked the district court in this case for, and received, an order deeming Mr. Mankaruse a vexatious litigant, requiring him to seek court permission before filing further cases against it, and also requiring him to post a $25,000 security bond before proceeding with the present case. *See Mankaruse v. Raytheon Co.*, No. 8:19-cv-01904-DOC, 2020 WL 2405258, at *1 (C.D. Cal. Jan. 23, 2020) (*Pre-Filing Order*). Mr. Mankaruse failed to post the required bond, and the district court then dismissed this case. We affirm.

I

Mr. Mankaruse is one of two named inventors on U.S. Patent No. 6,411,512 and Canadian Patent No. 2,389,458, both of which are titled "High Performance Cold Plate," and both which he has claimed to own. On October 3, 2019, Mr. Mankaruse filed the present case in the Central District of California. He accused Raytheon of infringing claims of the '512 and '458 patents and of misappropriating his trade secrets. *See* Complaint, *Mankaruse v. Raytheon Co.*, No. 8:19-cv-01904 (C.D. Cal. Oct. 3, 2019), ECF No. 1.

This is not the first lawsuit between Mr. Mankaruse and Raytheon. Mr. Mankaruse, an engineer, worked for Raytheon from 2004, until he was laid off in April 2012, as part of a reduction in Raytheon's workforce. A few months before the layoff, Mr. Mankaruse sued Raytheon, along with several Raytheon employees, in California state court, asserting employment discrimination based on his age and nationality, and Raytheon removed the case to federal court. *See* Notice of Removal of Action Pursuant to 28 U.S.C. § 1441(a), *Mankaruse v. Raytheon Co.*, No. 8:12-cv-00261 (C.D. Cal. Feb. 16, 2012), ECF No. 1. Mr. Mankaruse moved to dismiss his claims without prejudice when the case was removed. Raytheon Appx. 152. The federal court granted that motion and dismissed Mr. Mankaruse's claims on August 8, 2012. Raytheon Appx. 155.

From 2013 through 2017, Mr. Mankaruse filed six additional unsuccessful state-court actions against Raytheon, alleging various combinations of trade-secret misappropriation and discrimination, as well as contract breaches and torts. *See Mankaruse v. Raytheon Co.*, Case No. 30-2013-00625080 (Orange Cnty. Super. Ct. filed Jan. 17, 2013); *American Innovation Corp. and Mankaruse v. Raytheon Co.*, Case No. 30-2014-00732670 (Orange Cnty. Super. Ct. filed July 7, 2014); *Mankaruse v. Raytheon Co.*, Case No. 30-2016-00841632 (Orange Cnty. Super. Ct. filed Mar. 18, 2016); *Mankaruse v. Raytheon Co.*, Case No. 30-2016-00860092 (Orange Cnty. Super. Ct. filed June 27, 2016); *Mankaruse v. Raytheon Co.*, Case No. 30-2016-00878349 (Orange Cnty. Super. Ct. filed Sept. 30, 2016); *Mankaruse v. Raytheon Co.*, Case No. 30-2017-00934796 (Orange Cnty. Super. Ct. filed July 31, 2017). One of those cases went to trial, ending in a jury verdict in favor of Raytheon in December 2014, which was affirmed on appeal. *See* Raytheon Appx. 157–72 (Case No. 30-2013-00625080).

In another one of those cases, the California Superior Court, on July 12, 2018, declared Mr. Mankaruse a

vexatious litigant under California Code of Civil Procedure § 391(b)(1) and required that he obtain pre-filing approval from the court before initiating any future litigation and that he post a security bond of $10,000 before proceeding in the case. Raytheon Appx. 137–40 (order in Case No. 30-2016-00878349). After Mr. Mankaruse posted the required bond and the case proceeded, the court ultimately entered summary judgment against him on October 31, 2019 and awarded costs to Raytheon. Raytheon Appx. 192–204. The court thereafter rejected Mr. Mankaruse's motion to release the bond after final disposition of the case. Raytheon Appx. 149. Mr. Mankaruse was also placed on a list of vexatious litigants maintained by the California Judicial Council.[1]

In the present case, on December 12, 2019, citing Mr. Mankaruse's litigation history, Raytheon filed a motion asking the court to declare Mr. Mankaruse a vexatious litigant, impose a pre-filing-approval requirement, and order him to post a security bond of $50,000 before proceeding with this case. Raytheon Appx. 109–10, 271–93. Raytheon also asked that the court consider Mr. Mankaruse's history of filing cases against Intel Corporation and others (collectively, Intel)—including a co-pending patent-infringement action asserting the same patents as those at issue here, an action we address in *Mankaruse v. Intel Corp.*, No. 2020-2297, slip op. at 2–4 (Fed. Cir. May 7, 2021), issued today. *See* Raytheon Appx. 282–86.

After a hearing on the motion, the district court declared Mr. Mankaruse a vexatious litigant, entered the

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[1] We take judicial notice, under Federal Rule of Evidence 201, of the fact that Mr. Mankaruse remains on the California List of Vexatious Litigants at the time of this opinion. *See* Cal. Courts, Vexatious Litigant List 48, https://www.courts.ca.gov/documents/vexlit.pdf (last updated April 1, 2021).

requested pre-filing-approval order, and imposed a bond requirement on January 23, 2020. *See Pre-Filing Order*, 2020 WL 2405258, at *4. Proceeding through the factors set forth by the Ninth Circuit in *De Long v. Hennessey*, 912 F.2d 1144 (9th Cir. 1990), the court first determined that a pre-filing-approval order was appropriate because Mr. Mankaruse's previous lawsuits evidenced "an extensive history of frivolous and harassing litigation tactics" and compelled "an adverse inference regarding [his] motives in bringing the[] actions." *Pre-Filing Order*, 2020 WL 2405258, at *2–3. The court also found a pre-filing-approval order to be needed, deeming less stringent measures inadequate in light of his litigation history. *Id.* at *3.

Pursuant to the Ninth Circuit's requirement of narrow tailoring, the court ordered that Mr. Mankaruse

> seek prefiling approval . . . prior to filing cases in the Central District of California *pro se* against Raytheon, TRS, Intel, or any of their employees, officers or agents regarding Plaintiff's prior employment with these entities or regarding any alleged stolen trade secrets or patent infringement by these actors.

Id. (citing C.D. Cal. Local Rule 83–8.2). The court also granted Raytheon's request for a security bond in the present case, requiring that Mr. Mankaruse produce a bond of $25,000 "on or before February 29, 2020 or the action will be dismissed." *Id.* When Mr. Mankaruse failed to post a bond by the specified date, the district court dismissed his claims and entered a final judgment on June 9, 2020. Raytheon Appx. 7–8.

Mr. Mankaruse appealed the district court's January 23, 2020 order to the Ninth Circuit on February 19, 2020, and appealed again on June 15, 2020, after the judgment was made final. The appeal was transferred to our court on September 22, 2020, because it falls within our exclusive jurisdiction under 28 U.S.C. § 1295(a)(1).

II

Mr. Mankaruse challenges the district court's order as violative of his constitutional rights, including under the First and Fifth Amendments. *See* Mankaruse Opening Br. 21–22. We also understand Mr. Mankaruse to be challenging the court's security-bond requirement as violating the Eighth Amendment's prohibition on "excessive bail, excessive fines, or cruel and unusual punishments." *See id.* at 22–23. Mr. Mankaruse separately argues that the district court erred by finding him to be a vexatious litigant when, he asserts, the California state court terminated his designation as a vexatious litigant. *Id.* at 19.

The Ninth Circuit's test for determining whether a pre-filing-approval order is appropriate takes account of the constitutional guarantees invoked by Mr. Mankaruse, and we see no separate ground for finding a violation of those guarantees if the Ninth Circuit test is met. *See De Long*, 912 F.2d at 1147 ("[W]e also recognize that such pre-filing orders should rarely be filed."); *see also Ringgold-Lockhart v. County of Los Angeles*, 761 F.3d 1057, 1061–62 (9th Cir. 2014) (applying *De Long* after discussing First and Fifth Amendment concerns); *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1056–57 (9th Cir. 2007) (per curiam) (same). Applying that test, we conclude that Mr. Mankaruse has not shown reversible error in the district court's ruling in this case.

A

Applying the law of the regional circuit, we review a district court's entry of a pre-filing-approval order and declaration of a vexatious litigant for an abuse of discretion. *See Ringgold-Lockhart*, 761 F.3d at 1062; *Baden Sports, Inc. v. Molten USA, Inc.*, 556 F.3d 1300, 1304 (Fed. Cir. 2009). "A district court abuses its discretion when it bases its decision on an incorrect view of the law or a clearly erroneous finding of fact." *Molski*, 500 F.3d at 1056–57.

An order restricting future court filings should rarely be entered and must comply with "certain procedural and substantive requirements": (1) a plaintiff must be given an opportunity to oppose entry of the order; (2) the district court must indicate what court filings support issuance of the order; (3) the district court must find that the filings were frivolous or harassing; and (4) the order must be narrowly tailored. *Ringgold-Lockhart*, 761 F.3d at 1062 (citing *De Long*, 912 F.2d at 1147). To analyze the last two aspects of the test, the Ninth Circuit borrows from the Second Circuit's "helpful framework" of five substantive factors to determine "whether a party is a vexatious litigant and whether a pre-filing order will stop the vexatious litigation or if other sanctions are adequate." *Molski*, 500 F.3d at 1058; *see also Ringgold-Lockhart*, 761 F.3d at 1062. Those factors include:

> (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

Molski, 500 F.3d at 1058 (quoting *Safir v. United States Lines, Inc.*, 792 F.2d 19, 24 (2d Cir. 1986)).

The district court in the present matter gave Mr. Mankaruse an adequate opportunity to oppose entry of the order before it was entered. The parties fully briefed the issue, Raytheon Appx. 271–93, 294–446, 447–56, and appeared before the court, which heard from Mr. Mankaruse and counsel for Raytheon, *see id.* at 9–41. The district court had "an adequate record" of the earlier litigation, *De Long*,

912 F.2d at 1147, reviewing a list of cases that Mr. Mankaruse had filed against Raytheon and Intel over the preceding seven years, *Pre-Filing Order*, 2020 WL 2405258, at *2. *See also* Raytheon Appx. 125–270 (Raytheon's Request for Judicial Notice listing cases and supporting documentation).

The district court also reasonably made "substantive findings as to the frivolous or harassing nature" of Mr. Mankaruse's claims. *De Long*, 912 F.2d at 1148 (internal quotation marks omitted). For example, the district court explained, Mr. Mankaruse had a history of dismissing claims after Raytheon had expended significant effort in defending them, only to refile the same claims in a new suit. *See Pre-Filing Order*, 2020 WL 2405258, at *3; *see also, e.g.*, Raytheon Appx. 119, ¶ 5 (sworn attorney declaration that Mr. Mankaruse dismissed claims and refiled them in new suit the following day); *id.* at 181 (dismissing appeal of dismissal in Case No. 30-2014-00732670 after briefing but before argument); *id.* at 185. The district court noted that in one case, in which Raytheon had filed a demurrer, Mr. Mankaruse dismissed his lawsuit on the day of, but just before, the hearing, at which Raytheon counsel, lacking notice of the dismissal, showed up to argue. *See* Raytheon Appx. 185; *see also id.* at 127 (attorney declaration explaining events). Mr. Mankaruse does not deny this version of the events, and we see no reason that the incident should "not qualif[y]" as part of the analysis. Mankaruse Opening Br. 18 (annotation regarding Case No. 30-2016-00841632). Mr. Mankaruse even continued this pattern in the present case, refusing to amend his complaint to delete claims for relief against Intel (which is not named as a party) after a meeting with Raytheon's counsel, only to amend his complaint after Raytheon filed a motion to dismiss those claims. *See* Raytheon Appx. 59; *id.* at 119, ¶¶ 2–3 (attorney declaration regarding meet and confer); *id.* at 123 (attorney letter to Mr. Mankaruse requesting meet and confer).

The district court relied on the "extensive history of frivolous and harassing litigation tactics" confirming that this was Mr. Mankaruse's *modus operandi*, and not simply on the number of suits or motions filed, as justifying the designation of Mr. Mankaruse as a vexatious litigant. *Pre-Filing Order*, 2020 WL 2405258, at *3; *see also De Long*, 912 F.2d at 1148 ("Flagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants."); *Ringgold-Lockhart*, 761 F.3d at 1066 ("[A] pattern of frivolous or abusive litigation in different jurisdictions undeterred by adverse judgments may inform a court's decision that an injunction is necessary."); *cf. id.* at 1065 (commenting that imposing a pre-filing order based on "litigant's motion practice in two cases" "would at least be extremely unusual," but not deciding the issue). In addition to the suits against Raytheon, the district court was also aware of the similar claims Mr. Mankaruse asserted against Intel, and similar behavior regarding his motions practice. *See* Order, *Mankaruse v. Intel Corp.*, No. 8:19-cv-01902 (C.D. Cal. Jan. 27, 2020), ECF No. 34; *see also Mankaruse v. Intel Corp.*, No. 2020-2297, slip op. at 2–4. The reasonableness of the district court's decision is further supported by the fact that California courts have also declared Mr. Mankaruse a vexatious litigant under state law. *See* Raytheon Appx. 137–140. Given the character and frequency of Mr. Mankaruse's tactics, we cannot say the district court erred in its conclusion regarding the vexatiousness of Mr. Mankaruse as a litigant.

The district court also appropriately considered whether alternative sanctions would suffice to deter the actions Raytheon complained of, noting that Mr. Mankaruse previously forfeited a $10,000 bond by pressing an unsuccessful state-court claim against Raytheon. *Cf. Ringgold-Lockhart*, 761 F.3d at 1066 (explaining that district court "failed to consider whether other remedies were adequate

to curb what it viewed" as frivolous motions practice). The district court's "inference that other sanctions would be insufficient" is reasonable and not an abuse of its discretion. *Pre-Filing Order*, 2020 WL 2405258, at *3.

Mr. Mankaruse argues that the district court clearly erred by failing to recognize that a California state court "relieved" him of his vexatious litigant label. Mankaruse Opening Br. 19. This argument misunderstands the California court's order that he cites. In the order, the state court denied Raytheon's motion to declare Mr. Mankaruse a vexatious litigant under California law for a second time, but never addressed Mr. Mankaruse's status presented by his earlier case. *See* Raytheon Appx. 99–104. The court's order expressly states that it denied Raytheon's motion "for purposes of *this action*," referring only to that case, *id.* at 103, and to date Mr. Mankaruse is still listed on the state's list of vexatious litigants, *see supra* p.4 n.1.

Lastly, the court's Pre-Filing Order meets the requirement of being narrowly tailored. The court's order does not prevent Mr. Mankaruse from pursuing "all claims" against Raytheon or the other parties; rather, it is limited to claims "regarding [his] prior employment" or "regarding any alleged stolen trade secrets or patent infringement," *Pre-Filing Order*, 2020 WL 2405258, at *3, which are the types of claims that Mr. Mankaruse had been filing vexatiously, *see Molski*, 500 F.3d at 1061; *see also Baker v. Dykema Gossett, LLP*, 776 F. App'x 485, 487 (9th Cir. 2019) ("[T]he order was narrowly tailored because it was limited to one set of defendants and one court."). In addition, the requirement of pre-filing approval is limited to cases that Mr. Mankaruse files *pro se*; it does not apply to cases filed by counsel. And we understand that approval will actually be forthcoming if the claims filed are "not duplicative and not frivolous." *Ringgold-Lockhart*, 761 F.3d at 1066 (internal quotation marks omitted).

We conclude that the district court did not abuse its discretion by adopting the Pre-Filing Order in this matter.

B

We review a district court's requirement of a security bond from a declared vexatious litigant for abuse of discretion. *See Monsterrat Overseas Holdings, S.A. v. Larsen*, 709 F.2d 22, 24 (9th Cir. 1983). "Federal courts have inherent authority to require plaintiffs to post security for costs." *In re Merrill Lynch Relocation Mgmt., Inc.*, 812 F.2d 1116, 1121 (9th Cir. 1987). Under the Central District of California's Local Rule 83–8.2, the district court "may, at any time, order a party to give security in such amount as the Court determines to be appropriate to secure the payment of any costs, sanctions or other amounts which may be awarded against a vexatious litigant." C.D. Cal. R. 83–8.2. We cannot say that the district court abused its discretion under this rule by requiring Mr. Mankaruse to post a bond in this case.

As explained above, the court properly declared Mr. Mankaruse a vexatious litigant. And the bond amount of $25,000 was not excessive. The purpose of the bond is to provide a defendant security that, if it were to prevail in defending against a suit, would enable it to recoup its costs from a plaintiff, and the parties here do not meaningfully dispute that, at the time the bond was required, predicted costs of further litigation would have exceeded $25,000. *See* Fed. R. Civ. P. 54(d); *see also* Mankaruse Reply Br. 21 ("Both Intel and Raytheon spending millions of Dollars for years in frivolous litigations . . . ."); Raytheon Appx. 120, ¶ 10 (attorney declaration stating costs defending lawsuit exceed $50,000); *id.* at 116 (letter from Intel in similar case). Moreover, the district court set the amount at $25,000, representing half of what Raytheon requested in its motion and a reasonable amount of costs Raytheon might be entitled to if successful in defending against the suit. *See* Raytheon Appx. 288; *see also Walczak v. EPL*

Prolong, Inc., 198 F.3d 725, 734 (9th Cir. 1999) (affirming imposition of $100,000 bond when non-movant claimed damages could exceed $2 million); *Figure Eight Holdings, LLC v. Dr. Jays, Inc.*, 534 F. App'x 670, 670–71 (9th Cir. 2013) (affirming $50,000 bond after considering, among factors, the "risk that [plaintiff] would not pay the costs" if it lost and "an assessment of the likelihood that [plaintiff] will lose").

Mr. Mankaruse argues that the district court abused its discretion by requiring the $25,000 security bond because he is unable to secure that much money. Mankaruse Opening Br. 22–23. This argument fails to appreciate the proper legal standard by which we analyze the district court's decision. Federal district courts "have inherent power to require plaintiffs to post security for costs" and typically, although they are not required to, "follow the forum state's practice." *Simulnet E. Assocs. v. Ramada Hotel Operating Co.*, 37 F.3d 573, 574 (9th Cir.1994); *see also Kourtis v. Cameron*, 358 F. App'x 863, 866 (9th Cir. 2009). Although under California law, a court "may, in its discretion, waive a provision for a bond" based on a party's inability to pay, that standard does not make inability to pay a bar to requiring a bond, but leaves discretion with the court. Cal. Code Civ. Proc. § 995.240. In the circumstances of this case, we do not think that the district court abused its discretion in requiring Mr. Mankaruse to provide a security bond of $25,000. It follows that the district court properly dismissed Mr. Mankaruse's claims when he failed to pay the required bond.

III

For the foregoing reasons, we affirm the district court's dismissal of Mr. Mankaruse's suit against Raytheon.

The parties shall bear their own costs.

AFFIRMED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES – GENERAL

Case No. SA CV 19-1904-DOC (ADSx) Date: January 23, 2020

Title: NAGUI MANKARUSE ET AL V. RAYTHEON COMPANY ET AL

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Deborah Lewman	Not Present
Courtroom Clerk	Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFF: None Present	ATTORNEYS PRESENT FOR DEFENDANT: None Present

PROCEEDINGS (IN CHAMBERS): ORDER GRANTING MOTION TO DECLARE PLAINTIFF A VEXATIOUS LITIGANT [56]

Before the Court is Defendants Raytheon Company and TRS LLC US' (collectively, "Raytheon" or "Defendants") Motion to Declare Plaintiff a Vexatious Litigant ("Motion") (Dkt. 56). Having reviewed the papers and considered the parties' oral arguments on January 21, 2020, the Court **GRANTS** Defendants' Motion.

I. Background

A. Facts

The following facts are taken from the Motion. Plaintiff Nagui Mankaruse ("Plaintiff") is a former employee of Raytheon. Mot. At 1. He has been deemed a

vexatious litigant by the Superior Court of California.[1,2] Plaintiff, as a *pro se* litigant, has maintained seven cases against Raytheon and three cases against Intel Corporation, all of which were determined adversely to Plaintiff. Mot. At 1. Plaintiff filed the instant action in this Court on October 3, 2019. Dkt. 1. This is the same day as the hearing in which the Superior Court of California granted Raytheon's summary judgment motion on Plaintiff's last-pending state court case. Mot. At 2. On the same day, Plaintiff filed a related suit against Intel Corporation, also pending before this Court. *Id.*

In *Mankaruse v. Raytheon Company, et al.*, Case No. 30-2016-00878349-CU-IP-CJC, Orange County Superior Court, Raytheon filed a motion to have Plaintiff deemed a vexatious litigant pursuant to California law, to require that Plaintiff post a security bond of $10,000, and for a prefiling order prohibiting the filing of new litigation. On July 12, 2018, the Honorable James Crandall granted the motion and ordered Plaintiff to post a security bond in the amount of $10,000. RJN ¶ 1, Ex. 1. Plaintiff, therefore, was placed on the vexatious litigant list maintained by the California Judicial Council. RJN ¶ 2, Ex. 2. Raytheon was granted summary judgment in that case, and Plaintiff forfeited the bond. RJN ¶¶ 3, 10, 11.

B. Procedural History

On October 3, 2019, Plaintiff filed the action in this Court (Dkt. 1). On December 12, 2019, Defendants filed the Motion (Dkt. 56). On December 23, 2019, Plaintiff opposed the Motion ("Opp'n") (Dkt. 59). On December 30, 2019, Defendants replied ("Reply") (Dkt. 62). On January 21, 2020, the Court held oral argument on the Motion to allow all parties to have their day in Court.

In its Motion, Raytheon moves this Court to (1) declare Plaintiff a vexatious litigant; (2) require Plaintiff to furnish a security bond if this case is to move forward; (3) stay discovery until Plaintiff has posted such bond; and (4) issue a pre-filing order prohibiting Plaintiff from filing any new law suit in federal court without obtaining permission from this Court.

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[1] The Court takes judicial notice of the documents Raytheon submitted in their Request for Judicial Notice ("RJN"). Dkt. 56. The documents are records of prior court proceedings, documents maintained by state actors pursuant to state law, or official state records.

[2] Plaintiff argues that he is no longer deemed a vexatious litigant. *See* Opp'n at 6. However, that is directly contradicted by the orders declaring Plaintiff a vexatious litigant and denying his request to be removed from the vexatious litigant list. *See generally* RJN.

II. Legal Standard

A. Vexatious Litigant

"Federal courts can 'regulate the activities of abusive litigants by imposing carefully tailored restrictions under . . . appropriate circumstances.'" *Ringgold-Lockhart v. Cty. Of Los Angeles*, 761 F.3d 1057, 1061 (9th Cir. 2014) (quoting *De Long v. Hennesy*, 912 F.2d 1144, 1447 (9th Cir. 1990)). "Flagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." *DeLong v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990); *see* C.D. Cal. R. 83-8.1 ("It is the policy of the Court to discourage vexatious litigation."). Thus, "[p]ursuant to the All Writs Act, 28 U.S.C. § 1651(a), 'enjoining litigants with abusive and lengthy [litigation] histories is one such . . . restriction' that courts may impose." *Ringgold-Lockhart*, 761 F.3d at 1061 (quoting *De Long*, 912 F.2d at 1147). Federal district courts also "have inherent power to require plaintiffs to post security for costs." *Simulnet E. Assocs. v. Ramada Hotel Operating Co.*, 37 F.3d 573, 574 (9th Cir. 1994).

However, "[o]ut of regard for the constitutional underpinnings of the right to court access, 'pre-filing orders should rarely be filed, and only if courts comply with certain procedural and substantive requirements.'" *Ringgold-Lockhart*, 761 F.3d at 1062 (quoting *De Long*, 912 F.2d at 1147). In *DeLong v. Hennessey*, 912 F.2d 1144 (9th Cir. 1990), the Ninth Circuit "outlined four factors for district courts to examine before entering pre-filing orders." *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007).

> First, the litigant must be given notice and a chance to be heard before the order is entered. Second, the district court must compile "an adequate record for review." Third, the district court must make substantive findings about the frivolous or harassing nature of the plaintiff's litigation. Finally, the vexatious litigant order "must be narrowly tailored to closely fit the specific vice encountered."

Id. (quoting *De Long*, 912 F.2d at 1147-48). "The first and second of these requirements are procedural, while the 'latter two factors . . . are substantive considerations . . . [that] help the district court define who is, in fact, a "vexatious litigant" and construct a remedy that will stop the litigant's abusive behavior while not unduly infringing the litigant's right to access the courts.'" *Ringgold-Lockhart*, 761 F.3d at 1062 (quoting *Molski*, 500 F.3d at 1058). The Ninth Circuit has outlined the following factors to consider when determining who constitutes a "vexatious litigant":

> (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel;(4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; (5) whether other sanctions would be adequate to protect the courts and other parties.

Id. (quoting *Molski*, 500 F.3d at 1058).

III. Discussion

A. Notice and Opportunity to be Heard

The first *De Long* factor requires this Court consider whether the Plaintiff has had notice and opportunity to be heard. *De Long*, 912 F.2d at 1147. Raytheon filed the Motion on December 21, 2019 and properly served the Plaintiff. Dkt. 56. Plaintiff opposed the motion on December 23, 2019. Dkt. 59. Finally, the Court held a hearing on the Motion on January 21, 2020, and Plaintiff was in attendance. Dkt. 67. Thus, Plaintiff had an opportunity to be heard.

B. Record for Review

The second *De Long* factor requires "a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed." *De Long*, 912 F.2d at 1147. This listing should show "that the litigant's activities were numerous or abusive." *Id.* Plaintiff has filed numerous cases against Raytheon and Intel (defendant in the related action filed on the same day as the instant action). A listing of these cases is provided by Raytheon in its Motion. *See* Mot. at 8–10. The list includes six *pro se* actions determined adversely to Plaintiff filed against Raytheon or Intel in the past seven years.[3] An additional four actions were voluntarily dismissed by the Plaintiff. *Id.* at 9–10. The Court finds that the actions voluntarily dismissed by the Plaintiff were "abusive" given the timing of the dismissals, including some dismissals on the eve of a hearing on a

[3] The Court notes that the action determined adversely to the Plaintiff on October 3, 2019 has since become a final decision, as counsel for the Defendants indicated to the Court that the time to appeal that action has elapsed.

dispositive motion. *Id.* On this record, the Court finds that these filing are both numerous and abusive. *See De Long*, 912 F.2d at 1147.

C. Substantive Findings

"[B]efore a district court issues a pre-filing injunction against a pro se litigant, it is incumbent on the court to make substantive findings as to the frivolous or harassing nature of the litigant's actions." *De Long*, 912 F.2d at 1148 (internal quotations omitted). In evaluating this factor this Court also considers five additional issues: (1) the litigant's history of litigation and whether it entailed vexatious, harassing, or duplicative suits; (2) the litigant's motive in pursuing the litigation; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or posed an unnecessary burden on the courts; and (5) whether other sanctions would adequately protect the courts and other parties. *Molski*, 500 F.3d at 1058 (citing *Safir v. United States Lines, Inc.* 792 F.2d 19, 24 (2d Cir. 1986)).

Raytheon has supplied the Court with an overview of the harassing and abusive nature of Plaintiff's litigation tactics. For example, in *American Innovation Corp. and Mankaruse v. Raytheon Company, et al.*, Case No. 30-2014-00732670-CU-BC-CJC, Plaintiff dismissed the action shortly after Raytheon filed a dispositive motion. Mot. at 11. Then, the next day, Plaintiff refiled the action resulting in "two-plus" additional years of litigation. *Id.* As another example, in *Mankaruse v. Raytheon Company, et al.,* Case No. 30-2016-00841632-CU-IP-CJC, Plaintiff dismissed the suit the day before a hearing without informing the Defendants, resulting in Raytheon preparing for a fully briefed hearing only to find out the case was dismissed at the hearing itself. *Id.* Plaintiff therefore has an extensive history of frivolous and harassing litigation tactics. These tactics force Raytheon and Intel to spend significant resources in order to defend themselves. Indeed, Raytheon has provided evidence that it has, at times, fully briefed issues that were then dismissed by Plaintiff with little or no explanation. This compels the Court to make an adverse inference regarding Plaintiff's motive in bringing these actions.

Finally, the Court considers whether sanctions *other than* a prefiling order and security bond would adequately protect the Court and the parties. *See Molski*, 500 F.3d at 1058. The Court finds that Plaintiff's prior actions, including proceeding with this action *after* being declared a vexatious litigant in state court and previously losing a security bond in the amount of $10,000, compels the inference that other sanctions would be insufficient. The Plaintiff has not been deterred by similar findings in California state court, and therefore is not likely to be deterred absent a *strong* sanction in this instance.

D. Narrowly Tailored Order

While prefiling orders that prevent a litigant from filing *any* suit in a particular court are overbroad, *see De Long*, 912 F.2d at 1148, a prefiling order that covers a specific plaintiff's future actions under a particular statute within a particular district can be appropriate. *See Molski*, 500 F.3d at 1061 ("The order . . . appropriately cover[ed] only the type of claims [plaintiff had been filing.]"). Further, the plaintiff in *Molski* was not entirely prevented from filing those claims. Instead, the plaintiff simply needed to get approval before being allowed to move forward. *Id.*

Given Plaintiff's continued filings against Raytheon and Intel, the Court **DECLARES** Plaintiff a vexatious litigant and finds that a prefiling order is appropriate moving forward. Plaintiff is **ORDERED** to seek prefiling approval in this Court prior to filing cases in the Central District of California *pro se* against Raytheon, TRS, Intel, or any of their employees, officers, or agents regarding Plaintiff's prior employment with these entities or regarding any alleged stolen trade secrets or patent infringement by these actors. *See* C.D. Cal. R. 83-8.2. This order is narrowly tailored to the "group of defendants" Plaintiff has targeted and to the "type[s] of claims [Plaintiff] ha[s] been filing vexatiously." *Molski*, 500 F.3d at 1061. Further, the order will not deny Plaintiff access to the courts generally. Instead, it subjects Plaintiff to an initial screening regarding a subset of potential future litigation against particular parties that Plaintiff has unfairly targeted *pro se*. The Court also **GRANTS** Raytheon's request for a security bond in the amount of $25,000. *Id.* Plaintiff must pay the security bond on or before February 29, 2020 or the action will be dismissed. The Court **STAYS** the matter until the payment of the security bond.

IV. Disposition

Accordingly, the Court **GRANTS** Defendants' Motion. The Court **DECLARES** Plaintiff a vexatious litigant, **ISSUES** a prefiling order as described above, and **ORDERS** a security bond in the amount of $25,000. The Court **STAYS** the action pending payment of the security bond.

The Clerk shall serve this minute order on the parties.

Initials of Deputy Clerk kd

Additional material from this filing is available in the Clerk's Office.