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FILED

JUN 20 2005

LISA M. GALDOS
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4 In Propria Persona

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7 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF MONTEREY**

9
10 EUGENE FORTE,

11 Plaintiff,

12 vs.

13 ROBERT O'FARRELL,
14 et al.,

15
16 Defendants.

) Case No. M 72599

)
) **SUPPLEMENTAL POINTS AND**
) **AUTHORITIES IN OPPOSITION TO**
) **MOTION TO DECLARE PLAINTIFF**
) **A VEXATIOUS LITIGANT**

) **Date: June 30th, 2005**
) **Time: 9:00am**
) **Dept: 16**
) **Judge: Honorable John Golden**

18
19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 Opposing Moving Individuals' Smoke and Mirror Argument

21 Plaintiff submits that he feels *somewhat* like the character portrayed in the movie
22 *Shawshank Redemption* who, after traveling through a sewer pipe for 500 yards, is cleansed by
23 the rain. In this case, it is only temporary because plaintiff feels he has yet another 500 yards of
24 traveling through the sewer argument of moving individuals.

25 Plaintiff has already submitted more than enough Points and Authorities in his original
26 opposition to address the lunacy of the moving individuals' motion and the reason as to why it
27 must be denied. Plaintiff now will address and show clearly why the moving individuals should
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1 be sanctioned to the high heavens.

2 1. **The intent of the Vexatious Litigant Statute must be considered.**

3 As the appellate court stated in *In re Christina A.* (2001) 91 Cal.App.4th 1153, 1162 [111
4 Cal.Rptr.2d 310], citing *Calatayud v. State of California* (1998) 18 Cal.4th 1057, 1064-1065 [77
5 Cal.Rptr.2d 202, 959 P.2d 360]:

6 “Our role as an appellate court is to determine the legislative intent to effectuate
7 the purpose of the law. In doing so, we do not construe a statute in isolation, but
8 review it in context of the entire statutory scheme to which it belongs,
9 harmonizing all sections to retain its effectiveness.”

10 And also, *In re Christina A., supra*, 91 Cal.App.4th at p. 1162”

11 “If statutory language is susceptible to more than one interpretation, *courts must*
12 *adopt the meaning that conforms to the spirit of the statutory scheme and reject*
13 *that which would result in absurd consequences unintended by the Legislature.*
14 In applying these principles, courts must keep in mind the object to be achieved,
15 and the evil to be prevented, by the legislation.”.(emphasis added)

16 It is clear that the intent of the Vexatious Litigant Statute was enacted to prevent a plaintiff from
17 “vexing” a defendant by repeatedly suing that particular defendant for the same cause of action.
18 Its intent is to prevent a misuse of court resources in re-litigating a case over and over.

19 In this case, the moving individuals attempt to twist and turn the statute and the current
20 set of facts to suit their purposes. By law, the court must “adopt the meaning that conforms to
21 the spirit of the statutory scheme,” and in such scheme, must find that plaintiff is NOT a
22 vexatious litigant.

23 2. **The un-Twisting and the un-Turning of Moving Individuals’ Assertions**

24 The moving individuals’ assert *incorrectly* that plaintiff is a vexatious litigant “*within the*
25 *meaning*” of CCP Section 391 (b)¹. Their determination, according to their self serving
26 interpretation to conclude a “meaning” of the code, means nothing. Fact: Plaintiff is not and
27 has never been declared a vexatious litigant *according to the code by a court*:

28 “It is obvious from an examination of the pleadings, points and authorities,
declarations and other supporting documents upon which the trial court judges
based their decisions, that Martin Roston and Roston Institute are frequently

¹West’s Ann. C.C.P. §§ 391(b)(1, 2)

1 plaintiffs or defendants in state and federal courts. However, *a person is not a*
2 *vexatious litigant unless a court has found that he comes within the definitions*
3 *in section 391, subdivision (b)(1) or (2).* Roston v. Edwards (1982) 127
4 Cal.App.3d 842 , 179 Cal.Rptr. 830

5 Moving individuals have not cited any cases that lend credence to their self proclamation
6 and certainly have no court order in hand. They have not even cited one case that plaintiff has
7 filed against individuals, nor have they provided one case filed by plaintiff that would fall within
8 the provisions of 391 (b) 1.

9 ***“Absent a final determination of the state and/or federal litigation against***
10 ***plaintiff, the superior court could not properly determine her to be a vexatious***
11 ***litigant pursuant to Code of Civil Procedure section 391, subdivision (b)(2).***

12 Whether a different result under Code of Civil Procedure section 391 *995 could
13 obtain upon remand is not before us. Therefore, the September 22, 1992, order
14 determining plaintiff to be a vexatious litigant and subjecting her to \$2,500 in
15 sanctions must be reversed.” Childs v. PaineWebber Incorporated, 29
16 Cal.App.4th 982, 35 Cal.Rptr.2d 93, Cal.App. 5 Dist.,1994.

17 ***“A person is not a vexatious litigant unless court has found that he comes***
18 ***within statutory definition describing vexatious litigant as any person who, in***
19 ***immediately preceding seven-year period has commenced, prosecuted or***
20 ***maintained in propria persona at least five litigations other than in small claims***
21 ***court that have been finally determined adversely to him or unjustifiably***
22 ***permitted to remain pending for at least two years without having been brought***
23 ***to trial or hearing or who repeatedly relitigates or attempts to relitigate prior***
24 ***determination.”*** West's Ann.C.C.P. §§ 391(b)(1, 2).

25 The court need only look at moving individuals' Preliminary Statement, their argument,
26 and declaration, which are void of any reference to even one case to hang their black hat upon, to
27 recognize what a sham this motion is.

28 Moving individuals feebly grasp at the straw that plaintiff's Opposition to State Judicial
Defendants demurrer, that has nothing to do with them personally, determines the reason why
plaintiff should be declared a Vexatious Litigant against them. How asinine and wholly without
merit. At best, one case which is still in progress simply will not do it.

Where plaintiffs had filed only one prior litigation that satisfied conditions of

1 *statute defining vexatious litigant to mean any person who, in immediately*
2 *preceding seven-year period has commenced, prosecuted or maintained in*
3 *propria persona at least five litigations other than small claims court that have*
4 *been finally determined adversely to him or unjustifiably permitted to remain*
5 *pending at least two years without having been brought to trial or hearing,*
6 *evidence was insufficient to sustain finding that plaintiffs were vexatious*
7 *litigants. West's Ann.C.C.P. §§ 391(b)(1).*

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3. **The Reasons For The Moving Individuals Twisting and a-Turning**

The court hearing the case of *Roston v. Edwards* (1982) 127 Cal.App.3d 842 , 179 Cal.Rptr. 830, was not fooled and addressed precisely in their Footnote 2 what moving individuals therein and herein have attempted to do:

“Defendants, in their zeal to present a portrait of plaintiff Roston (and his enterprises) that would enhance their position, made reference to a multitude of cases which were inappropriate for consideration by the trial court. Some were small claims cases; in many the plaintiff Roston prevailed; in many he was the party defendant; and, most patently erroneous, many cases dated back to 1965 and 1966. While we will not gratuitously speculate why such cases were presented to the court, it seems obvious the reason was not to support the motion, because they did not fall within the applicable seven-year period. The presentation of such matter, if designedly done, is certainly to be discouraged. One might mistake it for an attempt to inflame the court against a party to the action.” (emphasis added) *Roston v. Edwards* (1982) 127 Cal.App.3d 842 , 179 Cal.Rptr. 830.

4. **The Pending Demurrer in Forte v. O’Farrell and the merits of the complaint**

Even though the Demurrer is separate and apart from this motion, the moving individuals have connected it with this subject motion. Therefore, plaintiff will include the reality for State Judicial defendant, Judge Robert O’Farrell, that his defeat based upon the reliance upon *Heck vs. Humphrey* is inevitable. Plaintiff relies on such case and its correct citing to establish that the cause of action under a section 1983, a civil rights violation claim, cannot be overcome. Judge Robert O’Farrell just became a common mortal, a person, not a judge or god once he was served the CCP 170.6 on December 19th, 2003.

Section 1983 provides, *“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the*

1 Constitution and laws, shall be liable to the party injured in an action at
2 law, suit in equity, or other proper proceeding for redress." [HECK v.
3 HUMPHREY, ___ U.S. ___ (1994)

4 It is very simple and not debatable. Moving nonparty individuals state that Plaintiff
5 should be declared a vexatious litigant because he is attempting to re-litigate the matter of his
6 contempt charge and that he can not have a cause of action against Judge Robert O'Farrell unless
7 such conviction was overturned.

8 It is not so, no matter how many times they repeat the same lie. Further, State Judicial
9 Defendant O'Farrell relies upon Heck vs. Humphrey for such assertion. It is factually an outright
10 distortion and lie about what is actually said in that case.

11 "The Court's opinion can be read as saying nothing more than that now, after
12 enactment of the habeas statute and because of it, prison inmates seeking 1983
13 damages in federal court for unconstitutional conviction or confinement must
14 satisfy a requirement analogous to the malicious prosecution tort's favorable
15 termination requirement. Cf. ante, at 2 (THOMAS, J., concurring).

16 ***That would be a sensible way to read the opinion, in part because the
17 alternative would needlessly place at risk the rights of those outside the
18 intersection of 1983 and the habeas statute, individuals not "in custody" for
19 habeas purposes. If these individuals (people who were merely fined, for
20 example, or who have completed short terms of imprisonment, probation or
21 parole, or who discover (through no fault of their own) a constitutional
22 violation after full expiration of their sentences), like state prisoners, were
23 required to show the prior invalidation of their convictions or sentences in
24 order to obtain 1983 damages for unconstitutional conviction or imprisonment,
25 the result would be to deny any federal forum for claiming a deprivation of
26 federal rights to those who cannot first obtain a favorable state ruling. [HECK v.
27 HUMPHREY, ___ U.S. ___ (1994), 11] The reason, of course, is that individuals not
28 "in custody" cannot invoke federal habeas jurisdiction, the only statutory
mechanism besides 1983 by which individuals may sue state officials in federal
court for violating federal rights. That would be an untoward result." U.S.
Supreme Court HECK v. HUMPHREY, ___ U.S. ___ (1994)***

24 Basically, that shoots State Judicial Defendants reliance on Heck Vs. Humphrey
25 concerning plaintiff's supposed requirement to have overturned the contempt conviction that
26 plaintiff, in fact, is not suing Judge Robert O'Farrell for, no matter how many times Judge
27 O'Farrell would like to say it is. In fact, Plaintiff does not want the contempt conviction
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1 overturned because it is prima facie evidence of the crime of a civil rights violation when
2 coupled with other matters done by Judge Robert O'Farrell after he was served the CCP 170.6.

3 Even though, it should have no relevance to this subject motion, it has been proffered by
4 the individuals making the motion that somehow plaintiffs's exhibits and Opposition to the
5 Demurrer is proof that plaintiff should be declared a vexatious litigant. Patently not so. Judge
6 Robert O'Farrell has been sued in both his individual and public capacity for a violation of
7 plaintiff civil rights. In addition, plaintiff is not barred from amending his complaint for
8 defamation if needed, even though it is already recognizable by reading it.

9
10 "Plaintiff, Robert Soliz, appeals after he declined to amend his complaint after
11 being given leave to do so for damages against Alexander H. Williams III, a Los
12 Angeles Superior Court judge, and the case was dismissed pursuant to stipulation.
13 In the published portion of the opinion, we discuss the application of the absolute
14 judicial immunity from a lawsuit for damages to plaintiff's state law claims. *We*
15 *reverse the order sustaining the demurrer to the complaint in part as to claims*
16 *for defamation and violations of civil rights in the fourth and fifth causes of*
17 *action respectively.* We affirm the demurrer and dismissal as to plaintiff's
18 remaining claims." *Soliz v. Williams* (1999) 74 Cal.App.4th 577 , 88 Cal.Rptr.2d
19 184

20 Judge Robert O'Farrell was served a CCP 170.6 Peremptory Challenge and therefore
21 unquestionably as a matter of law was stripped of all jurisdiction. There was a "*complete*
22 *absence of all jurisdiction*" of Judge Robert O'Farrell in all proceedings concerning the Plaintiff.
23

24 **Judicial Immunity in the courts:**

25 Judges enjoy absolute immunity whenever they preform judicial or adjudicatory
26 tasks, no matter how badly they perform them. *Forester v. White*, 484 U.S. 219
27 (1988); *Pierson v. Ray*, 386 U.S. 547, 553-54 (1967); and that *judicial immunity*
28 *only disappears when the judge acts in the "complete absence of all*
jurisdiction", that is there is no conceivable way he could have had any right to
control the subject and the person before him, Mireles v. Waco, 502 U.S. 9, 12,
(1991); *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978).

29 "*The broad power of a judge to control the proceedings before him does not go*
30 *so far as to warrant an exaction contrary to law.* [17] As declared in *Silcox v.*
31 *Lang* (1889), 78 Cal. 118, 123-124 [20 P. 297], "The right to challenge a certain
32 number of jurors peremptorily is absolute under the statute. (Code Civ. Proc., §§
33 601.)"

1 Judge O'Farrell is not being sued for an excess of jurisdiction. Judge O'Farrell has been
2 sued because he has involved himself in matters violating plaintiff's civil rights where he had no
3 jurisdiction whatsoever. There was in fact no judicial immunity for Judge O'Farrell. The
4 allegation of the complaint of M72599 alleges events after Judge O'Farrell was clearly absent all
5 jurisdiction and plaintiff submits that he feels like a broken record confronting the lie that State
6 Judicial defendant and his counsel, who continue to refuse to acknowledge this to the court.

7 There is no reasons again to address the matter of the merits of the complaint and pending
8 demurrer which in of itself should not matter a hill of beans to the subject motion before this
9 court and whether State Judicial Defendant O'Farrell who is not a party to this motion is granted
10 his demurrer or not. However, jhust for the heck of it, plaintiff closes with reference to the case
11 of Ward v. Village of Monroeville, 409 U.S. 57 (1972):

12 "Petitioner was denied a trial before a disinterested and impartial judicial officer
13 as guaranteed by the Due Process Clause of the Fourteenth Amendment where he
14 was compelled to stand trial for traffic offenses before the mayor, who was
15 responsible for village finances and whose court through fines, forfeitures, costs,
16 and fees provided a substantial portion of village funds. *Tumey v. Ohio*, 273, U.S.
17 510. A statutory provision for the disqualification of interested or biased judges
did not afford petitioner a sufficient safeguard, and it is of no constitutional
relevance that petitioner could later be tried do novo in another court, as *he was*
entitled to an impartial judge in the first instance. Pp. 59-62 *Ward v. Village of*
Monroeville, 409 U.S. 57 (1972)."

18 Plaintiff was denied a fair trial before a fair and impartial Judge once it was established
19 by the serving of the CCP 170.6 that Judge O'Farrell was clearly absent all jurisdiction and had
20 been determined not to be a fair and impartial judge. It just does not get any clearer than that,
21 especially when you add that the complaint of Forte v. O'Farrell et. al alleges a cause of action
22 under 1983, a violation of a person's civil right.

23 Plaintiff submits to Judge Robert O'Farrell who is not a moving party to this motion,
24 "See you in court, Bob!"

25
26 **5. Plaintiff's Request For Sanctions**

27 The court does have a remedy to put an end to the moving parties abuse of process and
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1 game playing wherein they are attempting to delay the matter of *Forte v. O'Farrell* getting into a
2 courtroom. The case of *Itel Containers International Corporation, Plaintiff v. Puerto Rico*
3 *Marine Management, Inc.*, Defendant. Civ. No. 83-2673L, Oct. 29, 1985. 108 F.R.D. 96, 3
4 Fed.R.Serv.3d 671 is dispositive.

5 "Following the dismissal of the action for lack of diversity jurisdiction, the
6 District Court, Lacey, J., held that: *(1) by willfully pursuing a litigation strategy*
7 *of actively concealing from the plaintiff and the court as long as possible that*
8 *the court was without power to hear matter, the defendant and its counsel*
9 *violated rules 7, 11, and 26(g) and a statute establishing counsel's liability for*
10 *excess of costs, and (2) defendant and its counsel would be required to pay*
11 *plaintiff's excess costs, expenses and attorney fees resulting from abuse of the*
12 *judicial process and a \$5,000 sanction to be paid to the government would also*
13 *be imposed to vindicate the dignity of the judicial process."* (Emphasis added)

14
15 **Code of Civil Procedure section 128.5 states in relevant part:**

16 "(a) Every trial court may order a party, the party's attorney, or both to pay any
17 reasonable expenses, including attorney's fees, incurred by another party as a
18 result of bad-faith actions or tactics that are frivolous or solely intended to cause
19 unnecessary delay. This section also applies to judicial arbitration proceedings
20 under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.

21 "(b) For purposes of this section:

22 "(1) 'Actions or tactics' include, but are not limited to, the making or opposing of
23 motions or the filing and service of a complaint or cross-complaint. The mere
24 filing of a complaint without service thereof on an opposing party does not
25 constitute 'actions or tactics' for purposes of this section.

26 "(2) 'Frivolous' means (A) totally and completely without merit or (B) for the sole
27 purpose of harassing an opposing party."

28 Code of Civil Procedure section 128.5 authorizes the award of attorney fees as a
sanction to control improper resort to the judicial process. The statute permits the
award of attorney fees, not simply as appropriate *996 compensation to the
prevailing party, but as a means of controlling burdensome and unnecessary legal
tactics. (*On v. Cow Hollow Properties* (1990) 222 Cal.App.3d 1568, 1577, 272
Cal.Rptr. 535.)

Plaintiff senses he heard a loud gasp from the learned legal opposing counsel that had
been trying to perpetrate this ruse upon the court and plaintiff. It simply is not going to fly and
moving parties here should also be sanctioned accordingly for bringing forward the motion to
declare litigant a vexatious litigant. It was done for the purpose of alienating Judge John Golden
or any court assigned and attempting to bias him in all matters put before him by plaintiff
including the demurrer.

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF MONTEREY)

I, the undersigned, declare that I am employed in the County of Monterey, State of California; I am over the age of 18 years and not a party to the within action; my business address is 1631 Fir Drive, Los Banos, California, 93635.

On June 15, 2005, I served the foregoing **SUPPLEMENTAL POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DECLARE PLAINTIFF A VEXATIOUS LITIGANT** on the parties in this action by:

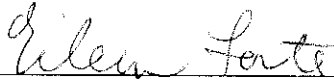
_____ personal service on the below-named party(ies) at the address(es) given.

_____ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent or deposited in a box or other facility regularly maintained by Federal Express for next day delivery.

 x placing a true copy thereof enclosed in a postage prepaid and sealed envelope United States Postal Service at Los Banos, California, for overnight delivery addressed as follows:

Mailed:
Paul Hammerness
Supervising Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
(415) 703-5520 telephone
(415) 703-5480 facsimile

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 15, 2005 at Los Banos, California.



Eileen Forte