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FILED

MAY 16 2005

LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
DEPUTY

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**
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10 EUGENE FORTE,
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12 Plaintiff,

13 vs.

14 ROBERT O'FARRELL,
15 et al.,

16
17 Defendants.
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Case No. M 72599
**OPPOSITION TO MOTION TO
DECLARE PLAINTIFF A
VEXATIOUS LITIGANT;
MEMORANDUM OF POINTS AND
AUTHORITIES; AND
DECLARATION OF EUGENE FORTE
IN SUPPORT THEREOF**

**Date: June 3, 2005
Time: 9:00am
Dept: TBD**

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20 Plaintiff hereby opposes the MOTION TO DECLARE PLAINTIFF A VEXATIOUS
21 LITIGANT; FOR ENTRY OF PREFILING ORDER AND TO POST \$15,000 SECURITY with
22 this and any supplemental opposition, declarations of Eugene Forte, the memorandum points and
23 authorities served and filed herewith, the notice to the clerk of the court, the court and defendant
24 of improper service of their notice, on the records and files of the case, and on such evidence as
25 may be presented at the hearing of the motion.

26 **ARGUMENT**

27 Plaintiff is not a vexatious litigant. Plaintiff is an American utilizing the court in a lawful
28 manner as prescribed by law. Mr. Lockyer has shamelessly abused his position as Attorney

1 General. He has, in fact, proven the case as to why he is being named a defendant in the current
2 action or subsequent action in Federal Court with the current motion that he has filed. What is
3 even more shocking and revolting about the matter is that he is doing this right before the eyes of
4 Chief Justice George.

5 The record will show clearly that the timing of such a vindictive motion was done at the
6 eleventh hour prior to the confirmation hearing of Judge Wendy Clark Duffy scheduled for
7 4:00PM, on May 16th, 2005, while Attorney General Lockyer still has not responded in any way
8 to the request made by plaintiff that he recuse himself from the confirmation process. Attached
9 as Exhibit "1" is the outline summary submitted to the Ms. Gale Tunnel, secretary to the
10 Commission on Judicial Appointments and received by the Supreme Court Clerk on May 9th,
11 2005 that confirms that Mr. Lockyer knew or should have known that filing of such a slanderous
12 and attacking document. This document has no substance or a scintilla of fact to support a
13 finding that plaintiff is vexatious and would be disturbing to any normal person¹. Exhibit "2" is a
14 letter granting plaintiff's request to testify in opposition to the appointment of Judge Wendy
15 Clark Duffy.

16 Chief Justice George and the Judicial Council itself through the auspice of Ms. Susan
17 Hansen has been directly implicated in the cabal by closing an eye to the actions of Attorney
18 General Bill Lockyer.

19 Mr. Lockyer's motion to declare plaintiff a vexatious litigant is an abuse of process by
20 public officials to prevent a citizen access to the courts and can be directly compared to the cases
21 of blatant civil rights violations against Afro-Americans in the South in the 1960's. There Afro-
22 Americans were found to be framed for murder, found guilty by a court of judges that were KKK
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25 ¹It is no secret to Mr. Lockyer and his staff that plaintiff suffered a heart attack in the
26 courtroom when trying to clear his good name and underwent open heart surgery. It is a clear and
27 calculated act in an attempt to burden plaintiff has much as possible with the hopes of killing him
28 off. In the eyes of Mr. Lockyer, that would be far better than having plaintiff unjustly branded as a
"vexatious litigant." Plaintiff assures Mr. Lockyer that he will regret what he has done in this manner
until his dying day and plaintiff wishes Mr. Lockyer a long life so that he can suffer for an enormous
length of time under the public embarrassment of what he has been caught doing to harm his country.

1 members and then appealed to justices that were also KKK. Mr. Lockyer takes plaintiff's
2 statements out of context and twists facts to attempt to close down plaintiff's rights to have his
3 grievances addressed.

4 5 **CONCLUSION**

6 Plaintiff submits that this motion is being filed in an attempt to prevent plaintiff from
7 filing certain documents that plaintiff had informed Mr. Lockyer and Mr. Hammerness he
8 intended on filing as well as to taint plaintiff's character. The first of course, is to prevent the
9 motion to amend the complaint to include Mr. Lockyer and Mr. Hammerness among others and
10 including but not limited to a cause of action of a civil conspiracy to violate plaintiff's civil
11 rights. (See Exhibit G to Declaration of Deputy Attorney General in Support CCP Section 391
12 Motion for Vexatious Litigant.) The second is to prevent the Order to Show Cause Re Contempt
13 against Mr. Hammerness and his other client Ms. Amanda Berkeley (Exhibit "3"). The third is to
14 prevent the Request for Court Judgment on Entry of Default (attached as Exhibit "4").

15 Plaintiff also submits that Mr. Hammerness intentionally and fraudulently misled the
16 court in his Case Management statement dated April 25, 2005 (Exhibit "5) by stating that
17 Plaintiff was a vexatious litigant and that discovery was completed as to the parties due to Mr.
18 Hammerness asserting that absolute judicial immunity abolishes discovery. Plaintiff informed
19 Mr. Hammerness that he would be making a motion to the court to have such intentionally
20 misleading and prejudicial statements regarding plaintiff being a vexatious litigant removed.
21 (Exhibit "6"). However, plaintiff has been inundated in having to document with correspondence
22 the acts of the clerks of the court and their outright ignoring of their ministerial duties in denying
23 plaintiff's request for entry of default judgment against Robert O'Farrell. (Exhibit "7). Mr.
24 Hammerness, on May 12, 2005, feeling the walls closing in on him and Mr. Robert O'Farrell,
25 then initiated another assault upon plaintiff claiming that plaintiff was in violation of Federal
26 Statutes regarding the faxing of "unsolicited faxes" to Mr. Hammerness. (Exhibit "8", p. 5 of
27 12). Plaintiff immediately responded demanding that Mr. Hammerness provide proof of any
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1 illegal fax. (Exhibit "8", p. 4 of 12). Further, plaintiff copied the information to Ms. Sue Hanson,
2 supervising attorney of Judicial Council that Mr. Hammerness had brought into the matter at the
3 onset. (Exhibit "8", p.2-3, 5 of 12). Mr. Hammerness did not provide one fax that showed a
4 violation of any statute. Ms. Susan Hanson did not respond to plaintiff's request asking for her
5 to inform plaintiff if it was unethical for an attorney not to disclose his representation of a client
6 when asked by opposing counsel. Such correspondence was also sent to the Commission on
7 Judicial Appointments care of Ms. Gail Tunnell for Chief Justice George due to the fact that
8 Attorney General Bill Lockyer is on the confirmation panel of Judge Wendy Duffy who is
9 directly connected to covering up the crimes of Judge Robert O'Farrell. (Exhibit "9"). It is this
10 series of documents during the week of May 12, 2005 that has caused Mr. Lockyer and his
11 wrecking crew to go to the extreme of filing this subject motion in an attempt to declare plaintiff
12 a vexatious litigant, and disrupt the testimony in opposition to the confirmation of Judge Wendy
13 Duffy to be given on May 16th, 2005 at 4:00pm. It is no accident that Mr. Lockyer leaves from
14 his caption in this matter his also being the attorney for Judge Wendy Duffy who is also his
15 intended co-defendant and the subject of the confirmation process.

16 Plaintiff further submits that Mr. Leon Panetta and the Monterey Herald have their fingers
17 in this matter because they are on line for being exposed to the public as charlatans claiming to
18 protect the rights of Americans and informing the public honestly. The Monterey Herald
19 announced that Judge Wendy Duffy had been appointed to the Sixth Appellate court prior to her
20 confirmation hearing by way of publicizing her retirement party and last day at work. (Exhibit
21 "9", p. 4-5 of 15 and Exhibit "10").

22 Mr. Lockyer claims that plaintiff should be found to be a vexatious litigant but does not
23 offer one case as proof to establish the required record of a "vexatious litigant" of five cases lost
24 in seven years by an in pro per. Why Not? The fact is there are none that he can point to.

25 Mr. Lockyer has used his position in the case of defending Judge Robert O'Farrell in a
26 way now to disrupt the opposition to Judge Wendy Clark Duffy. Mr. Lockyer has served the
27 Notice of the Motion untimely in order to prevent plaintiff from filing documents showing Mr.

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1 Lockyer's involvement of the obstruction of the discovery process.

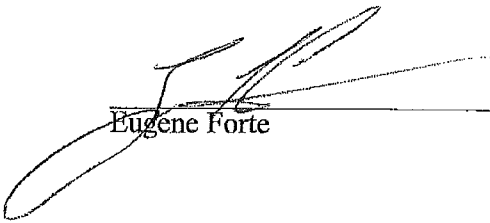
2 Mr. Lockyer's action was clearly done to obstruct the presentation of oral testimony to the
3 opposition of the appointment of Judge Wendy Duffy by a citizen. Chief Justice George and
4 Governor Schwarzenegger have also been informed of this matter and are being asked to
5 investigate it. (Exhibit "11").

6 Plaintiff will be supplying additional argument which will absolutely destroy Mr. Lockyer
7 and crew's argument, and any judge that so dares to declare plaintiff a vexatious litigant when
8 there is absolutely no legal basis to do so will be exposed as willful violation of plaintiff's civil
9 rights. Plaintiff submits that he has not yet begun to fight.²

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12 Dated: May 16, 2005


Eugene Forte

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27 ²The phrase was first uttered by John Paul Jones and suggests that Mr. Hammerness in his
28 moronic way can add this to his list of what he describes as "thinly veiled threats" made by plaintiff
if he so wishes to be further exposed as the treasonous fool he is.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 California Code of Civil Procedure §391(b):

3 "Vexatious litigant" means a person who does any of the following:

4 (1) In the immediately preceding seven-year period has commenced,
5 prosecuted, or maintained in propria persona at least five litigations other than in a
6 small claims court that have been (i) finally determined adversely to the person or
7 (ii) unjustifiably permitted to remain pending at least two years without having
8 been brought to trial or hearing."

9 *There have been no litigations of plaintiff that have been finally determined adversely wherein*
10 *he was in propria persona. In fact, plaintiff won the appeal of Forte v. Lichtenegger M58208*
11 *on August 30, 2004.*

12 "(2) After a litigation has been finally determined against the person,
13 repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the
14 validity of the determination against the same defendant or defendants as to whom
15 the litigation was finally determined or (ii) the cause of action, claim, controversy,
16 or any of the issues of fact or law, determined or concluded by the final
17 determination against the same defendant or defendants as to whom the litigation
18 was finally determined."

19 *All of plaintiff's litigations are against different defendants with different causes of action.*

20 "(3) In any litigation while acting in propria persona, repeatedly files
21 unmeritorious motions, pleadings, or other papers, conducts unnecessary
22 discovery, or engages in other tactics that are frivolous or solely intended to cause
23 unnecessary delay."

24 In the subject litigation, *plaintiff filed only one notice of motion for leave to file first*
25 *amended complaint.* The documents attached to Mr. Hammerness' subject motion were
26 evidence plaintiff submitted in Opposition To State Judicial Defendant's Motion For Demurrer.
27 Since it is a well known premise that the courts favor resolution of cases on their merits, plaintiff
28 has a right to give as much evidence as he deems pertinent to present his case to the fullest when
faced with possible dismissal by demurrer.

Plaintiff has a right to amend the complaint to add other defendants, be they public
officials or not, if he believes he has a valid cause of action against them. A motion to declare

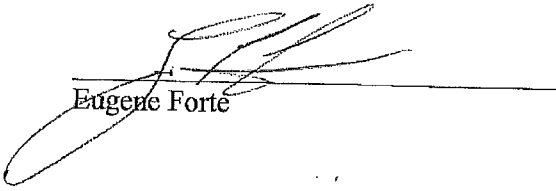
1 plaintiff vexatious is not the place to prevent plaintiff from filing a suit against them. Once the
2 motion to amend is heard and granted, then defendants may file a motion for demurrer or
3 summary judgment motion if there is no cause of action.

4 In addition, *plaintiff has only served one deposition subpoena* to which he certainly had
5 a right to take as outlined in the Order to Show Cause and Affidavit For Contempt and
6 attachments that plaintiff is attempting to file on May 16th, 2005 and which is attached as Exhibit
7 "3". This deposition is certainly not frivolous but in fact, germane to a possible fraud committed
8 in a conspiracy to cover Defendant O'Farrell's previous violation of plaintiff's civil rights.

9
10 "(4) Has previously been declared to be a vexatious litigant by any state or
11 federal court of record in any action or proceeding based upon the same or
12 substantially similar facts, transaction, or occurrence."

13 *Plaintiff has never been declared a vexatious litigant. Period. There has never been any*
14 *previous motion to declare plaintiff a vexatious litigant. This is because there is no cause.*

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16 Dated: May 16, 2005

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18 Eugene Forte

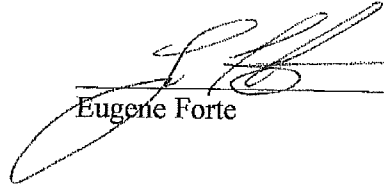
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Panetta dated May 12, 2005.

- 11. That attached as Exhibit "11" is a true and correct copy of the letter I wrote to Chief Justice George dated May 16, 2005 and faxed before 9:00am on May 16, 2005.
- 12. That I have read the foregoing Opposition to Motion to Declare Plaintiff A Vexatious Litigant and know the contents therein. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 16th day of May, 2005.


Eugene Forte