

# PUBLIC MATTER

1 STATE BAR OF CALIFORNIA  
 OFFICE OF THE CHIEF TRIAL COUNSEL  
 JAYNE KIM, No. 174614  
 2 ACTING CHIEF TRIAL COUNSEL  
 PATSY J. COBB, No. 107793  
 3 DEPUTY CHIEF TRIAL COUNSEL  
 LAWRENCE J. DAL CERRO, No. 104342  
 4 ASSISTANT CHIEF TRIAL COUNSEL  
 DONALD R. STEEDMAN, No. 104927  
 5 SUPERVISING TRIAL COUNSEL  
 SUSAN CHAN, No. 233229  
 6 DEPUTY TRIAL COUNSEL  
 BRUCE ROBINSON, No. 69325  
 7 ASSIGNED DEPUTY TRIAL COUNSEL  
 180 Howard Street  
 8 San Francisco, California 94105-1639  
 Telephone: (415) 538-2384  
 9

**FILED**

OCT 18 2011

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

*POSTING*

STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of:

) Case No. 10-O-07882

JAMES HUNG XIA,  
No. 166112,

) NOTICE OF DISCIPLINARY CHARGES

A Member of the State Bar

**NOTICE - FAILURE TO RESPOND!**

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE  
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT  
THE STATE BAR COURT TRIAL:**

- (1) YOUR DEFAULT WILL BE ENTERED;
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE, AND;
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE. SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN ORDER RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ., RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

The State Bar of California alleges:

kwiktag®

018 038 295





1           7. On or about November 21, 2002, respondent filed a civil rights violations complaint  
2 against several defendants, including the Regents of the University of California in a matter  
3 entitled *Ha v. Rhoden, et al*, Alameda County Superior Court, Case No. 2002-073252. The case  
4 was dismissed on or about June 18, 2003. The Court of Appeal affirmed the dismissal on  
5 September 28, 2004.

6           8. On or about November 21, 2002, respondent filed a civil complaint against the  
7 University of California Police Department and one of its officers in a matter entitled *Ha v.*  
8 *Aranas*, Alameda County Superior Court, Case No. 2002-073289. The complaint was dismissed  
9 on May 28, 2003. The dismissal was affirmed by the Court of Appeal on September 24, 2004.

10          9. On or about December 2, 2002, respondent filed a civil rights complaint in a matter  
11 entitled *Ha v. Ross, et al.*, Alameda County Superior Court, Case No. 2002-074172. Respondent  
12 filed a First Amended Complaint on October 29, 2004 seeking \$50 million dollars in  
13 compensatory damages.

14          10. On or about March 25, 2003, respondent filed *Ha v. County of Alameda*, Alameda  
15 County Superior Court, Case No. RG03-088377. The action was for a petition for relief from the  
16 government tort claim requirements. On June 11, 2003, respondent's petition was denied. The  
17 Court of Appeal affirmed the denial of the petition on September 28, 2004.

18          11. On or about December 22, 2004, the Attorney General of the State of California,  
19 counsel for State Defendants in the *Ha v. Ross* matter, filed a motion to have respondent declared  
20 a vexatious litigant, for respondent to post security pursuant to CCP ¶391.1, for a pre-filing order  
21 to preclude respondent from filing new litigation in propria persona.

22          12. On or about January 24, 2005, The Honorable Judge James A. Richmann, Judge of  
23 the Superior Court, County of Alameda, issued a three page Order, Order Granting Motion to  
24 Declare Plaintiff a Vexatious Litigant in the *Ha v. Ross* matter. A true and correct copy of the  
25 Order re Vexatious Litigant is hereby attached and incorporated as Exhibit "1" to this Notice of  
26 Disciplinary Charges. As indicated in the Order re Vexatious Litigant, the Court found that  
27 respondent within the immediately preceding seven-year period, filed at least 5 litigations in the  
28

1 Superior Court of Alameda County that have been determined adversely against him: (1) *Ha v.*  
2 *Kochis* Case No. 2002-068743; (2) *Ha v. Fry*, Case No. 2002-070272; (3) *Ha v. Rhoden* Case  
3 No. 2002-073252; (4) *Ha v. Aranas* Case No. 2002-073289; (5) *Ha v. County of Alameda* Case  
4 No. RG03-088377. The Court also found no reasonable probability that respondent would  
5 prevail in the underlying *Ha v. Ross* matter because the alleged conduct of the State Defendants  
6 was absolutely privileged. The Court also ordered respondent to furnish security in the amount  
7 of \$10,000.00 within 30 days of service of Notice of Entry of Order or risk the dismissal of his  
8 claim against the State Defendants. By separate Order the court issued a Prefiling Order  
9 prohibiting respondent from filing any new litigation in the courts of California *in propria*  
10 *persona* without first obtaining leave of the presiding judge of the court where the action is to be  
11 filed. A true and correct copy of the Prefiling Order-Vexatious Litigant is hereby attached and  
12 incorporated as Exhibit "2" to this Notice of Disciplinary Charges.

13 13. Between on or about January 2005 through on or about February 2007, respondent  
14 filed seven unmeritorious challenges for cause, against every Alameda County Superior Court  
15 judge assigned to the *Ha v. Ross* matter; these challenges were filed, and resolved as follows:

- 16 i) On or about January 7, 2005, respondent filed a challenge against Judge Steven A.  
17 Brick, which was stricken on January 12, 2005;
- 18 ii) On March 21, 2005, respondent filed a challenge seeking to disqualify "all the judges  
19 of Department 31 of Alameda Superior Court (and their research attorneys) in general  
20 and the Honorable James A. Richmann in particular." This challenge was stricken on  
21 March 22, 2005;
- 22 iii) On August 22, 2005, respondent filed a challenge against Judge William McKinstry,  
23 which was stricken on August 23, 2005;
- 24 iv) On October 11, 2005, respondent filed a challenge against Judge Judith D. Ford,  
25 which was stricken on October 13, 2005;
- 26  
27  
28

1 v) On December 22, 2005, respondent filed a challenge against Judge Jo-Lynne Q. Lee,  
2 which was denied on January 3, 2006, pursuant to CCP ¶170.4(b), for failure to state any  
3 grounds for disqualification.

4 vi) On April 2005, respondent filed a peremptory challenge against Judge Brick which  
5 was denied as moot because at the time Judge Brick had already recused himself from the  
6 proceeding;

7 vii) On February 21, 2007, respondent filed a challenge for cause against Judge Frank  
8 Roesch, which was stricken on February 22, 2007.

9 14. On or about March 1, 2007, a hearing on respondent's motion to vacate void order of  
10 dismissal came before the Honorable Frank Roesch. The court denied plaintiff's motion to vacate  
11 void order of dismissal. The Minute Order prohibited respondent from filing any further  
12 documents with the exception of a Notice of Appeal in the *Ha v. Ross* matter<sup>1</sup>. Any further  
13 documents filed by respondent (other than a Notice of Appeal) would be stricken from the  
14 record. A true and correct copy of the March 1, 2007 Minute Order is hereby attached and  
15 incorporated as Exhibit "3" to this Notice of Disciplinary Charges.

16 15. On May 8, 2007, respondent filed another challenge for cause to disqualify Judge  
17 Frank Roesch. This challenge was stricken on May 9, 2007.

18 16. On or about June 1, 2007, respondent filed an application for permission to appeal the  
19 trial court's March 1, 2007 order denying his motion to vacate a prior dismissal order.  
20 Respondent's request for permission to appeal was denied on July 16, 2007 on the basis that  
21 respondent failed to show a responsible possibility the appeal had merit.

22 17. On or about November 30, 2007, the court issued a seven page Order, Order Striking  
23 Documents Filed by Plaintiff Hung Ha in Violation of Court's March 1, 2007 Minute Order;  
24 Order Quashing Plaintiff Hung Ha's Subpoenas. A true and correct copy of the Order Striking  
25 Documents Filed by Plaintiff in Violation of Court's March 1, 2007 Order is hereby attached and  
26 incorporated as Exhibit "4" this Notice of Disciplinary Charges. As indicated in the court's  
27

28 <sup>1</sup> The March 1, 2007 Order was entered after *Ha v. Ross* was dismissed (the last appearing defendants' demurrer was sustained without leave to amend on January 24, 2006).

1 November 30, 2007 Order, the court found respondent filed 43 documents in the *Ha v. Ross*  
2 matter, in direct violation of the court's March 1, 2007 order.

3 18. On or about November 29, 2007, respondent filed a challenge to disqualify Judge  
4 Frank Roesch pursuant to Code of Civil Procedure ¶170.3. This challenge was stricken on  
5 December 6, 2007.

6 19. On or about December 31, 2007, respondent filed an application for permission to  
7 appeal the trial court's December 6, 2007 order striking a challenge for cause and December 10,  
8 2007 order vacating an upcoming hearing date. Respondent's request for permission to appeal  
9 was denied on January 23, 2008 on the basis that respondent failed to show a responsible  
10 possibility the appeal had merit.

11 20. On or about February 7, 2008, respondent filed a motion in the Court of Appeal of the  
12 State of California, First Appellate District (A120063, Alameda County Superior Court No.  
13 2002074172) to vacate the court's January 23, 2008 order in *Ha v. Ross, et al.*. The motion was  
14 denied on February 22, 2008.

15 21. On or about March 3, 2008, respondent filed a petition for review and motion to  
16 disqualify the justices of the Alameda County Superior Court in the Supreme Court of California  
17 (Court of Appeal, First Appellate District, Div. 1- No. A120065, in the matter entitled *Hung Ha*  
18 *v. Superior Court of Alameda County*). Respondent's petition for review and motion to  
19 disqualify was denied on April 23, 2008 (Supreme Court Order S161364).

20 22. By filing the following civil complaints in *Ha v. Kochis* Case No. 2002-068743; *Ha*  
21 *v. Fry*, Case No. 2002-070272; *Ha v. Rhoden* Case No. 2002-073252; *Ha v. Aranas* Case No.  
22 2002-073289; *Ha v. County of Alameda* Case No. RG03-088377 that were patently  
23 unmeritorious, by filing unmeritorious challenges to every judge assigned in *Ha v. Ross*, by  
24 filing unmeritorious appeals to set aside a prior court order, and for all the reasons set forth in  
25 Judge Richmann's, Order re Vexatious Litigant, respondent failed to counsel or maintain such  
26 action, proceedings, or defenses only as appear to him legal or just in willful violation of  
27 Business and Professions Code, section 6068(c).  
28



1 appeals to set aside a prior court order, respondent committed an act or acts involving moral  
2 turpitude, dishonesty or corruption.

3 COUNT THREE

4 Case No. 10-O-07882  
5 Business and Professions Code, section 6068(b)  
6 [Disrespect to a Court]

7 32. Respondent willfully violated Business & Professions Code § 6068(b), by  
8 willfully disrespecting a court, as follows:

9 33. The allegations of Counts One through Two are incorporated by reference.

10 34. By filing motions and further documents after the Court ordered respondent not to file  
11 any further documents with the exception of the Notice of Appeal in *Ha v. Ross*, by filing  
12 unmeritorious challenges to every judge assigned in *Ha v. Ross*, by filing unmeritorious appeals  
13 to set aside a prior court order, respondent willfully failed to maintain the respect due the courts  
14 of justice and judicial officers.

15 COUNT FOUR

16 Case No. 10-O-07882  
17 Business and Professions Code, section 6068(c)  
18 [Maintaining an Unjust Action]

19 35. Respondent wilfully violated Business and Professions Code, section 6068(c), by  
20 failing to counsel or maintain such action, proceedings, or defenses only as appear to him legal  
21 or just, as follows:

22 36. At all times relevant herein, respondent has proceeded as a pro per litigant in the U.S.  
23 District Court Northern District of California. Respondent's history includes the following  
24 cases:

25 i) *Ha v. Burr, et al.* (N.D. Cal., No. 3:04-cv-04464) filed October 21, 2004 and dismissed  
26 on March 7, 2005;

27 ii) *Ha v. Burr, et al.* (N.D. Cal., No. 3:07-cv-04699) filed September 12, 2007 and  
28 dismissed on September 19, 2007;

1           iii) *Ha v. McGuinness, et al.* (N.D. Cal., No. 4:07-cv-03777) filed July 23, 2007 and  
2 dismissed on February 26, 2008;

3           iv) *Ha v. Sweet, et a.*, (N.D. Cal., No. 4:09-cv-01392) filed March 30, 2009 and  
4 dismissed on July 16, 2009.

5           v) *Ha v. U.S. Attorney General, et al.* (N.D. Cal., No. 3:09-cv-05281) filed November 5,  
6 2009 and dismissed on April 29, 2010.

7           37. On or about November 5, 2009, respondent filed a complaint as a pro se litigant in  
8 federal court, entitled *Ha v. U.S. Attorney General, et al.*, U.S. District Court Northern District of  
9 California, Case No. C09-5281. The defendants were a combination of public officials, private  
10 individuals and corporations or organizations. Respondent filed action against defendants for  
11 hypothetical future injuries that might result from hypothetical future actions of the co-  
12 defendants which respondent speculates could occur stemming from respondent's revocation of  
13 his membership to use an East Bay job-center, East Bay Works One-Stop Career Center, in  
14 Berkeley, California.

15           38. The defendants *in Ha v. U.S. Attorney General, et al.*, moved to dismiss the action  
16 with prejudice. The motions were heard on April 28, 2010, at which time the Court dismissed  
17 the case with prejudice and issued an Order to Show Cause ("OSC") whether respondent should  
18 be declared a vexatious litigant. The court retained jurisdiction solely for the purpose of  
19 respondent's vexatious litigant hearing but otherwise dismissed the case with prejudice without  
20 leave to amend on April 29, 2010.

21           39. On or about April 30, 2010, respondent attempted to file a First Amended Complaint  
22 and attempted to serve it on defendants.

23           40. On June 3, 2010, respondent filed a motion to withdraw consent to the court's  
24 jurisdiction styled as "application for leave to withdraw consent to proceed before a magistrate"  
25 and alleged misconduct by the Court as grounds for withdrawal of consent.

26           41. On or about June 30, 2010, the OSC hearing as to why respondent should not be  
27 designated as a vexatious litigant and respondent's motion to withdraw consent was heard before  
28

1 U.S. Magistrate Judge James Larson, U.S. District Court Northern District of California<sup>2</sup>. The  
2 court ruled from the bench declaring respondent a vexatious litigant and ordered that any future  
3 in pro per pleading by respondent submitted in this federal district would be subject to pre-filing  
4 review by a judge of this Court. A true and correct copy of the Court's Order following OSC  
5 hearing is attached hereto as Exhibit "5" and is incorporated this Notice of Disciplinary Charges.

6 42. On or about July 29, 2010, the Honorable Judge James Larson, U.S. Magistrate Judge  
7 of the United States District Court, issued an eight page Order, Order for Pre-Filing Review. A  
8 true and correct copy of the Order for Pre-Filing Review is hereby attached as Exhibit "6" to this  
9 Notice of Disciplinary Charges. As indicated in the Order for Pre-Filing Review, the Court  
10 noted that respondent was declared a vexatious litigant on January 24, 2005 in the Superior Court  
11 for the County of Alameda. The court also found that respondent has brought five non-  
12 meritorious pro se actions since 2004 in the United States District Court. Of those five actions:

- 13 i) Each was dismissed, either by the United States District Court Judge during review of  
14 Plaintiff's request proceed In Forma Pauperis or by a ruling on the Defendants' motions  
15 to dismiss, resulting in no monetary judgment or equitable relief to Plaintiff;
- 16 ii) Each case was dismissed with prejudice, and on only two occasions was Plaintiff  
17 given leave to amend his Complaint to attempt to state a claim;
- 18 iii) Only one case even advanced to the responsive pleading stage, yet in each case  
19 Plaintiff filed from 10 to 20 extraneous motions or other documents, including three  
20 motions to disqualify the judge, numerous ex parte motions, and a notice of appeal in  
21 every case except the most recent one;
- 22 iv) One of Plaintiff's appeals was dismissed for failure to prosecute, and two other  
23 appeals were ordered related and the district court's decision in each affirmed.
- 24 v) In the present case, Plaintiff's complaint was dismissed with prejudice and without  
25 leave to amend, yet Plaintiff attempted to file a "First Amended Complaint," and has  
26 attempted to serve it on Defendants.

27  
28 <sup>2</sup> U.S. Magistrate Judge James Larson, U.S. District Court Northern District of California, retired from the bench on  
May 31, 2011.

1 43. By filing the following civil complaints in *Ha v. Burr, et al.* (N.D. Cal., No. 3:04-cv-  
2 04464); *Ha v. Burr, et al.* (N.D. Cal., No. 3:07-cv-04699); *Ha v. McGuinness, et al.* (N.D. Cal.,  
3 No. 4:07-cv-03777); *Ha v. Sweet, et a.,* (N.D. Cal., No. 4:09-cv-01392); *Ha v. U.S. Attorney*  
4 *General, et al.* (N.D. Cal., No. 3:09-cv-05281) that were non-meritorious, by filing extraneous  
5 motions or other documents in each case, for attempting to file and serve defendants with a First  
6 Amended Complaint after the case had been dismissed with prejudice and without leave to  
7 amend in *Ha v. U.S. Attorney General, et al.*, and for all the reasons set forth in Judge Larson's,  
8 Order for Pre-Filing Review, respondent failed to counsel or maintain such action, proceedings,  
9 or defenses only as appear to him legal or just in willful violation of Business and Professions  
10 Code, section 6068(c).

11 COUNT FIVE

12  
13 Case No. 10-O-07882  
14 Business and Professions Code, section 6106  
15 [Moral Turpitude]

16 44. Respondent willfully violated Business & Professions Code § 6106, by committing an  
17 act involving moral turpitude, dishonesty or corruption, as follows:

18 45. The allegations of Count Four are hereby incorporated by reference.

19 46. By filing the following civil complaints in *Ha v. Burr, et al.* (N.D. Cal., No. 3:04-cv-  
20 04464); *Ha v. Burr, et al.* (N.D. Cal., No. 3:07-cv-04699); *Ha v. McGuinness, et al.* (N.D. Cal.,  
21 No. 4:07-cv-03777); *Ha v. Sweet, et a.,* (N.D. Cal., No. 4:09-cv-01392); *Ha v. U.S. Attorney*  
22 *General, et al.* (N.D. Cal., No. 3:09-cv-05281) that were non-meritorious, by filing extraneous  
23 motions or other documents in each case, for attempting to file and serve defendants with a First  
24 Amended Complaint after the case had been dismissed with prejudice and without leave to  
25 amend in *Ha v. U.S. Attorney General, et al.*, and for all the reasons set forth in Judge Larson's,  
26 Order for Pre-Filing Review, respondent committed an act or acts involving moral turpitude,  
27 dishonesty or corruption.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

COUNT SIX

Case No. 10-O-07882  
Business and Professions Code, section 6068(b)  
[Disrespect to a Court]

47. Respondent willfully violated Business & Professions Code § 6068(b), by willfully disrespecting a court, as follows:

48. The allegations of Counts Four through Five are incorporated by reference.

49. By filing extraneous motions and other documents in every case filed in the district court, by filing unmeritorious motions to disqualify the judge in cases filed in the district court, by filing unmeritorious notice of appeals, by filing a First Amended Complaint after respondent's case was dismissed with prejudice and without leave to amend in *Ha v. U.S. Attorney General, et al.*, respondent willfully failed to maintain the respect due the courts of justice and judicial officers.

NOTICE - INACTIVE ENROLLMENT!

**YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.**

NOTICE - COST ASSESSMENT!

**IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.**

//  
//  
//  
//  
//  
//

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Respectfully submitted,

THE STATE BAR OF CALIFORNIA  
OFFICE OF THE CHIEF TRIAL COUNSEL



DATED: October 18, 2011

By: \_\_\_\_\_  
SUSAN CHAN  
Deputy Trial Counsel

Bruce Robinson  
Assigned Deputy Trial Counsel





motion and the arguments at the hearing and, good cause appearing, HEREBY  
ORDERS as follows:

The motion by Defendants Winton McKibben, Thomas Reardon, and the State of California ("Defendants") to have Plaintiff declared a vexatious litigant, for Plaintiff to post security pursuant to CCP § 391.1, and for a Prefiling Order to preclude Plaintiff from filing new litigation *in propria persona* is GRANTED.

Plaintiff is a vexatious litigant because within the immediately preceding 7-year period, at least 5 litigations in the Superior Court of this County have been finally determined adversely to him: (1) Ha v. Kochis Case No. 2002-068743; (2) Ha v. Fry Case No. 2002-070272; (3) Ha v. Rhoden Case No. 2002-073252; (4) Ha v. Aranas Case No. 2002-073289; (5) Ha v. County of Alameda Case No. RG03-088377. Defendants' request for judicial notice of the Register of Actions in these cases and of 8 other cases filed by Plaintiff in this County is GRANTED.

The Court finds that there is no reasonable probability that Plaintiff will prevail in this action because the alleged conduct of the State Defendants is absolutely privileged. On that basis, Plaintiff is ordered to furnish security in the amount of \$10,000 within 30 days of service of Notice of Entry of Order. If Plaintiff fails to do so, the State Defendants are entitled, upon *ex parte* application, to dismissal of the claims against them.

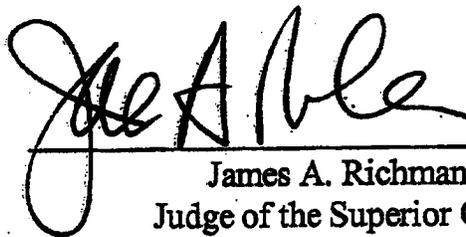
The State Defendants are to serve Notice of Entry of Order on Plaintiff. If the security ordered is not furnished within 30 days after service of the Notice of Entry of Order, the claims against the State Defendants will be dismissed.

The State Defendants' request for a Prefiling Order to prohibit Plaintiff from filing any new litigation in the Court's of this state *in propria persona* without first obtaining leave of the presiding judge of the court where the action is to be filed is GRANTED. A separate Prefiling Order has been executed and filed with this Order.

The request for joinder made at the hearing by Defendant Jason Collom is GRANTED as to the finding that Plaintiff is a vexatious litigant, but denied as to the Order requiring Plaintiff to post security. To obtain an Order requiring Plaintiff to post security, Defendant Collom and the other Defendants to this action must establish, by noticed motion, that there is no reasonable probability that Plaintiff will prevail against them in this action.

This action is stayed, in its entirety, for 60 days.

Dated                       
JAN 24 2005

  
James A. Richman  
Judge of the Superior Court



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): (To be completed only if a party is making the motion) <b>Amy W. Lo (Bar # 194308)</b> <b>State of California, Office of Attorney General</b> <b>1515 Clay Street, Suite 2000, Oakland, California 94612</b>	TELEPHONE NO.: <b>(510) 622-2252</b> FAX NO.: <b>(510) 622-2121</b>	<div style="text-align: right;">             *2544403*         </div> <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> <div style="text-align: center; font-weight: bold;">ALAMEDA COUNTY</div> <div style="text-align: center; font-size: 1.5em; font-weight: bold;">JAN 24 2005</div> <div style="text-align: center; font-weight: bold;">CLERK OF THE SUPERIOR COURT</div> <div style="text-align: center;">           By  Deputy         </div> <div style="text-align: right; margin-top: 10px;">           CASE NUMBER:  <b>2002074172</b> </div>
ATTORNEY FOR (Name): INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY, AND MAILING AND STREET ADDRESS: <b>Superior Court of California, County of Alameda, Rene C. Davidson</b> <b>1225 Fallon Street, Dept. 105</b> <b>Oakland, California, CA 94612</b>		
CASE NAME: <b>HUNG HA v. ANDRE<del>S</del> ROSS, et al.</b>		
<b>PREFILING ORDER—VEXATIOUS LITIGANT</b>		

- Name and address of plaintiff(s) or cross-complainant(s) who is subject to this prefiling order:  
**Hung Ha**  
**P.O. Box 367**  
**Berkeley, California 94701-0367**
- This prefiling order is entered pursuant to a motion made by  the court  party (name):  
**Defendants Winton McKibben, Thomas Reardon, and State of California**
- The individual(s) mentioned in item 1 is prohibited from filing any new litigation in propria persona in the courts of California without approval of the presiding judge of the court in which the action is to be filed.
- The clerk is ordered to provide a copy of this order to the California Judicial Council by fax at (415) 396-9281 or by mail at the address below.

Vexatious Litigant Prefiling Orders  
 California Judicial Council  
 Administrative Office of the Courts  
 303 Second Street, South Tower  
 San Francisco, California 94107

Date: **JAN 24 2005**

  
 \_\_\_\_\_  
 JUDGE

-----  
 (Bottom fold line if using a window return envelope)

**EXHIBIT**

tabbles

2

Case No./Title: 2002074172 Ha vs. Ross

**CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct: I am the clerk of the Alameda County Superior Court and not a party to this cause. I served this PREFILING ORDER – VEXATIOUS LITIGANT by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Hung Ha  
PO Box 367  
Berkeley, CA 94701-0367

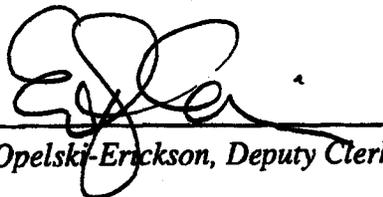
Amy W. Lo  
OFFICE OF THE ATTORNEY GENERAL  
STATE OF CALIFORNIA  
PO Box 70550  
Oakland, CA 94612-0550

Vexatious Litigant Prefiling Orders  
CALIFORNIA JUDICIAL COUNCIL  
ADMINISTRATIVE OFFICE OF THE COURTS  
303 Second Street, South Tower  
San Francisco, CA 94107

Dated: January 24, 2005

Executive Officer/Clerk of the Superior Court

By

  
Elizabeth Opelski-Erickson, Deputy Clerk







**FILED**  
ALAMEDA COUNTY



NOV 30 2007

CLERK OF THE SUPERIOR COURT

By Vicki Daybell *VP*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

HUNG HA,

Plaintiff,

v.

ANDREW ROSS et al.,

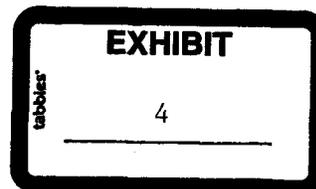
Defendants.

No. 2002074172

ORDER STRIKING DOCUMENTS  
FILED BY PLAINTIFF HUNG HA IN  
VIOLATION OF COURT'S MARCH 1,  
2007 MINUTE ORDER; ORDER  
QUASHING PLAINTIFF HUNG HA'S  
SUBPOENAS

On January 24, 2005, plaintiff Hung Ha ("Plaintiff") was declared a vexatious litigant and subject to a prefiling order in the above-entitled action. On March 1, 2007, this Court issued an order denying Plaintiff's motion to vacate void order of dismissal. The Court further ordered Plaintiff was "not to file any further documents with the exception of a Notice of Appeal. If plaintiff files any further documents (other than a Notice of Appeal), they will be stricken." (See Court's March 1, 2007 Order.)

Plaintiff filed a notice of appeal on March 5, 2007. In direct violation of the Court's March 1, 2007 order, Plaintiff then proceeded to file further documents with the Court.



IT IS ORDERED that the following identified documents filed by Plaintiff are hereby stricken on the Court's own motion:

1. Civil subpoena directed to Frank Roesch c/o Pat Sweeten Executive Officer; filed on March 1, 2007.
2. Motion to vacate order prohibiting Plaintiff from filing papers except a notice of appeal in future or issue order that final judgment be entered; filed March 9, 2007.
3. Motion to correct clerical error in order issued on March 1, 2007; filed March 23, 2007.
4. Application for waiver of additional court fees and costs; filed April 5, 2007.
5. Plaintiff's declaration in support of motion to vacate order prohibiting Plaintiff's filing of subsequent papers; filed April 5, 2007.
6. Notice of related cases; filed April 6, 2007.
7. Application to the Presiding Judge for order to related Ha v. Alameda (Petition); filed April 16, 2007.
8. Plaintiff's reply to defendant's failure to oppose plaintiff's motion to vacate; filed April 27, 2007.
9. Plaintiff's reply to defendant's failure to oppose plaintiff's motion to correct; filed April 27, 2007.

10. Civil subpoena directed to Honorable Frank Roesch; filed May 4, 2007.
11. Proof of service re: Civil subpoena directed to Honorable Frank Roesch; filed May 7, 2007.
12. Hung Ha's Challenge for cause as to qualification of Honorable Frank Roesch; filed May 8, 2007.
13. Reasons for contesting TR: Re Hung Ha's motion to correct error; filed May 8, 2007.
14. Reasons for contesting TR: Re Hung Ha's motion to vacate void order prohibiting him from filing further papers except notice of appeal; filed May 8, 2007.
15. Miscellaneous letter to Presiding Judge Reasons for contesting TR: Re Hung Ha's motion to correct error; filed July 25, 2007.
16. Application for waiver of additional court fees and costs; filed August 8, 2007.
17. Declaration re: statement of disqualification; filed September 4, 2007.
18. Declaration re: petition for review; filed September 4, 2007.
19. Declaration re: challenge for cause as to Chief Justice; filed September 4, 2007.

20. Declaration re: Appellant's motion to vacate Justice McGuiness's order; filed September 10, 2007.
21. Plaintiff's request to court to vacate all void orders, rulings, judgments, and to enter default requested on 2/28/07; filed on October 29, 2007.
22. Proof of service by fax re: transcript of hearing held on March 1, 2007; filed on October 29, 2007.
23. Proof of service by fax re: transcript of hearing held on February 22, 2007; filed on October 29, 2007.
24. Declaration re: 3/1/07 hearing Proof of service by fax re: transcript of hearing held on March 1, 2007; filed on November 8, 2007.
25. Declaration re: Plaintiff's RJN #13 filed on Jan. 30, 2007 but missing; filed November 8, 2007.
26. Declaration re: 2/22/07 hearing; filed on November 8, 2007.
27. Motion to reconsider motion to vacate 7/1/2005 judgment of dismissal void on face of record, and application to set default hearing; filed November 13, 2007.
28. Notice of order by operation of law denying with prejudice demurrer and/or motion to strike amended complaint: RE Alex Yao; filed November 16, 2007.

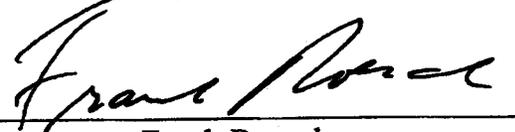
29. Notice of order by operation of law denying with prejudice demurrer and/or motion to strike amended complaint: RE "State Defendants"; filed November 16, 2007.
30. Notice of order by operation of law denying with prejudice demurrer and/or motion to strike amended complaint: RE Sean Aranas; filed November 16, 2007.
31. Notice of order by operation of law denying with prejudice demurrer and/or motion to strike amended complaint: RE Mark Rhoden; filed November 16, 2007.
32. Notice of order by operation of law denying with prejudice demurrer and/or motion to strike amended complaint: RE Alameda County; filed November 16, 2007.
33. Notice of order by operation of law denying with prejudice demurrer and/or motion to strike amended complaint: RE Andrew Ross; filed November 16, 2007.
34. Notice of order by operation of law denying with prejudice demurrer and/or motion to strike amended complaint: RE Jason Collom; filed November 16, 2007.
35. Plaintiff's ex parte application for order shortening time in which to hear motion to set aside void dismissal judgments and set default hearing; filed November 19, 2007.

36. Notice and Acknowledgement of Receipt re: Alex Yao; filed November 28, 2007.
37. Plaintiff's Statement of Damages re: Alex Yao, Regents of the University of California, Devin Kochis, Alameda County, California State, Mark Rhoden, Jason Collom and Andrew Ross; filed November 28, 2007.
38. Plaintiff's Notices and Acknowledgement of Receipts re: Sean Aranas, Devin Kochis, Mark Rhoden, Alameda County, Jason Collom, Andrew Ross and Regents of the University of California; filed November 28, 2007.
39. Notice and Acknowledgement of Receipt re: Unknown Forsteror Patton Wolan & Carlise, LLP on behalf of Unknown Forster; filed November 29, 2007.
40. Plaintiff's Statement of Damages re: Unknown Forster; filed November 29, 2007.
41. Amendment To Complaint; filed November 29, 2007.
42. Application for waiver of additional courts fees and costs; filed November 29, 2007.
43. Application for waiver of additional court fees and costs; filed November 30, 2007.

IT IS FURTHER ORDERED that the following subpoenas be quashed on the ground that there is no pending hearing in the above entitled matter:

1. Civil subpoena directed to Carolyn Lemos; filed November 29, 2007.
2. Civil subpoena directed to Dan Kroll; filed November 29, 2007.
3. Civil subpoena directed to Frank Roesch; filed November 30, 2007.

November 30, 2007



Frank Roesch  
Judge of the Superior Court

**CLERK'S DECLARATION OF MAILING**

I certify that I am not a party to this cause and that on the date stated below I caused a true copy of the foregoing ORDER STRIKING DOCUMENTS FILED BY PLAINTIFF HUNG HA IN VIOLATION OF COURT'S MARCH 12, 2007 MINUTE ORDER; ORDER QUASHING PLAINTIFF HUNG HA'S SUBPOENAS to be mailed first class, postage pre paid, in a sealed envelope to the persons hereto, addressed as follows:

Hung Ha  
P.O. Box 367  
Berkeley, CA 94701

I declare under penalty of perjury that the same is true and correct.  
Executed on November 30, 2007.

By: Vicki Daybell  
Vicki Daybell, Deputy Clerk  
Department 31



United States District Court  
For the Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Hung Ha,

No. C 09-5281 JL

Plaintiff,

**ORDER**

v.

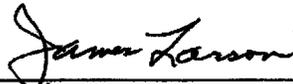
U.S. Attorney General, et al.,

Defendants.

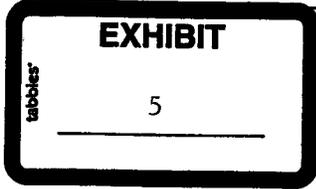
The Court held a hearing on an Order to Show Cause why Plaintiff should not be designated as a vexatious litigant. The Court ruled from the bench that Plaintiff is a vexatious litigant, and that any future in pro per pleading by him submitted in this federal district shall be subject to pre-filing review by a judge of this court. The Court will issue a detailed written order reflecting the reasoning behind its decision. In the interim, Plaintiff is hereby ordered not to file any additional papers in this case, and not to attempt to serve any additional pleadings on any of the Defendants in this case. The Clerk shall not file any such pleadings and shall return any such attempted filings to Plaintiff.

IT IS SO ORDERED.

DATED: June 30, 2010



James Larson  
United States Magistrate Judge



UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

HUNG HA,

Plaintiff,

v.

NANCY WHELAN-STEVENSON et al,

Defendant.

---

Case Number: CV09-05281 JL

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 1, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Hung Ha  
P.O. Box 367  
Berkeley, CA 94701-0367

Dated: July 1, 2010

Richard W. Wieking, Clerk  
By: Venice Thomas, Deputy Clerk

United States District Court  
For the Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Hung Ha,

Plaintiff,

v.

U.S. Attorney General, et al.,

Defendants.

No. C 09-5281 JL

**ORDER DENYING MOTION TO  
WITHDRAW CONSENT (Docket # 195)**

The Court received Plaintiff's motion to withdraw his consent to this Court's jurisdiction, e-filed at Docket # 195, styled as "application for leave to withdraw consent to proceed before a magistrate (tentative version)." This was filed after the Court's dismissal of his complaint with prejudice and without leave to amend. (Docket # 186). The application also alleges misconduct by this Court as grounds for withdrawal of consent. So the Court will also treat Plaintiff's pleading as an affidavit of judicial misconduct under Civil Local Rule 315.

Plaintiff's grounds for withdrawing his consent to this Court's jurisdiction,<sup>1</sup> as stated in an e-mail to opposing counsel, are:

"1) judicial misconduct with the appearance of conniving with attorneys of Patton Wotan & Carlisle LLP and those of Low Ball and Lynch;

2) judicial misconduct of actually conniving with said attorneys and, via them, their clients (who are defendants);

---

<sup>1</sup> The Court has corrected misspellings.

1 3) judicial misconduct of associating with certain persons who may be or could have  
2 been indicted and prosecuted for very serious crimes under either or both California state  
3 laws and federal laws; and

4 4) judicial misconduct that probably are within purview of the criminal law of  
5 California state and federal law.”

6 Plaintiff again challenges the Court’s rulings denying his motions and its alleged  
7 failure to “take any action toward the offending attorneys and defendants whose  
8 misconduct is evinced in the ‘motions’ and failure to answer in substance the allegations of  
9 my complaint. Hon fails totally to admonish, if not discipline, defense attorneys for  
10 misconduct that is ‘unbecoming of attorneys.’”

11 Plaintiff argues that the Court’s issuance of the Order to Show Cause  
12 mischaracterizes him as one who “flagrantly abuses the justice system, instead of seeking  
13 social justice through due administration of the law.” He argues that there is no evidence in  
14 favor of the Show Cause order.

15 Plaintiff’s legal argument is that the Court has committed misconduct, by “conniving”  
16 with defense counsel. Plaintiff argues that extraordinary circumstances exist, specifically,  
17 that the attorneys representing Defendants are themselves “extraordinary circumstances.  
18 They must be disbarred.” The attorneys and this Court are “dishonest and unscrupulous.”

19 Finally, Plaintiff argues that the Court itself “has committed such acts for which he  
20 may be indicted and be prosecuted under both California state law and federal law, by  
21 Department of Justice fo California, and U.S. Department of Justice.” Plaintiff also invokes  
22 the Fifth Amendment to the U.S. Constitution as grounds for permitting him to withdraw his  
23 consent to this Court’s jurisdiction.

24 **ANALYSIS AND CONCLUSION**

25 Withdrawal of consent in civil cases is not permitted except in extraordinary  
26 circumstances, *Fellman v. Fireman's Fund Ins. Co.*, 735 F.2d 55, 58 (2d Cir. 1984) *see also*  
27 *Carter v. Sea Land Services, Inc.*, 816 F.2d 1018, 1020 (5th Cir. 1987) (court would not  
28 “read into the statute a rule that would allow a party to express conditional consent . . .

1 thereby obtaining what amounts to a free shot at a favorable outcome or a veto of an  
2 unfavorable outcome.") This view was adopted by the Ninth Circuit in *Dixon v. Ylst*, 990  
3 F.2d 478, 480 (9th Cir. 1993). Factors to consider include the burdens and costs to  
4 litigants, and whether consent was voluntary and uncoerced. *Pacemaker Diagnostic*  
5 *Clinic of America, Inc. v. Instromedix, Inc.*, 725 F.2d 537, 543 (9th Cir. 1984), cert. denied  
6 469 U.S. 824 (1984).

7 This Court finds that Plaintiff presents the classic instance of a litigant who is  
8 dissatisfied with the outcome of his case and seeks a new judge in hope of obtaining a  
9 more favorable disposition.

10 The burden and prejudice to the other litigants in this case, which is now closed,  
11 would be unacceptable, for all the reasons specified in the Court's Order regarding the  
12 vexatious litigant issue. In fact, permitting Plaintiff to withdraw his consent now would  
13 amount to reversing this Court's dismissal of his lawsuit, without an appeal.

14 Further, this Court lacks jurisdiction to permit Plaintiff to withdraw his consent, now  
15 that his case has been dismissed, since the Court retained jurisdiction solely to rule on the  
16 Order to Show Cause.

17 The Court permitted Plaintiff at the hearing on the Order to Show Cause to present  
18 evidence whether his consent had been coerced or was otherwise involuntary, but he failed  
19 to present any such evidence, nor could he counter the evidence of prejudice to  
20 Defendants if he were permitted to withdraw his consent, or the Court's lack of jurisdiction  
21 to permit him to withdraw consent, now that his case has been dismissed with prejudice  
22 and without leave to amend.

23 For all the above reasons, Plaintiff's application for permission to withdraw his  
24 consent to this Court's jurisdiction is denied.

25 **Affidavit of Judicial Misconduct**

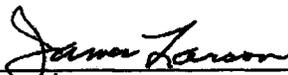
26 Civil Local Rule 3-315 provides that whenever an affidavit of bias or prejudice  
27 directed at a Judge of this Court is filed pursuant to 28 U.S.C. § 144, and the Judge has  
28 determined not to recuse him or herself and found that the affidavit is neither legally

1 insufficient nor interposed for delay, the Judge shall refer the request for disqualification to  
2 the Clerk for random assignment to another Judge. In the case at bar, this Court finds  
3 Plaintiff's affidavit to be both legally insufficient and interposed for delay. The reason for this  
4 finding is that Plaintiff's allegations that the Court has "connived" or "conspired" with  
5 Defendants has no legal or factual basis: Plaintiff is merely dissatisfied with the Court's  
6 rulings. This is no more a justification for a finding of misconduct than it is a basis for  
7 permitting withdrawal of consent.

8 In addition, the Court concludes that Plaintiff's request is interposed for purposes of  
9 delay. Plaintiff filed numerous requests for extensions of time to file his appeal, for the  
10 Court to retract its unfavorable rulings, and for entry of default and other sanctions against  
11 Defendants. Many of these motions have been filed after his case was dismissed. The  
12 Court can only find that Plaintiff is filing this blizzard of meritless post-judgment motions in  
13 an attempt to forestall the inevitable end of his case. Accordingly, the Court finds no basis  
14 for referring Plaintiff's affidavit of judicial misconduct to another judge of this Court.  
15 Plaintiff's request for disqualification of the assigned judge, incorporated in Plaintiff's motion  
16 to withdraw consent, is therefore denied.

17 IT IS SO ORDERED.

18 DATED: July 29, 2010

19  
20   
21 \_\_\_\_\_  
22 James Larson  
23 United States Magistrate Judge

24 G:\JL\ALL\CASES\CIVIL\09-5281\Order deny 195.wpd

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

HUNG HA,

Plaintiff,

v.

NANCY WHELAN-STEVENSON et al,

Defendant.

---

Case Number: CV09-05281 JL

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 29, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Hung Ha  
P.O. Box 367  
Berkeley, CA 94701-0367

Dated: July 29, 2010

Richard W. Wieking, Clerk  
By: Venice Thomas, Deputy Clerk



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Hung Ha,

No. C 09-5281 JL

Plaintiff,

**ORDER FOR PRE-FILING REVIEW**

v.

U.S. Attorney General, et al.,

Defendants.

**INTRODUCTION**

Plaintiff Hung Ha ("Plaintiff" or "Ha") sued more than twenty-five defendants in this action. The defendants were a combination of public officials and agencies and private individuals and corporations or organizations. All of the defendants moved to dismiss the action with prejudice. The motions were heard on April 28, 2010, at which time the Court dismissed the case with prejudice and issued an Order to Show Cause ("OSC") whether Ha should be declared a vexatious litigant. The Court issued its written order dismissing the case on April 29, 2010, retaining jurisdiction solely "for the Order to Show Cause hearing whether Ha should be declared a vexatious litigant." Docket No. 186 at 18.

Defendants asked the Court to find Plaintiff to be a vexatious litigant and to require pre-filing approval for all future filings by Plaintiff in pro per in this Court.

**This Court Grants Defendants' Requests for Judicial Notice**

**EXHIBIT**

tabbles

6

**United States District Court**  
For the Northern District of California

1 Pursuant to Federal Rule of Evidence 201(b), "a judicially noticed fact must be one  
2 not subject to reasonable dispute in that it is either (1) generally known within the territorial  
3 jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to  
4 sources whose accuracy cannot reasonably be questioned." Rule 201(d) further provides  
5 that "[a] court shall take judicial notice if requested by a party and supplied with the  
6 necessary information."

7 Courts routinely take judicial notice of legal documents filed in related litigation,  
8 including pleadings, motions, and judgments. See, e.g., *Papai v. Harbor Tug & Barge Co.*,  
9 67 F.3d 203, 207, n. 5 (9th Cir. 1995), rev'd on other grounds, 520 U.S. 548 (1997)  
10 ("Judicial notice is properly taken of orders and decisions made by other courts and  
11 administrative agencies."); *United States ex rel. Robinson Rancheria Citizens Council v.*  
12 *Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (court took judicial notice of a California  
13 court's final judgment and related filings that had a direct relation to matters at issue).

14 The documents submitted by Defendants in this case are all rulings by courts either  
15 in this district or in California state court in lawsuits brought by Plaintiff Ha. Therefore, this  
16 Court grants Defendants' request for judicial notice of the evidence proffered in support of  
17 their pleadings in response to the Order to Show Cause.

### 18 BACKGROUND

19 Plaintiff's history in this and other courts shows that he is a vexatious litigant.  
20 Indeed, the Superior Court for the County of Alameda, on January 24, 2005, already has  
21 declared Plaintiff a vexatious litigant in that forum. (See Exhibit 1 to Request for Judicial  
22 Notice by County Defendants in support of their Motion to Dismiss.)

23 In its order, the Superior Court stated that Plaintiff has filed at least 5 lawsuits in the  
24 Superior Court of Alameda County in the preceding 7-year period that had been finally  
25 determined adversely to him.

26 In this forum, Plaintiff similarly has brought five non-meritorious pro se actions since  
27 2004. Of these five actions:

28

- 1 • Each was dismissed, either by the United States District Court Judge during
- 2 review of Plaintiff's request proceed In Forma Pauperis ("IFP") or by a ruling
- 3 on the Defendants' motions to dismiss, resulting in no monetary judgment or
- 4 equitable relief to Plaintiff;
- 5 • Each case was dismissed with prejudice, and on only two occasions was
- 6 Plaintiff given leave to amend his Complaint to attempt to state a claim;
- 7 • Only one case even advanced to the responsive pleading stage, yet in each
- 8 case Plaintiff filed from 10 to over 20 extraneous motions or other documents,
- 9 including three motions to disqualify the judge, numerous ex parte motions,
- 10 and a notice of appeal in every case except the most recent one (see
- 11 Defendants cities of ALAMEDA, FREMONT, HAYWARD, and
- 12 PLEASANTON's Request for Judicial Notice (hereinafter "RJN"), Exhibits
- 13 A-E);
- 14 • One of Plaintiff's appeals was dismissed for failure to prosecute, and two
- 15 other appeals were ordered related and the district court's decision in each
- 16 affirmed.
- 17 • In the present case, Plaintiff's complaint was dismissed with prejudice and
- 18 without leave to amend, yet Plaintiff attempted to file a "First Amended
- 19 Complaint," and has attempted to serve it on Defendants.

**History of Plaintiff's Vexatious Federal Litigation**

21 On October 21, 2004, as found by District Court Judge Susan Illston, Plaintiff filed a  
22 complaint against Superior Court Judge Kenneth Mark Burr, many other state judges, state  
23 court employees, other government employees, various police officers, and various private  
24 attorneys because he was unhappy with the state court's handling of his appeal in *People*  
25 *v. Ha.* (See RJN, Exhibit F.) On March 7, 2005, Judge Illston dismissed Plaintiff's  
26 complaint.

27 On September 12, 2007, Plaintiff then filed virtually the same action against  
28 essentially the same Defendants. After the cases were ordered related and the matter

1 transferred to Judge Illston, she specifically noted, "[t]his is not the first time plaintiff has  
2 filed a complaint in this Court against these Defendants or in relation to his state court  
3 cases. On March 7, 2005, this Court dismissed a similar complaint and denied plaintiff's  
4 IFP application. More recently, Judge Armstrong dismissed a similar complaint filed by  
5 plaintiff..." (See RJN, Exhibit F, p. 1.) In dismissing the action, Judge Illston noted that  
6 "plaintiff's complaint fail[ed] to state a claim upon which relief [could] be granted and [was]  
7 frivolous." (See id. at p. 3.)

8 The "similar complaint" referenced by Judge Illston in her order dismissing Plaintiff's  
9 September 12, 2007 complaint refers to Plaintiff's complaint against various state judges  
10 wherein he was seeking review of a prefiling order of the California Court of Appeal. (See  
11 RJN, Exhibit G.) That court had denied Plaintiff's request to file an appeal in a state court  
12 lawsuit because he had been declared a vexatious litigant, and Plaintiff was instructed that  
13 federal district courts may not exercise appellate jurisdiction over state court judgments.  
14 (Id.) District Court Judge Sandra Brown Armstrong gave Plaintiff a chance to amend his  
15 complaint to state a claim, and when Plaintiff was unable to do so, she dismissed the action  
16 with prejudice on February 26, 2008.

17 On March 30, 2009, Plaintiff filed another meritless action, this time against U.C.  
18 Berkeley police officers and employees of the university's recreation facility. Judge  
19 Armstrong ordered all of Plaintiff's federal claims dismissed on July 17, 2009 for failure to  
20 state a claim. (See RJN, Exhibit H.)

21 On February 16, 2010, Plaintiff filed the instant action against Defendants for  
22 hypothetical future injuries that might result from hypothetical future actions of the  
23 co-defendants, which Plaintiff speculates could occur. On April 28, 2010, this Court issued  
24 an Order to Show Cause as to why Plaintiff should not be declared a vexatious litigant. On  
25 April 29, 2010, the Court granted Defendants' motions to dismiss Plaintiff's complaint with  
26 prejudice and without leave to amend. Notwithstanding the Court's prior orders, Plaintiff  
27 attempted to file an amended complaint and then attempted to serve the amended  
28 complaint on Defendants.

## History of Plaintiff's Vexatious State Litigation

On January 24, 2005, the Superior Court for the County of Alameda issued an order declaring Plaintiff to be a vexatious litigant, and noted:

Plaintiff is a vexatious litigant because within the immediately preceding 7-year period, at least 5 litigations in the Superior Court of this County have been finally determined adversely to him: (1) *Ha v. Kochis* Case No. 2002-068743; (2) *Ha v. Fry* Case No. 2002-070272; (3) *Ha v. Rhoden* Case No. 2002-073252; (4) *Ha v. Aranas* Case No. 2002-073289; (5) *Ha v. County of Alameda* Case No. RG03-088377. (See Exhibit 1 to Request for Judicial Notice by County Defendants in support of their Motion to Dismiss.)

### ANALYSIS

#### A. Plaintiff Should Be Declared A Vexatious Litigant In This Case

Courts may restrict litigants with abusive and lengthy histories from filing further actions. (28 U.S.C. § 1651 (a).) A federal court has "the inherent power to file restrictive pre-filing orders against vexatious litigants with abusive and lengthy histories of litigation." (*Weissman v. Quail Lodge, Inc.*, 179 F.3d 1194, 1197 (9th Cir. 1999).) Such pre-filing orders may enjoin the potential litigant from filing an action unless certain criteria are met. (*Moy v. United States*, 906 F.2d 467, 469 (9th Cir. 1990) (upholding order requiring pro se litigant to obtain district court approval prior to filing further complaints).)

The Ninth Circuit has set out four factors that district courts should consider when considering whether a particular litigant is vexatious and issuing a pre-filing order. (*DeLong v. Hennessey*, 912 F.2d 1144, 1147-1148 (9th Cir. 1990).) Those factors are: (1) notice, (2) adequate record for review; (3) substantive findings of frivolousness; and (4) narrowly tailored order to prevent litigant's abusive behavior. (*Id.*) Additionally, in *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th Cir. 2007), the Ninth Circuit ruled that the district court may also consider five additional factors: (1) the litigant's history of litigation, in particular vexatious, harassing or duplicative lawsuits; (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 has imposed an unnecessary burden on the

1 courts and their personnel; and (5) whether other sanctions would be adequate to protect  
2 the courts and other parties. (Id. at 1058; and see *Safir v. United States Lines, Inc.*, 792  
3 F.2d 19 (2d. Cir. 1986).) In *Molski*, the Ninth Circuit stated that the *Safir* factors assist the  
4 court by providing a "helpful framework for applying the two substantive factors" (i.e.,  
5 factors three and four) of the *DeLong* test. (*Molski*, 500 F.3d at 1058.)

6 **1. Notice**

7 Due process requires that the potentially vexatious litigant be provided with notice  
8 and an opportunity to oppose the order prior to its issuance. (*DeLong*, 912 F.2d at 1147.)

9 Here, this Court issued notice of an order to show cause hearing as to why Plaintiff  
10 should not be considered a vexatious litigant. This Court retained jurisdiction over this  
11 matter specifically for the purpose of this order to show cause hearing, and mentioned that  
12 fact on two occasions in its order dismissing Plaintiff's complaint. Plaintiff thus had  
13 adequate notice that he could be declared a vexatious litigant, and ample opportunity to  
14 respond to the Court's order to show cause.

15 **2. Adequate Record for Review**

16 The second requirement is for "a listing of all the cases and motions that led the  
17 district court to conclude that a vexatious litigant order was needed." (*Molski*, 500 F.3d at  
18 1058.)

19 Plaintiff's history includes the following cases:

- 20 • *Ha v. Burr, et al.* (N.D. Cal., No. 3:04-cv-04464-SI) filed 10/21/04 and  
21 dismissed on 03/07/05.
- 22 • *Ha v. Burr, et al.* (N.D. Cal., No. 3:07-cv-04699-SI) filed 09/12/07 and  
23 dismissed on 12/19/07.
- 24 • *Ha v. McGuinness, et al.* (N.D. Cal., No. 4:07-cv-03777-SBA) filed 07/23/07  
25 and dismissed on 02/26/08.
- 26 • *Ha v. Sweet, et al.* (N.D. Cal., No. 4:09-cv-01392-SBA) filed 03/30/09 and  
27 dismissed on 07/16/09.

28

1 • *Ha v. U.S. Attorney General, et al.* (N.D. Cal., No. 3:09-cv-05281-JL) filed  
2 11/05/09 and dismissed on 04/29/10.

3 Additionally, the motions filed within each of the listed cases are to be considered in  
4 the Court's determination. (See *Molski*, 500 F.3d at 1058.) The docket sheet for each of  
5 the above cases evidences a pattern of harassing and frivolous motions. (See RJN,  
6 Exhibits A-E.) For example, Plaintiff filed a motion to disqualify the judge in each case  
7 after the judge ordered his complaint dismissed. Additionally, Plaintiff filed such motions as  
8 an "ex parte motion to set aside order dismissing case" (See RJN, Exhibit B, p. 3), "First  
9 Amended Application for Leave to File Motion to Reconsider Previous Motion to Set Aside  
10 Order of Dismissal and Judgment" (See RJN, Exhibit C, p. 7), a motion for sanctions after  
11 his complaint was dismissed (See RJN, Exhibit E, p. 27), and motions for entry of defaults  
12 against several defendants in the instant case after they had filed responsive pleadings.  
13 (See *id.*) The record thus amply establishes Plaintiff's history of filing duplicative and  
14 unmeritorious actions.

### 15 3. Substantive Findings of Frivolousness or Harassing Nature

16 The district court is to "look at both the number and content of the filings as indicia of  
17 the frivolousness of the litigant's claims." (*Molski*, 500 F.3d at 1059 (citations omitted))  
18 Plaintiff has filed five actions in the Northern District of California since 2004. Within each  
19 of those actions, he has filed numerous meritless motions and ex parte applications.  
20 Plaintiff has not received any monetary judgment or equitable relief from any of these  
21 actions. Indeed, Plaintiff has never been able to even state a cause of action against any  
22 of the defendants he alleges caused him harm.

23 In the present case, Plaintiff went so far as to seek default judgments against  
24 several Defendants because they filed motions to dismiss instead of answering his most  
25 recent meritless complaint. After this Court dismissed his lawsuit with prejudice and  
26 without leave to amend, Plaintiff attempted to file and serve an amended complaint on all  
27 Defendants. (See Defendants Cities of Brentwood, Concord, Pittsburg, Richmond and San  
28 Pablo's Response to This Court's Order to Show Cause.) Plaintiff's litigious history in this  
court and his failure to ever file a complaint that has stated a claim for which relief could be

1 granted, provide ample justification for this Court to declare him to be a vexatious litigant  
2 and require pre-filing review of any complaint he attempts to file.

3 Plaintiff's frivolous actions have required, and continue to require, Defendants to  
4 expend extremely limited resources in responding to his filings. Responding Defendants  
5 herein are public entities with limited public resources, facing extreme budgetary  
6 constraints. Plaintiff's continued frivolous measures are unduly burdensome to the public  
7 at large and to this Court.

8 **4. Breadth of Order**

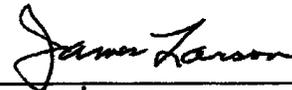
9 Plaintiff has filed meritless complaints in the Northern District against many different  
10 public and private individuals. The only way to protect those individuals from future  
11 harassing and frivolous lawsuits is to require pre-filing review of all Plaintiff's future pro se  
12 filings.

13 **ORDER**

14 Accordingly, it is hereby ordered that any future civil pro se filing by Plaintiff in this  
15 district shall be subject to pre-filing review by a judge of this Court.

16 **IT IS SO ORDERED.**

17 **DATED: July 29, 2010**

18 

19 \_\_\_\_\_  
20 James Larson  
21 United States Magistrate Judge

22 G:\LALL\CASES\CIVIL\09-5281\Order pre-filing review.wpd  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF SERVICE BY CERTIFIED AND REGULAR MAIL**

**CASE NUMBER: 10-O-07882**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco, on the date shown below, a true copy of the within

**NOTICE OF DISCIPLINARY CHARGES**

in a sealed envelope placed for collection and mailing as *certified mail, return receipt requested*, and in an additional sealed envelope as *regular mail*, at San Francisco, on the date shown below, addressed to:

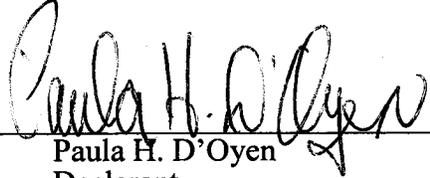
**Article No.: 7160 3901 9849 1845 9284**  
James Hung Xia  
P O Box 367  
Berkeley, CA 94701-0367

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

DATED: October 18, 2011

Signed:   
Paula H. D'Oyen  
Declarant