

(ENDORSED)
FILED
MAR 11 2024

Clerk of the Court
Superior Court of CA County of Santa Clara
BY True Parker DEPUTY

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

KOSTIANTYN MARS
Petitioner
vs.
HANNA MARS
Respondent.

Case No.: 22FL003144

ORDER

Introduction

Respondent Hanna Mars requests the Court designate Petitioner Kostiantyn Mars as a vexatious litigant. Petitioner opposes Respondent's motion.

II. Vexatious Litigant

Respondent requests Petitioner be designated a vexatious litigant under Code of Civil Procedure section 391, subdivision (b)(3).

As an initial matter, it should be noted the moving papers are found in different places in the record. Respondent's Request for Order which included the request for designation of vexatious litigant was filed on September 26, 2023. The Court set this motion for hearing on January 11, 2024. The motion was ultimately continued to February 7, 2024. At that hearing, the Court heard arguments from the parties. The Court also invited further briefing on the issue and informed the parties the matter would be deemed submitted as of March 8, 2024. Petitioner filed a supplemental brief on February 23, 2024. Respondent filed two supplemental briefs – the first on February 16, 2024 and the second on March 1, 2024.

1 **A. Legal Authority**

2 **1. Vexatious Litigation Motions Generally**

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4 Code of Civil Procedure section 391.7, subdivision (a) allows the court to “enter a
5 prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of
6 this state in propria persona without first obtaining leave of the presiding justice or presiding
7 judge of the court where the litigation is proposed to be filed.”

8 The vexatious litigant statutes were established “to curb misuse of the court system by
9 those acting in propria persona who repeatedly relitigate the same issues.” (*Bravo v.*
10 *Ismaj (Bravo)* (2002) 99 Cal.App.4th 211, 220–221, citing *In re Bittaker* (1997) 55 Cal.App.4th
11 1004, 1008.) “These ‘persistent and obsessive’ litigants would often file groundless actions
12 against judges and other court officers who made adverse decisions against them. Their abuse of
13 the system not only wastes court time and resources, but also prejudices other parties waiting
14 their turn before the courts.” (*Bravo, supra*, 99 Cal.App.4th at p. 221 [internal citation omitted].)
15 In addition to protecting the courts, the statutes also serve to protect the litigant who suffers the
16 financial burden of responding to someone who files numerous, meritless actions. (*Morton v.*
17 *Wagner (Morton)* (2007) 156 Cal.App.4th 963, 970–971.) To establish a litigant is vexatious,
18 “the trial court must conclude that the litigants['] actions are unreasonably impacting the objects
19 of [his] actions and the courts as contemplated by the statute.” (*Id.* at p. 971.)

20 Declaring a person a vexatious litigant under Code of Civil Procedure section 391.7 does
21 not require that the vexatious litigant be a plaintiff if it occurs in a pending proceeding.
22 (*Marriage of Deal* (2020) 45 Cal.App.5th 613, 621 [rejecting the argument that a court may only
23 declare a plaintiff a vexatious litigant as a matter of law].)

24 “When considering a motion to declare a litigant vexatious, the court must weigh the
25 evidence to decide whether the litigant is vexatious based on the statutory criteria and whether
26 the litigant has a reasonable probability of prevailing. To be declared a vexatious litigant, the
27 [party] must come within one of the definitions in [Code of Civil Procedure] section 391,
28 subdivision (b).” (*Goodrich v. Sierra Vista Regional Medical Center* (2016) 246 Cal.App.4th
29 1260, 1265, internal citation omitted.)

30 **2. Code of Civil Procedure Section 391, Subdivision (b)(3)**

31 The term “vexatious litigant” is defined in Code of Civil Procedure section 391,
32 subdivision (b)(3), which explains a vexatious litigant includes a person who, “[i]n any litigation
33 while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other
34 papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely
35 intended to cause unnecessary delay.” (Code Civ. Proc., § 391, subd. (b)(3).)

36 Code of Civil Procedure section 397 does not define “repeatedly” or “unmeritorious.”
37 Case law confirms those determinations are left to the trial court’s discretion. (*Morton, supra*,
38 156 Cal.App.4th at p. 971; *Bravo, supra*, 99 Cal.App.4th at p. 219; *Golin v. Allenby* (2010) 190

1 Cal.App.4th 616, 632 [even if each filing viewed in isolation might be reasonable, multiple
2 requests for same relief and for reconsideration of prior rulings “created an unmeritoriousness”
3 to the filings.) The Sixth District Court of Appeal in *Morton* provides some guidance on this
4 issue, stating: “[M]ost cases affirming the vexatious litigant designation involve situations
5 where litigants have filed dozens of motions either during the pendency of an action or relating
6 to the same judgment.” (156 Cal.App.4th at p. 972, citing *Bravo, supra*, 99 Cal.App.4th at
7 p. 225 [a litigant considered vexatious after filing numerous motions contesting appointment of
8 the special discovery master; six motions challenging the judge or his rulings; five motions for
sanctions against opponent, opponent’s attorney, judge, and special master; a motion for
continuance; and a motion for new trial].) The Court of Appeal in *Holcomb v. U.S. Bank Nat.
Assn.* (2005) 129 Cal.App.4th 1494, 1505 defined “repeatedly” as “referring to a past pattern or
practice on the part of the litigant that carries the risk of repetition in the case at hand.”

9 “Not all failed motions can support a vexatious litigant designation. The repeated
10 motions must be so devoid of merit and be so frivolous that they can be described as a flagrant
11 abuse of the system, have no reasonable probability of success, lack reasonable or probable cause
12 or excuse, and are clearly meant to abuse the processes of the courts and to harass the adverse
party than other litigants.” (*Morton, supra*, 156 Cal.App.4th at p. 972, internal quotations
omitted.)

13 In *Morton*, the Court of Appeal overturned the trial court’s finding that the defendant was
14 a vexatious litigant under section 391, subdivision (b)(3), finding that the three motions filed
15 over the course of two years did not constitute “repeatedly.” (*Morton, supra*, 156 Cal.App.4th at
16 p. 970; see also *In re Whitaker* (1992) 6 Cal.App.4th 54, 56 [a vexatious litigant filed at least 24
17 actions in the superior court and 35 writ and appeal proceedings, the majority of which were
18 meritless].) The Court of Appeal left open the possibility that a person could be declared
a vexatious litigant based on only three motions, “where perhaps they all seek the exact same
relief which has already been denied or all relate to the same judgment or order or are filed in
close succession.” (*Morton, supra*, 156 Cal.App.4th at p. 972.)

19 In *Natural Gas Antitrust Cases* (2006) 137 Cal.App.4th 387, 398, the Court of
20 Appeal overturned the trial court’s finding that a litigant was vexatious, holding that
21 reasserting the same objection to requests for judicial notice on several occasions and an
22 attempt to reinstate a dismissed appeal were insufficient to qualify a person as a vexatious
23 litigant pursuant to Code of Civil Procedure section 391 subdivision (b)(3). By contrast, in *In re*
24 *Luckett* (1991) 232 Cal.App.3d 107, 109, the appellate court declared the plaintiff to be a
25 vexatious litigant based on his filing of unmeritorious motions and other frivolous tactics in 43
26 separate appellate proceedings he initiated. Also, in *First Western Development Corp. v.*
27 *Superior Court* (1989) 212 Cal.App.3d 860, 869, fn. 9, the vexatious appellant filed more than
28 40 motions and petitions in an unlawful detainer action after the entry of the adverse judgment
where the trial court found, “[e]very piece of paper filed by [the litigant] since the case has been
before this court has been false in whole or substantial part and has been filed [solely] to delay
resolution of this case.” Further, in *In re Whitaker* (1992) 6 Cal.App.4th 54, 56, the court found
the plaintiff was a vexatious litigant under section 391, subdivision (b)(3) because he had filed
35 writ and appeal proceedings in the Court of Appeal, only one of which was resolved in his
favor on a pretrial matter in a case subsequently resolved against him.

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2 **B. Analysis**

3 In Respondent's September 26, 2023 request for order, she describes 14 motions filed by
4 Petitioner related to this dissolution proceeding. All of the 14 motions were ultimately denied as
5 meritless. Five of these motions requested modification of the Court's custody orders without a
6 change in circumstances. Three of the motions were requests to disqualify the prior judicial
7 officer - the Honorable Andrea Flint. Each disqualification motion cited the exact same basis for
8 disqualification. Petitioner also filed an appeal of the decision on his initial disqualification
9 motion. The appeal was denied.

10 Since the filing of Respondent's request to designate Petitioner a vexatious litigant and
11 the hearing held on February 7, 2024, Petitioner filed 15 additional motions. These motions
12 included 4 additional motions to disqualify Judge Flint repeating the same basis for recusal cited
13 in previous motions. The vast majority of these filings are motions for reconsideration that fail
14 to state a change in circumstances.

15 As stated previously, at the hearing on February 7, 2024, the Court invited further
16 briefing on the request to designate Petitioner a vexatious litigant. Petitioner filed a brief on
17 February 23, 2024. However, Petitioner's brief did not address the issue of vexatious litigation.
18 Instead, Petitioner repeated the same allegations he has included in nearly every motion he has
19 filed.

20 Since the hearing held on February 7, 2024, Petitioner has filed an additional 13 motions
21 and/or requests for order which included a motion to disqualify this judicial officer. In the
22 motion to disqualify, Petitioner cited the exact same allegations contained in his previous
23 motions to disqualify Judge Flint.

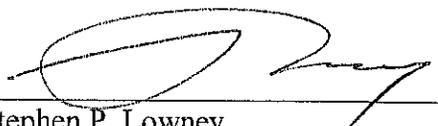
24 Based on the content of these various filings, it appears Petitioner's numerous filings are
25 exactly the type the vexatious litigant statutes are meant to address. They are repetitive, lack
26 legal and evidentiary support, and do not contain cogent arguments. His papers nearly always
27 contain dozens of pages of facts and allegations irrelevant to relief sought in the document.
28 Petitioner includes a version of the same allegations in nearly every filed motion - namely, the
Judge is biased because the Judge is receiving bribes from Respondent's attorney and
Respondent and her attorney are attempting to kidnap Petitioner's minor child.

Furthermore, he has submitted nine different requests to disqualify a judge. All nine
motions for disqualification were ordered stricken based on their failure to state facts that
constitute grounds for disqualification.

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1 In sum, Respondent's motion to declare Petitioner a vexatious litigant is GRANTED.
2 Petitioner is prohibited from filing any new litigation in the courts of this state in propria persona
3 without first obtaining leave from the presiding judge of the court where the proposed litigation
4 is to be filed. (See Code Civ. Proc., § 391.7, subd. (a.)

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6 Dated: MAR 1 1 2024


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8 Stephen P. Lowney
9 Judge of the Superior Court

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