

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT E. CARUSO and SANDRA L.
FERGUSON,

Plaintiffs,

v.

WASHINGTON STATE BAR
ASSOCIATION 1933, a legislatively created
Washington association, State Bar Act (WSBA
1933); WASHINGTON STATE BAR
ASSOCIATION after September 30, 2016
(WSBBA 2017): PAULA LITTLEWOOD,
Executive Director, WSBA 1933 and WSBA
2017, in her official capacity; ROBIN LYNN
HAYNES is the President of the WSBA 1933
and WSBA 2017, in her official capacity;
DOUGLAS J. ENDE, Director of the WSBA
1933 and WSBA 2017 Office of Disciplinary
Counsel, in his official capacity; WSBA
1933/WSBA 2017 BOARD OF
GOVERNORS, namely: BRADFORD E.
FURLONG-President-elect (2016-2017), *et al.*,

Defendants.

No. 2:17-cv-00003

REPLY IN SUPPORT OF MOTION
FOR PRE-FILING ORDER

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FILING ORDER

Case No. 2:17-cv-00003

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I. INTRODUCTION

1 Attorney Stephen K. Eugster (“Eugster”) has filed over eleven successive lawsuits
2 against the Washington State Bar Association and its employees and officials (“WSBA”).
3 Although multiple state and federal courts repeatedly have dismissed his claims against the
4 WSBA at the pleading stage, and although this Court imposed monetary sanctions against him,
5 Eugster continues to advance harassing and repetitive litigation. He has further progressed to
6 suing opposing counsel and judges who have ruled against him. The WSBA now seeks a pre-
7 filing order requiring court review of certain limited categories of lawsuits filed by Eugster to
8 stem further duplicative, vexatious litigation.
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11 In response, rather than addressing the factors and elements relevant to a pre-filing order,
12 Eugster re-asserts a fraud on the court claim the Ninth Circuit already has rejected. Eugster also
13 asserts his conduct is not frivolous and harassing and that he is acting in good faith, yet his
14 continued reliance on arguments multiple courts already have rejected refutes this assertion. The
15 WSBA’s request for a pre-filing order is narrowly tailored and reasonable given Eugster’s
16 repetitive, wasteful, and escalating litigation against the WSBA. Accordingly, the WSBA
17 respectfully asks that this Court enter the requested order requiring pre-filing review.
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II. ARGUMENT

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20 Eugster does not dispute that this Court has inherent power to file restrictive pre-filing
21 orders against vexatious litigants or attorneys. *See generally* Dkt. #63; *De Long v. Hennessey*,
22 912 F.2d 1144, 1147 (9th Cir. 1990); *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1059,
23 1063 (9th Cir. 2007). Nor does Eugster refute that the WSBA has satisfied two of the four
24 required elements for entering such an order—proper notice and compilation of an adequate
25 record. *See* Dkt #63; Dkt. #61 at 6; *De Long*, 912 F.2d at 1147; *Molski*, 500 F.3d at 1063-65.
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1 Eugster’s attempts to refute the remaining two elements—the frivolous, harassing litigation
 2 history and the narrow tailoring of the pre-filing order—fail for the reasons set forth below.

3 **A. Eugster Has Advanced Repetitive, Frivolous and Harassing Litigation Without a**
 4 **Good Faith Expectation of Prevailing.**

5 A pre-filing order is warranted because Eugster repeatedly has pursued frivolous and
 6 harassing claims against the WSBA without a good faith expectation of prevailing on those
 7 claims. Of the five factors courts typically consider to evaluate whether a party’s conduct is
 8 frivolous and harassing, Eugster addresses only two, his “history of litigation” and his claim that
 9 he has an objective good faith expectation of prevailing. *See* Dkt. #63 at 2-6. As set forth
 10 below, the record clearly refutes Eugster’s claims that his prior suits were valid and advanced
 11 with the good faith expectation that he would prevail. *See* Dkt. #62, Appendix (“App.”).

12 Eugster asserts his case history has not been frivolous or harassing, Dkt. #63 at 2, but the
 13 record is replete with examples of meritless and repetitive claims against the WSBA that prior
 14 courts have dismissed as baseless. *See generally* Dkt. #62, App. Rather than identifying valid
 15 grounds for his prior suits, Eugster mischaracterizes the disciplinary proceedings against him¹
 16 and the outcome of prior lawsuits he has filed against the WSBA.² Moreover, even Eugster’s
 17 own description of his prior cases confirms a pattern of harassment and frivolity. *See, e.g.*, Dkt.
 18 #63 at 4 (“no matter what this court or the court of appeals may say, the decisions are void”).
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23 ¹ Eugster incorrectly asserts that the WSBA “reinstated” an investigation of a grievance against him that had
 24 been “over” in response to his filing *Eugster v. Wash. State Bar Ass’n*, No. CV 09-357, 2010 WL 2926237 (E.D.
 25 Wash. July 23, 2010) (“*Eugster III*”). *See* Dkt. #63 at 3. Yet the record confirms the investigation of Eugster was
 26 ongoing and was not instituted in relation to *Eugster III*. *See* Dkt. #62, App. at 369-73 (detailing Eugster’s
 27 disciplinary history).

² For example, Eugster claims *Eugster v. Wash. State Bar Ass’n*, 198 Wash. App. 758 (2017) (“*Eugster IV*”) does
 not preclude future lawsuits, because the superior court dismissed his claims on jurisdictional grounds. Dkt. #63 at
 4. Eugster ignores, however, that the Washington Court of Appeals affirmed the dismissal of *Eugster IV* on res
 judicata grounds, which is a final judgment on the merits. 198 Wash. App. at 796.

1 Additionally, the full record before this Court confirms that Eugster has advanced the
2 same meritless claims and arguments against the WSBA challenging mandatory bar membership,
3 license fees, regulatory authority, and the discipline system in at least ten cases. Dkt. #61 at 2-5;
4 *see e.g.*, Dkt. #62, App. at 59-60 (claiming the lawyer discipline system violates due process);
5 211-17 (asserting the same); 356-59 (asserting the same). Eugster also has disregarded prior
6 judicial determinations that his claims and arguments are invalid. Dkt. #61 at 4-5; *see e.g.*, Dkt.
7 #62, App. at 744-47 (in which Eugster challenged bar membership and license fees for the third
8 time and discipline procedures for the fifth time despite past dismissals); 532 (in which this
9 Court held Eugster had filed a “legally and factually baseless” suit after being “on notice of the
10 flaws” in his claims). Forcing the same parties to “defend themselves over and over and over
11 against the same allegations” this way constitutes harassment. *Johns v. Town of Los Gatos*, 834
12 F. Supp. 1230, 1232 (N.D. Cal. 1993); *see also Buster v. Greisen*, 104 F.3d 1186, 1189-90 (9th
13 Cir. 1997) (filing of successive complaints based on previously-rejected propositions of law
14 constitutes harassment), *abrogated on other grounds, Fossen v. Blue Cross & Blue Shield of*
15 *Mont., Inc.*, 660 F.3d 1102, 1112 (9th Cir. 2011).

16 In addition to filing meritless and repetitive lawsuits, Eugster has progressed to asserting
17 claims against his opposing counsel and judges who have ruled against him. *See, e.g.*, Dkt. #64
18 (seeking to disqualify the judge in this case); Dkt. #62, App. at 586-88 (challenging the
19 impartiality of the judge in this case), 33 (suing the Justices after the Supreme Court suspended
20 him from practice); 693 (same); 771 (same); 277-83 (suing and asserting bias by the Division III
21 Court of Appeals and the panel members who previously ruled against him); 571-81 (claiming
22 the WSBA’s lawyers committed fraud on the court); 841-44 (same and adding that the WSBA’s
23 lawyers defamed Eugster with past characterizations of his lawsuits).
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1 Eugster continues this pattern here. Without any supporting analysis or authority,
2 Eugster asserts that with the pre-filing order motion the WSBA’s lawyers continue a fraud on
3 this Court that began with their motion to dismiss in this case. Dkt. #63 at 2; *see also* Draft
4 Complaint for Fraud on the Court. The Ninth Circuit already rejected this fraud claim (Dkt. #62,
5 App. at 617; 620), yet Eugster maintains the argument “no matter what this court or the court of
6 appeals may say.” Dkt. #63 at 4. Courts have concluded such tactics constitute harassment
7 warranting a pre-filing order. *See Lundahl v. Nar Inc.*, 434 F. Supp. 2d 855, 859-60 (D. Idaho
8 2006) (finding harassment based on a “lengthy history of targeting the same defendant and any
9 party previously associated with [prior] lawsuits, including judges, clerks, and attorneys”); *Stone*
10 *v. Baum*, 409 F. Supp. 2d 1164, 1172, 1178 (D. Ariz. 2005) (concluding record supported a pre-
11 filing order where plaintiffs filed lawsuits against the attorneys representing their opponents and
12 the judges adjudicating the cases). Given Eugster’s vexatious litigation history and
13 unwillingness to accept the finality of prior orders, a pre-filing order is warranted.
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16 Likewise, Eugster’s claim that he “has a good faith expectation of prevailing,” (Dkt. #63
17 at 6) is belied by his repeated advancement of previously rejected claims. *Molski*, 500 F.3d at
18 1059 (claims are frivolous and warrant a pre-filing order if they are “numerous” and “patently
19 without merit”). Eugster ignores that courts have repeatedly dismissed his claims on the merits,
20 for lack of ripeness, and pursuant to the res judicata doctrine. *See generally* Dkt. #63. His entire
21 basis for asserting that he proceeds in good faith—again unsupported by authority—is that any
22 bar association that includes limited license practitioners violates the constitution. *Id.* at 6. But
23 the addition of limited license practitioners as bar members is irrelevant to the substance of
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1 Eugster's claims, and this Court previously has rejected this argument in any event. Dkt. #62,
2 App. at 520-21, 615-18 (affirmed by Ninth Circuit).³

3 The remaining three factors, which Eugster fails to address, also weigh in favor of a pre-
4 filing order. First, as a lawyer, Eugster is not entitled to the deference usually afforded to *pro se*
5 litigants. See Dkt. #61 at 9. Second, Eugster does not and cannot refute that he has exacted a
6 substantial burden on the WSBA and the eight courts in which he has filed, requiring them to
7 repeatedly address the same claims, needlessly-long and frequently-amended pleadings,
8 improper filings, voluntarily dismissed cases, and numerous appeals. See Dkt. #61 at 9-10.
9 Finally, Eugster has ignored and failed to pay the \$28,385 sanction this Court imposed and has
10 proceeded to file additional frivolous lawsuits while escalating his tactics. See, e.g., Dkt. #62, ¶
11 28 and App. at 540, 666, 671-90, 737-47. Verbal admonitions and additional monetary sanctions
12 would thus be insufficient to deter him. See Dkt. #61 at 10-11.
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15 **B. The Requested Pre-Filing Order Is Appropriately Tailored.**

16 The pre-filing order the WSBA seeks would require Eugster as a party or attorney to
17 obtain this Court's prior approval to file (1) a lawsuit against the WSBA, its employees, or
18 agents in federal court, (2) facial challenges to Washington's bar system in state court, or (3) any
19 claims arising from his prior federal lawsuits, in federal or state court. As set forth in the
20 Motion, the scope of this request is appropriately tailored to Eugster's misconduct. See Dkt. #61
21 at 11-12. This Court has the authority to enjoin Eugster from filing duplicative suits against the
22 same parties in federal court (*see Moy v. United States*, 906 F.2d 467, 471 (9th Cir. 1990));
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25 ³ The U.S. District Court for the Eastern District of Washington recently granted the WSBA's Motion to Dismiss
26 in *Eugster v. Littlewood*, Case No. CV-00392, *12-14 (E.D. Wash. May 11, 2018) ("*Eugster VIII*") and held "that
27 the WSBA's inclusion of limited-license practitioners does not change the common nucleus of facts arising from all
of these lawsuits, namely Mr. Eugster's objection to his compelled membership and dues in all the WSBA," and that
"the issue has been previously raised, considered, and rejected" by this Court, in this case. Eugster has already
appealed. See Case No. CV-00392 (E.D. Wash. May 15, 2018), Dkt. No. 40 (Notice of Appeal).

1 future state court cases regarding matters already decided in federal court (*see, e.g., G.C. & K.B.*
2 *Investments, Inc. v. Wilson*, 326 F.3d 1096, 1107 (9th Cir. 2003)); and from reopening litigation
3 based on previous suits (*see Cook v. Peter Kiewit Sons Co.*, 775 F.2d 1030, 1033-34 (9th
4 Cir.1985); *Wood*, 705 F.2d at 1525-26).

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6 Without addressing this authority, Eugster simply asserts that the request is “too broad
7 and ill-defined.” *See* Dkt. #63 at 7. Yet he fails to identify any overbreadth or explain what
8 aspect of the requested relief is ill-defined. *Id.* Nor does Eugster identify any issues or
9 legitimate cases that would be improperly stalled based on the requested pre-filing order. *Id.* To
10 the contrary, the pre-filing order does not unfairly infringe on Eugster’s rights. It will not
11 prevent Eugster from bringing valid claims on his own behalf or on behalf of his clients. The
12 order will require pre-filing review only of certain limited categories of claims that Eugster
13 already has had ample opportunity to litigate. *See* Dkt. #61 at 2-5. To the extent Eugster has
14 valid new claims against the WSBA or related to the bar system, this Court can allow those
15 claims to proceed after pre-filing review.
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17 III. CONCLUSION

18 Eugster has continued to advance vexatious and harassing litigation against the WSBA
19 despite repeated dismissal of his claims on res judicata grounds and prior warnings from courts,
20 including monetary sanction imposed by this Court. He has escalated this harassing and
21 frivolous conduct, targeting opposing counsel and judges who rule against him. The requested
22 pre-filing order would result only in this Court reviewing certain proposed claims in advance,
23 which would deter further duplicative, vexatious litigation. The WSBA respectfully requests that
24 this Court impose a pre-filing review requirement on Eugster.
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1 DATED this 18th day of May, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of May, 2018, I electronically filed the foregoing document with the United States District Court ECF system, which will send notification of such filing to the following:

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