

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
JUL 16 2025

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA  
TRENT TRIPLE, Clerk  
BY ANNA MEYER  
DEPUTY

Case No. CV01-25-10793

IN RE: REFERRAL TO CONSIDER  
WHETHER RAUL MENDEZ  
SHOULD BE DECLARED A  
VEXATIOUS LITIGANT PURSUANT  
TO I.C.A.R. 59

PROPOSED FINDINGS AND  
NOTICE OF INTENT TO  
ISSUE A PREFILING ORDER

#### I. Background – Referral Order

An order referring the consideration of whether Raul Mendez should be declared a vexatious litigant has been submitted by the presiding judge in CV01-24-10291 (Raul Mendez v. Intermountain Gas Company), the Honorable Cynthia Yee-Wallace.<sup>1</sup>

The referral order notes the following:<sup>2</sup>

Here, the Court finds that based on the below findings, that referral to the Administrative District Judge for the determination of whether Raul Mendez

<sup>1</sup>See *also* Administrative Order No. 25-06-02 (Order Assigning Deputy Administrative District Judge James Cawthon to Preside in CV01-25-10793) (issued June 16, 2025).

<sup>2</sup>Judicial notice is taken of the court records specifically identified herein, including the (March 24, 2025) Declaration of Kersti H. Kennedy in Support of Motion to Declare Raul A. Mendez a Vexatious Litigant (757 pages, including exhibits) and the (April 3, 2025) Supplemental Declaration of Kersti H. Kennedy in Support of Motion to Declare Raul A. Mendez a Vexatious Litigant (20 pages including exhibits), both filed in CV01-24-10291. See I.R.E. 201. See *also* *IDHW v. Doe* (2023-24), 172 Idaho 891, 537 P.3d 1252, 1259-60 (2023) ("When a court takes judicial notice of records, exhibits, or transcripts from the court file in the same or a separate case, the court must identify the specific documents or items so noticed."). The court will also direct the clerk to copy the other relevant materials referenced herein into this case.

is a vexatious litigant is appropriate. The Court finds that the following summaries outlined below support the Court's order herein:

1. In 2016, Mendez filed suit against former employer, Community Health Clinics, Inc., Case No. 1: 16-cv-00425-DCN, alleging unlawful discrimination in the workplace. After four and half years, the court ultimately granted the defendant's motion for case terminating sanctions based upon Mendez's litigation tactics and behavior in that case. (Kennedy Decl. Ex. DD.) During the pendency of the case, Mendez sought three times to add a claim for retaliation under the First Amendment, which the court denied each time. (Id.) Mendez also filed two motions for reconsideration. (Id.) Further, Mendez frequently contacted the court's law clerk assigned to this case; however, would then use informal communications between himself and the Court's clerk as fodder for motion practice. (Id.) Mendez appealed the case to the Ninth Circuit Court of Appeals, which court affirmed the decision of the district court on June 29, 2022 and found Mendez's behavior 'willful and in bad faith.' (Id. Ex. OO.)

2. In 2018, Mendez sued the State of Idaho in Case No. 1:21-cv-00447-BLW, seeking to 'remove' a pending Idaho Supreme Court Appeal stemming from a traffic ticket Mendez failed to pay-to the Ninth Circuit Court of Appeals via the District Court. (Kennedy Decl. Ex. DD.) The court explained that Mendez's request was not proper and 'remanded' the case back to the Idaho Supreme Court; Mendez appealed. The Ninth Circuit dismissed the appeal for lack of jurisdiction; Mendez asked the court to reconsider, and the court denied the request. (Id.)

3. In 2019, Alma Rosales sued the Idaho Department of Health and Welfare, Case No. 1:19-cv-000426-DCN, alleging her food stamp benefits were impermissibly lowered. (Kennedy Decl. Ex. DD.) After an initial review, the Court allowed the case to proceed but required that Rosales pay the requisite filing fee over time, to which Rosales filed a Motion for Reconsideration, and which was denied. (Id.) Rosales appealed that decision, and the circuit court dismissed for lack of jurisdiction. (Id.) 'In subsequent filings, it became clear that (Raul) Mendez Alma's son was 'attempting to represent (her) in the() proceedings.' The court indicated that because Mendez is not a licensed attorney, he could not represent her and struck the items he had filed on her behalf. (Id.) Rosales never obtained legal counsel, could not proceed pro se, and, eventually, the court dismissed the complaint. (Id. Exs. DD, YY.) On July 22, 2020, an appeal was filed. (id. Ex. ZZ.) After the Ninth Circuit affirmed the decision on December 19, 2022, another appeal was filed on August 29, 2023. (Id. Exs.

AAA, BBB.) The Ninth Circuit deemed the appeal as frivolous and dismissed the appeal on June 20, 2024. (Id. Ex. CCC.)<sup>3</sup>

4. In 2019, Mendez sued Moonridge Neighborhood Association, Inc., Case No. 1: 19-cv-00092-DCN, stemming from Mendez's refusal to pay HOA dues. (Kennedy Decl. Ex. DD.) 'After he contested the dues and failed to pay the HOA (Moonridge) filed a small claims action in Ada County, Idaho, against Mendez. Mendez then removed the case to Federal District Court and alleged four counterclaims.' (Id.) 'The court ultimately remanded the case to Idaho State Court finding it lacked jurisdiction over the matter. The Court explained that while Mendez's counterclaims may invoke federal jurisdiction, the original claims did not, and the Court's analysis only looks at the original complaint. Mendez sought reconsideration and the Court denied the request.'

5. In 2019, Mendez sued Moonridge Neighborhood Association, Inc., Case No. 1: 19-cv-00507-DCN. (Kennedy Decl. Ex. DD.) 'Following the Court's decision that it did not have jurisdiction over a removed state-law cause of action with no original federal matters at issue, Mendez filed his own federal case against Moonridge asserting the same four counterclaims as in Case No. 1: 19-cv-00092, except this time as original causes of action.' (Id.) The court granted in part and denied in part Defendants' Motion to Dismiss and denied Mendez's subsequent Motion to Reconsider. (Id.) On March 23, 2023, the court entered judgment of dismissal with prejudice and Mendez appealed. (Id. Ex. PP.) The court referred the matter to the federal district court to determine whether the appeal was frivolous or bad in bad faith. (Id. Ex. QQ.) On April 21, 2023, the federal district court issued its findings, finding that Mendez's appeal was frivolous and his arguments without merit. (Id. Ex. RR.)

6. On January 25, 2019, Raul Mendez brought a pro se Customer Complaint against Intermountain before the Idaho Public Utilities Commission regarding Intermountain's initiation fees and other charges. (Kennedy Decl. Ex. A.) Intermountain answered on March 29, 2019. (Id. Ex. B.) Mendez responded on April 17, 2019. (Id. Ex. C.) The Idaho Public Utilities Commission decided every issue against Mendez. (Id. Ex. D.) Mendez asked the commission to reconsider, which request was denied.

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<sup>3</sup>See Exhibit CCC to Declaration (p. 620-21) (June 20, 2024) Order, 1 (9<sup>th</sup> Circuit) ("The district court certified that this appeal is not taken in good faith and denied appellant leave to proceed on appeal in forma pauperis. See 28 U.S.C. § 1915(a). On September 25, 2023, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. See 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious). Upon a review of the record and the response to the court's September 25, 2023 order, we conclude that this appeal is frivolous. We therefore confirm that appellant is not entitled to proceed in forma pauperis in this appeal, and we dismiss the appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2). All other pending motions are denied as moot.").

(Id. Ex. E.) Mendez filed an appeal, which was later withdrawn. (Id. Exs. F, G.)<sup>4</sup>

7. On February 7, 2019, Mendez filed suit against the City of Boise, Case No. 1: 19-cv-00049-BLW. (Kennedy Decl. Ex. DD.) 'After Mendez refused to pay mandatory sewer service fees, the City of Boise filed claim in Ada County against him. Mendez removed the claim to federal court and asserted five counterclaims.' (Id.) Defendants filed a Motion for Remand, and the Court determined it did not have jurisdiction because the original complaint lacked any federal nexus and remanded the matter to state court. (Id.) Mendez filed a Motion for Reconsider, which the court denied. Mendez appealed and the Ninth Circuit dismissed the case for lack of jurisdiction. (Id.) Mendez asked the circuit court to reconsider, which request was denied. (Id.).

8. On August 2, 2019, Raul Mendez filed a pro se Complaint and Demand for Jury Trial against Ada County, Ada County Commissioners, Ada County Treasurer, Ada County Billing Services, Scott Williams, Lyn Call and any other employees of the Ada County Billing Services, Ammon Taylor, and Republic Services in United States District Court, District of Idaho in Case No. 1: 19-cv-00301-BLW, asserting violations of due process and equal protection, violations of Fair Debt Collections Practices Act, intentional infliction of emotional distress, damage to reputation, and violations of the Federal Trade Commission Act and the Idaho Consumer Protection Act. (Kennedy Decl. Ex. W.) On August 3, 2020, the court entered a Memorandum Decision and Order, granting Defendants' motion to dismiss and dismissing certain claims asserted by Mendez. (Id. Ex. X.) On August 26, 2020, Mendez filed a notice of appeal. (id. Ex. Y.) On September 18, 2020, the court entered an order dismissing the appeal. (Id. Ex. Z.) On October 19, 2020, Mendez again filed a notice of appeal. (Id. Ex. AA.) On April 23, 2021, the United States Court of Appeals for the Ninth Circuit

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<sup>4</sup>The case number of his public utilities proceeding is: INT-G-19-03. It is not clear that a proceeding by complaint against a public utility, pursuant to Title 61, Chapter 6, of the Idaho Code constitutes a "civil action", as set forth in I.C.A.R. 59(b). The appeal from such a proceeding would constitute qualifying litigation. See I.C.A.R. 59 (b) ("Litigation, as used in this rule, means any civil action or proceeding, and includes any appeal from an administrative agency, any appeal from the small claims department of the magistrate division, any appeal from the magistrate division to the district court, and any appeal to the Supreme Court.") (emphasis added). However, Mr. Mendez apparently withdrew his appeal. See also *Idaho Power Co. v. Idaho Public Utilities Com'n*, 155 Idaho 780, 789, 316 P.3d 1278, 1287 (2013) ("Grouse Creek I and Grouse Creek II request an award of attorney fees under Idaho Code section 12-121. That statute provides, 'In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties....' That statute has no application to this case. It only applies in 'any civil action,' which is an action by filing a complaint in court as required by Rule 3(a) of the Idaho Rules of Civil Procedure. *Lowery v. Bd. of Cnty. Comm'rs for Ada Cnty.*, 117 Idaho 1079, 1082, 793 P.2d 1251, 1254 (1990). An appeal from an agency decision is not a civil action. *Allen v. Blaine Cnty.*, 131 Idaho 138, 142, 953 P.2d 578, 582 (1998).").



entered decision affirming the lower court's decision and dismissing Mendez's appeal. (Id. Ex. BB.)

9. In 2020, Mendez sued Sony Computer Entertainment America, LLC, Case No. 1:20-cv-00588-DCN. (Kennedy Decl. Ex. DD.) In this case, Mendez alleged Sony removed the majority of the digital content he purchased from the PlayStation store for use on his home gaming devices. (Id.) Defendant asked for an early stay order so the parties could arbitrate, and the court agreed. Mendez later sought to lift the stay, which the court denied. Mendez sought reconsideration of that decision. The court noted that Mendez specifically targeted the law clerk in this case for some ire as the clerk purportedly 'refus(ed) to respond to matters (i.e. questions Mendez's posed via email) that they are allowed to assist the parties with.' On June 22, 2022, Mendez filed an appeal regarding his motion for reconsideration, which was dismissed for lack of jurisdiction on July 15, 2022. (Id. Exs. SS, TT.) Mendez filed another appeal on July 19, 2023, which was dismissed and finding it frivolous and indicating that no further filings would be entertained in the case. (Id. Ex. UU, VV.)

10. On February 6, 2020, Mendez sued the City of Boise, Case No. 1:20-cv-00061-BLW. (Kennedy Decl. Ex. DD.) 'Mendez again sought review over the City of Boise's decision to charge him sewage fees at his unoccupied home. Unlike his prior case, however which he removed from Idaho state court Mendez brought these claims in federal court of his own accord.' (Id.) The court reviewed Mendez's complaint and dismissed his federal claims as lacking merit and declined to exercise supplemental jurisdiction over his state law claims. (Id.) Mendez appealed and the Ninth Circuit affirmed the decision in all respects. (Id.) Mendez sought en banc review and to stay the Ninth Circuit's mandate, but each request was denied. (Id.)

11. In 2021, Raul Mendez filed suit against Banner Bank, Ada County Case No. CV01-21-17728, alleging fraud and breach of contract based on Banner Bank charging \$2 fee for delivery of paper account statements. (Kennedy Decl. Ex. DDD.) Banner Bank moved for summary judgment, which was granted. (Id.) Banner Bank was also awarded attorney fees and costs. (Id.) Mendez appealed to the district court, which district court dismissed as untimely. (Id.) The Idaho Court of Appeals reversed in August 2024, finding that the appeal was timely. (Id.) On October 31, 2024, Mendez moved to dismiss the appeal, which was granted on November 18, 2024 and Mendez was awarded \$4 in costs. (Id. Ex. EEE.) On December 12, 2024, Mendez moved for contempt against Banner Banks for not paying him the \$4. (Id.) Banner Bank declined to pay the \$4 because Mendez owed over \$15,000 in attorney fees. (Id.)

12. On November 15, 2021, Mendez sued the City of Boise, Case No. 1:21-cv-00446-DCN. (Kennedy Decl. Ex. DD.) 'This case seeks for the third time a decision as it relates to the City of Boise's decision to enforce its sewer fees.' the court noted that '(i)n his original case (Case No 1: 19-cv-00049), Mendez brought suit against ten defendants. In his subsequent suit (Case No. 1:21-cv-00446), Mendez brought suit against five of the ten previously-named defendants. In his current suit, Mendez retains the same group of five defendants from the second case. And, as before, the claims are substantially similar to prior lawsuits on the same topic.' (Id.)

13. On November 15, 2021, Raul Mendez filed a pro se Complaint and Demand for Jury Trial against Ada County, Ada County Commissioners, Ada County Treasurer, Ada County Billing Services, Scott Williams, Lyn Call and any other employees of the Ada County Billing Services, Ammon Taylor, and Republic Services in United States District Court, District of Idaho in Case No. 1:21-cv-00447-BLW, asserting violation of the equal protection clause, violation of the takings clause, violation of 'liberty in not being defamed,' violations under the Fair Debt Collections Practices Act, intentional infliction of emotional distress, damage to reputation-defamation, fraud, and violation of the RICO act. (Kennedy Decl. Ex. CC.) On March 21, 2022, the court entered Memorandum Decision and Order noting that 'Mendez is no stranger to litigation,' reciting Mendez's prior failed attempts to litigate cases against Ada County and considers whether Mendez should be deemed a vexatious litigant. (Id. Ex. DD.) Such order examined Mendez's pattern of repeat filing fourteen cases in federal district court.<sup>5</sup> The court noted it would hold in abeyance its determination as to any vexatious litigant status until it received and reviewed Mendez's response to the order. (Id.) On October 11, 2022, the court entered docket entry order noting that Mendez emailing with directly with the court's staff and raising substantive issues despite repeating warnings that such conduct was inappropriate; thus, the court ordered Mendez to no longer correspond with court staff and to communicate only with the court through motion and documents submitted for filing. (Id Ex. JJ.) On November 14, 2022, the court dismissed the case without leave to amend. (Id. Ex. EE.) Mendez filed a motion for reconsideration, which the court denied on March 1, 2023 and

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<sup>5</sup>The fourteen cases identified were: "(1) Mendez v. St. Alphonsus, Case No. 1: 12-cv-00026-EJL-CWD; (2) Mendez v. Community Health, Case No. 1: 16-cv-00425-DCN; (3) Mendez v. State of Idaho, Case No. 1:18-cv-00063-DCN; (4) Mendez v. Moonridge, Case No. 1: 19-cv-00092-DCN; (5) Mendez v. Moonridge, Case No. 1: 19-cv-00507-DCN; (6) Mendez v. Sony, Case No. 1:20-cv-00588-DCN; (7) Mendez v. Ada County Libraries, Case No. 1:20-cv-00589-DCN; (8) Mendez v. Community Health, Case No. 1:21-cv-00448-BLW; (9) Rosales v. Idaho Department of Health and Welfare, Case No. 1: 19-cv- 000426-DCN; (10) Mendez v. City of Boise, Case No. 1: 19-cv-00049-BLW; (11) Mendez v. Ada County, Case No. 1: 19-cv-00301-BLW;; (12) Mendez v. City of Boise, Case No. 1:20-cv-00061-BLW; (13) Mendez v. Ada County, Case No. 1:21-cv-00447-BLW; and (14) Mendez v. City of Boise, Case No. 1:21- cv-00446-DCN. (Kennedy Decl. Ex. DD.)". See (March 24, 2025) Memorandum in Support of Motion to Declare Raul Mendez a Vexatious Litigant, at 7.

ordered that it 'will not entertain any further filing in this closed case. Any such filings will be summarily denied.' (Id. Ex. FF.) On March 31, 2023, Mendez filed notice of appeal. (Id. Ex. GG.) On June 6, 2023, the court entered referral notice, referring the matter 'to the district court for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith.' (dd. Ex. HH.) On September 19, 2024, the court entered an order denying Mendez's petition for rehearing and stating that '(n)o further filings will be entertained in this closed case.' (Id. Ex. II.)

14. On August 4, 2022, Raul Mendez filed a pro se Complaint and Demand for Jury Trial against Intermountain in Ada County Case No. CV01-22-10795 and alleging the same legal issues in the 2019 Idaho Public Utilities Commission proceeding as well as that Intermountain trespassed on Mendez's property and damaged his fence. (Kennedy Decl. Ex. H.) The district court bounded the case down to the magistrate court. (Id. Ex. I.) On December 20, 2022, Intermountain filed an answer. (Id. Ex. J.) On June 5, 2023, the magistrate court dismissed the case without prejudice for failure to appear at two separate court dates and failure to prosecute. (Id. Ex. K.) Mendez moved to reopen the case and reassign it to the district court, which the magistrate court denied on September 21, 2023. (Id. Ex. L.) Mendez appealed the magistrate court's decision regarding the motion to reopen to the district court. (Id. Exs M, N.) The district court denied the appeal. (Id. Ex. Q.) Then, Mendez appealed to the Idaho Supreme Court and moved for fee waiver, which fee waiver request was denied. (Id. Exs. R, S, T.) Mendez moved to dismiss his appeal or allow him to proceed with waiver of his fee and the court granted the motion and dismissed the appeal. (Id. Exs. U, V.)

15. On December 5, 2022, Mendez filed a pro se Complaint and Demand for Jury Trial against Ada County, Ada County Commissioners, Ada County Treasurer, Ada County Clerk, Ada County Recorded Ada County Billing Services, Scott Williams, Lyn Call and any other employees of the Ada County Billing Services, Ammon Taylor, and Republic Services in United States District Court, District of Idaho in Case No. 1:22-cv-493-BLW, asserting violation of the equal protection clause, violation of the takings clause, violation of 'liberty in not being defamed,' violations of the Fair Debt Collections Practice Act, intentional infliction of emotional distress, damage to reputation-defamation, fraud, violations of RICO, and breach of contract. (Kennedy Decl. Ex. KK.) On June 3, 2023, the court entered an order and dismissed all claims with prejudice. (id. Ex. LL.) On July 18, 2023, Mendez filed notice of appeal. (id. Ex. MM) On June 3, 2024, the court of appeals entered its memorandum, affirming the decision of the lower court and dismissing Mendez's appeal. (id. Ex. NN.)

16. On July 19, 2023, Mendez sued Sony Computer Entertainment America, LLC, Case No. 23-cv-00333-DCN, which case the court dismissed on December 18, 2023. (Kennedy Decl. Ex. WW.) On January 18, 2024, Mendez appealed. (Id.) On August 28, 2024, the court dismissed the appeal, finding it to be frivolous and indicating that no further filings would be entertained in the case. (Id. Ex. XX.)<sup>6</sup>

17. On April 12, 2024, Raul Mendez filed a pro se Complaint and Demand for Jury Trial against Russell Swainston, Nicholas Lewis, Eva Bingham, and Lyndon Box, in Ada County Case No. CV01-24-06458 and asserting claims of breach of fiduciary duty, breach of contract and implied covenant of good faith and fair dealing, constructive fraud and fraud, defamation, medical malpractice, common tort-gross negligence and recklessness, common tort-intentional infliction of emotional distress, discrimination under Title VI of the Civil Rights Act 1964, and discrimination under the Idaho Human Rights Act. (Kennedy Decl. Ex. GGG.) On December 18, 2024, the court dismissed Defendants Lewis, Bingham, and Box. (Id. Ex. HHH.) On December 2, 2024, Mendez filed a motion for sanctions. (Id. Ex. III.) On January 8, 2025, the court entered an order notifying the parties of the court's intention to reconsider the determination of indigency. (Id. Ex. JJJ.) On February 14, 2025, the court entered an order rescinding the finding of indigency. (Id. Ex. KKK.) Mendez filed a motion to disqualify the judge. (Id. Ex. LLL.)

18. On June 17, 2024, Raul Mendez attempted to initiate a case against Banner Bank in Ada County Case No. CV01-24-10297. (Kennedy Decl. Ex. FFFF.) Mendez filed a motion for fee waiver, which the court denied on June 24, 2024. Mendez then filed motion for permissive appeal, which was denied. (Id.) Mendez appealed the denial of his motion for permissive appeal, but the Idaho Supreme Court affirmed the denial. (Id.) On October 31, 2024, Mendez filed another motion for fee waiver and the district court held hearing on the motion on December 4, 2024 at which it denied the motion. (Id.) The case was dismissed on December 12, 2024. (Id.)

19. On July 1, 2024, Raul Mendez filed a pro se Complaint and Demand for Jury Trial in the instant case, Ada County Case No. CV01-24-10291, alleging the same facts and same or similar legal theories as those brought forth before the Idaho Public Utilities Commission and in Ada County Case

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<sup>6</sup>See Exhibit XX to Declaration (p. 565) (August 28, 2024) Order, 1 (9<sup>th</sup> Circuit) ("Mendez v. Sony Computer Entertainment America, LLC, Case No. 23-cv-00333-DCN – "Upon a review of the record and the response to the court's May 20, 2024 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 10), see 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious). No further filings will be entertained in this closed case.").

No. CV01-22-10795. (Compl. at 2-4, 5-8.) Such case is pending before this Court.

20. On December 12, 2024, Raul Mendez attempted to initiate a case against Banner Bank, Ada County Case No. CV01-24-20923. (Kennedy Decl. Ex. FFFF.) Mendez filed a motion for fee waiver, which the court denied on December 19, 2024. (Id.) Mendez filed motion to reconsider on December 30, 2024, which the court denied. (Id.) On January 15, 2025, Mendez filed an appeal to the Idaho Supreme Court, which was dismissed on February 19, 2025.

21. On March 25, 2025, Raul Mendez filed a pro se Complaint and Demand for Jury Trial against Banner Bank and Hawley Troxell Ennis Hawley LLP in the Ada County Case No. CV01-24-20923, asserting breach of contract and implied covenant of good faith and fair dealing, fraud, violation of the Idaho Consumer Protection Act, constructive fraud, abuse of process and conspiracy to commit abuse of process, intentional infliction of emotional distress, defamation, and 'privacy violation.' (Suppl. Kennedy Decl. Ex. MMM.)<sup>7</sup>

## II. Legal Standards

The determination of whether an individual should be declared a vexatious<sup>8</sup> litigant is governed by the procedure set forth in I.C.A.R. 59(d):

An administrative judge may find a person to be a vexatious litigant based on a finding that a person has done any of the following:<sup>9</sup>

(1) In the immediately preceding seven-year period the person has commenced, prosecuted or maintained pro se at least three litigations, other than in the small claims department of the magistrate division, that have been finally determined adversely to that person.

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<sup>7</sup>See (May 20, 2025) Order on Defendant's Motion to Declare Raul Mendez a Vexatious Litigant and Findings in Support of Referral of Vexatious Litigant, at 7-18.

<sup>8</sup>Vexatious conduct has been defined as conduct "without reasonable or probable cause or excuse; harassing; annoying." Black's Law Dictionary (11th ed. 2019).

<sup>9</sup>"I.C.A.R. 59 does not require the administrative judge to inquire into the motives of a person who may refer a potential vexatious litigant to the administrative judge. The Rule only requires the administrative judge to review the litigant's conduct to determine whether it fits within one [or more than one] of the four categories described in subsection (d). I.C.A.R. 59." *In re Prefiling Order Declaring Vexatious Litigant, Pursuant to I.C.A.R. 59, Mark D. Colafranceschi*, 164 Idaho 771, 779-80, 435 P.3d 1091, 1099-1100 (2019).



(2) After a litigation has been finally determined against the person, the person has repeatedly relitigated or attempted to relitigate, pro se, either (A) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (B) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting pro se, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous<sup>10</sup> or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding.

Pursuant to I.C.A.R. 59(e):

If the administrative district judge finds that there is a basis to conclude that a person is a vexatious litigant and that a prefiling order should be issued, the administrative district judge shall issue a proposed prefiling order along with the proposed findings supporting the issuance of the prefiling order. The person who would be designated as a vexatious litigant in the proposed order shall then have fourteen (14) days to file a written response to the proposed order and findings. If a response is filed, the administrative district judge may, in his or her discretion, grant a hearing on the proposed order. If no response is filed within fourteen (14) days, or if the administrative district judge concludes following a response and any subsequent hearing

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<sup>10</sup>Frivolous conduct has been "defined as conduct that 'obviously serves merely to harass or maliciously injure another party to the civil action' or 'is not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.'" *Berkshire Investments, LLC v. Taylor*, 153 Idaho 73, 86, 278 P.3d 943, 956 (2012). See also *Hymas v. Meridian Police Dept.*, 159 Idaho 594, 602, 364 P.3d 295, 303 (Ct. App. 2015) ("Under a separate title, the Idaho Code defines frivolous as conduct 'not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.' I.C. § 12-123(1)(b)(ii); see also BLACK'S LAW DICTIONARY 451 (8th ed.2004) (defining a 'frivolous defense' as one that has no basis in law or fact)."). A patently or manifestly frivolous assertion or claim has been defined as "the sort of implausible allegation that is so 'wholly insubstantial or obviously frivolous' or 'so patently without merit as to require no meaningful consideration[.]'" *Goode v. Zavodnick*, 2023 WL 3568126, \*8 (D. Colo.) (citing *Coando v. Coastal Oil & Gas. Corp.*, 44 F. App'x 389, 395 (10th Cir. 2002) (citing *Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974)); *Wiley v. Nat'l Collegiate Athletic Ass'n*, 612 F.2d 473, 477 (10th Cir. 1979) (same); *Best v. Kelly*, 39 F.3d 328, 330 & n.3 (D.C. Cir. 1994) *Tarshik v. Kansas*, No. 08-4058-SAC, 2008 WL 4489789, at \*1 to \*7 (D. Kan. Sept. 30, 2008)).

that there is a basis for issuing the order, the administrative district judge may issue the prefiling order.<sup>11</sup>

“Litigation, as used in this rule, means any civil action or proceeding, and includes any appeal from an administrative agency, any appeal from the small claims department of the magistrate division, any appeal from the magistrate division to the district court, and any appeal to the Supreme Court.” I.C.A.R. 59(b).<sup>12</sup>

‘Although the Idaho Rules of Civil Procedure are not applicable to proceedings under Idaho Court Administrative Rule 59, the requirement that a court’s judgment be supported by sufficient factual findings is still applicable in the context of vexatious litigant proceedings.’ *In re Cook*, 168 Idaho at 161, 481 P.3d at 115 (internal citations omitted). The reason for this requirement ‘is to provide the appellate court with ‘a clear understanding

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<sup>11</sup>See also *Re Khurana*, 169 Idaho 120, 122, 492 P.3d 1079, 1081 (2021) (“An ADJ’s determination that an individual is a vexatious litigant is reviewed for an abuse of discretion. *Telford v. Nye*, 154 Idaho 606, 610, 301 P.3d 264, 268 (2013). This Court applies the four-part *Lunneborg* standard when reviewing a decision for an abuse of discretion. See *Lunneborg v. My Fun Life*, 163 Idaho 856, 421 P.3d 187 (2018). Under that standard, we ask whether the lower court: ‘(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.’ *Id.* at 863, 421 P.3d at 194 (citation omitted). This Court does not set aside factual findings unless they are clearly erroneous. *In re Prefiling Order Declaring Vexatious Litigant*, 164 Idaho 771, 776, 435 P.3d 1091, 1096 (2019) (citation omitted). ‘Findings of fact are not clearly erroneous if they are supported by substantial and competent evidence.’ *Id.* (citing *Hull v. Giesler*, 163 Idaho 247, 250, 409 P.3d 827, 830 (2018)). Finally, **(t)his Court adheres to the rule that persons acting pro se are held to the same standards and rules as those represented by attorneys.**” *Id.* (quoting *Huff v. Singleton*, 143 Idaho 498, 500, 148 P.3d 1244, 1246 (2006)) (italics in original).” (bold emphasis added).

<sup>12</sup>The rule does not expressly limit “any civil action or proceeding” to Idaho state court cases and the rule also provides that a vexatious litigant declaration by a “federal court of record in any action or proceeding” is entitled to dispositive recognition, indicating that federal court civil proceedings by the pro se litigant (particularly, Idaho federal court civil proceedings) are relevant to the vexatious litigant determination. See I.C.A.R. 59(d)(4). See also *Limary v. McLean*, \_\_\_ Idaho \_\_\_, 567 P.3d 232, 236 (2025) (“When we interpret a rule, we begin with the plain language of the rule itself, but we may temper that interpretation by the purpose of court rules generally: ‘Today we make it clear that while the interpretation of a court rule must always begin with the plain, ordinary meaning of the rule’s language it may be tempered by the rule’s purpose.’”); *Greenfield v. Meyer*, \_\_\_ Idaho \_\_\_, 560 P.3d 517, 532 (2024) (“Finally, the Amended Prefiling Order relied on *Greenfield v. City of Post Falls Mun.*, 648 F. App’x 739 (9th Cir. 2016). The Amended Prefiling Order found that this litigation had been finally and adversely decided to Greenfield, and was maintained within the last seven years. The ADJ took judicial notice of the opinion rendered in the matter and the timing of the appeal. While Greenfield is again correct to point out that the underlying litigation in the district court commenced outside of the relevant time-period, her appeal was filed and maintained within the previous seven years of the Amended Prefiling Order.”). But see *In Re Cook*, 168 Idaho 153, 160, 481 P.3d 107, 114 (2021) (“See *In re Prefiling Order Declaring Vexatious Litigant*, 164 Idaho 771, 777, 435 P.3d 1091, 1097 (2019) (explaining that the standards followed by federal courts in making vexatious litigant determinations are inapplicable to Idaho courts).”).

of the basis of the trial court's decision, so that it might be determined whether the trial court applied the proper law to the appropriate facts in reaching its ultimate judgment.' *Id.* at 161–62, 481 P.3d at 115–16 (quoting *Akers v. Mortensen*, 147 Idaho 39, 44, 205 P.3d 1175, 1180 (2009)). The findings of fact 'should be clear, coherent, and complete while avoiding an unnecessary review of the evidence' *In re Cook*, 168 Idaho at 162, 481 P.3d at 116 (citations omitted). *Greenfield v. Meyer*, \_\_\_Idaho\_\_\_, 560 P.3d 517, 530-31 (2024).

As to findings pursuant to I.C.A.R. 59(d)(3):

A lengthy exposition on the substance of a litigant's motions is by no means necessary to make a determination that they were frivolous or unmeritorious. However, an order declaring a litigant vexatious under Rule 59(d)(3) and imposing prefiling restrictions requires some discussion of the underlying merits of a claim or motion before finding as such. *In Re Cook*, 168 Idaho 153, 164, 481 P.3d 107, 118 (2021).

### III. Litigation History – Raul Mendez

#### A. I.C.A.R. 59(d)(1)

A review of his litigation history reveals that Mr. Mendez's pro se filings in Idaho state and federal court satisfy the terms of I.C.A.R. 59(d)(1):<sup>13</sup> "In the immediately preceding seven-year period the person has commenced, prosecuted or maintained pro se at least three litigations, other than in the small claims department of the magistrate division, that have been finally determined adversely to that person."<sup>14</sup>

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<sup>13</sup>See also *In re Prefiling Order Declaring Vexatious Litigant, Pursuant to I.C.A.R. 59. [Van Hook]*, 164 Idaho 586, 592, 434 P.3d 190, 196 (2019) ("**While the referral initially arose out of the Canyon County divorce case, Rule 59 required the administrative district judge to examine Van Hook's multiple litigations filed across several counties and his conduct as a pro se litigant within those litigations to find Van Hook was a vexatious litigant.**"). (emphasis added).

<sup>14</sup>See *In Re Cook*, 168 Idaho 153, 161-62, 481 P.3d 107, 115-16 (2021) ("This Court has **defined 'final' in this same context "as 'not requiring any further judicial action by the court that rendered judgment to determine the matter litigated.'** *Telford v. Nye*, 154 Idaho 606, 611, 301 P.3d 264, 269 (2013) (quoting *Final*, Black's Law Dictionary (9th ed. 2009)). We have further defined an action as 'finally determine' when 'all of the issues are disposed of.' *Id.* (citations omitted). 'Adverse' means 'against; opposed (to)' or 'having an opposing or contrary interest, concern, or position.' *Adverse*, Black's Law Dictionary (11th ed. 2019). Therefore, **a litigation is 'finally determined adversely to' a party when it has been decided against that party's interest or position, all of the issues have been disposed of, judgment has been entered, and no further judicial action is required.** . . . Here, in concluding that the **civil protection actions** had been finally determined adversely to Ms. Cook, the ADJ simply listed the docket number for each case and

A review of Mr. Mendez's recent (in the immediately preceding seven years) pro se litigation history reveals the following Idaho state court cases:<sup>15</sup>

- CV01-21-17728 (Mendez v. Banner Bank);<sup>16</sup>

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indicated that each had been dismissed in favor of the other party. However, the ADJ's written decision does not include an explanation of how the ADJ determined that Ms. Cook's petitions for civil protection orders had been finally determined adversely to her. The ADJ did not make a factual finding **as to whether the petitions had been dismissed with or without prejudice**. Nor did the ADJ indicate why Ms. Cook's petitions were dismissed by the magistrate court. Litigations, including petitions for civil protection orders, can be dismissed for a variety of reasons. For example, they could be dismissed because the case was finally decided on the merits, for procedural reasons, because the parties stipulated to dismissal, or because the plaintiff voluntarily had the case dismissed. **Although the language of Rule 59(d)(1) does not require an in-depth review of the merits of a dismissed litigation before concluding that it was finally determined adversely to a party, it is incumbent upon the ADJ to make sufficient factual findings regarding the underlying litigation to demonstrate that its dismissal was adverse to the party in question.**" (emphasis added). See also *Greenfield v. Menetrey*, No. CV28-21-8129, 2022 WL 22828746, \*4 (Id. Dist., Kootenai County) ("Pursuant to I.C.A.R. 59(b), each appeal to the Idaho Supreme Court in Kootenai County Case CV2010-8209 are considered 'litigations' for the purposes of I.C.A.R. 59(d)(1). Each appeal was finally determined adversely to Ms. Greenfield through dismissal." (emphasis added)).

<sup>15</sup>*Mendez v. Intermountain Gas Company*, Idaho Public Utilities Case No. INT-G-19-0, cited in the vexatious litigant referral motion, does not appear to fit within the definition of "litigation", as defined in I.C.A.R. 59, as it is not a civil action or proceeding, nor did Mr. Mendez pursue his appeal of this administrative agency proceeding (as previously noted (see n. 4, *supra*)). See also Title 61, Chapter 6, Idaho Code.

<sup>16</sup>His pro se complaint in this case was filed on November 23, 2021. He filed an amended pro se complaint on April 14, 2022. On January 6, 2023, an Order Granting Defendant's Motion for Summary Judgment was entered, along with a **Judgment for Dismissal With Prejudice**. Mr. Mendez appealed to the district court and that appeal was dismissed (see March 23, 2023 Order Dismissing Appeal) but the appeal was later reinstated by the Idaho Supreme Court (see August 19, 2024 Unpublished Opinion). Mr. Mendez then **subsequently moved to dismiss the appeal, which was granted** (see November 4, 2024 Order Dismissing Appeal; November 18, 2024 Amended Order Dismissing Appeal). Mr. Mendez was also assessed attorney fees in the sum of \$15,686.00 and costs of \$164.62. See (March 28, 2023) Judgment for Attorney Fees and Costs. An amended judgment was later entered (see March 13, 2025) Amended Judgment (entering judgment in favor of Banner Bank in the amount of \$18,975.46). **Mendez then filed another notice of appeal, which was dismissed by the Idaho Supreme Court.** See (April 29, 2025) Order Dismissing Appeal.

His initial complaint asserted:

Causes of Action. A. BREACH OF CONTRACT. 18) Mendez opened his checking account with Banner on April 2020 and had no fees attached to it. year later, the bank decided to start charging two dollars for providing paper statement to Mendez even though the E-Sign act requires that the financial institution provides paper statement if customers have no way to access the e-statement. Furthermore, disclosure of the fee is not enough because customers must consent to e-statements and they can revoke the consent and decide to go back to paper statements if they so choose to. The charge for the statement is to coerce customers to 'consent' to e-statements. 19) In addition, IC 28-4-401 further reinforces the principle that banks can only make charges for which customers have consented to and in



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accordance with the agreement between the bank and customers. 20) Mendez has the simplest checking account that he opened with no charges. The paper statement charge violates the agreement because Banner has to provide paper statements if Mendez has no way to access statements electronically. 21) Furthermore, Banner conduct violates the Implied Covenant of Good Faith and Fair Dealing inherent in every agreement requiring they act in good faith and deal fairly in the performance of the contract. Banner set up Mendez with the simplest checking account with no fees when it was opened because of his low-income, they are now charging fee for something they must provide when Mendez has no access to e-statement, and Mendez has not consented to the charge. To the contrary, Mendez has repeatedly told the bank to stop charging the fee, to which Banner has responded that they are in compliance with law and he must sign electronically. B. FRAUD. IC-5-518. 22) Banner Bank has told Mendez multiple times that they complied with Federal law by disclosing they would charge for paper statements going forward. Specifically, Mendez received letter from Executive office explaining to him that 'banks are permitted to charge fees for paper statements, when such fees are properly disclosed' 'the bank continues to provide paper statements to all clients who need or want them, but there is now \$2 fee.' 23) Banner Bank is intentionally deceiving and misleading customers like Mendez when they fail to meet the requirements mandated by the E-Sign Act. Banner cannot charge fee for something they are mandated by law to provide. The E-sign Act states that customer's consent to receiving electronic statements must demonstrate that he/she has access to the equipment and programs necessary to receive, open, and read the relevant electronic documents. 24) Banner bank has not informed Mendez that by 'consenting' to electronic statements that he has the right to withdraw consent to electronic statements at any time and go back to paper statements. Banner Bank has not disclosed that he is not required to agree to use or accept electronic statements. 25) Mendez is low income and does not have the means to access e—statements and his only option is paper statements on an account that had no fees when it was opened. Banner was fully aware of Mendez income at the time of opening the account. 26) Banner is not informing customers of their full rights in regards to how to get their statements, so that in order for them to avoid paper statement fee they 'consent' to electronic statements. (November 23, 2021) Complaint, 4-5.

His amended complaint asserted:

Causes of Action. A. BREACH OF CONTRACT. 19) Mendez opened his checking account with Banner on January 2020 and had no fees attached to it. year later, the bank decided to start charging two dollars for providing paper statement to Mendez even though the E-Sign act and Truth in Savings Act, 12 CFR 1030 require that the financial institution provide paper statement if customers have no way to access the e-statement. Furthermore, disclosure of the fee is not enough because customers must consent to e—statements and they can revoke the consent and decide to go back to paper statements if they so choose to. The charge for the statement is to coerce customers to 'consent' to e-statements. Furthermore, Banner is passing e-statements as free 'benefit' and profiting from their deception in charging for the paper statement. 20) In addition, IC 28-4-401 further reinforces the principle that banks can only make charges for which customers have consented to and in accordance with the agreement between the bank and customers. 21) Mendez has the simplest checking account that he opened with no charges. The paper statement charge violates the agreement because Banner has to provide paper statements if Mendez has no way to access statements electronically. 22) Furthermore, Banner conduct violates the Implied Covenant of Good Faith and Fair Dealing inherent in every agreement requiring they act in good faith and deal fairly in the performance of the contract. Banner set up Mendez with the simplest checking account with no fees when it was opened because of his low—income, they are now charging fee for something they must provide



- CV01-24-10291 (Mendez v. Intermountain Gas);<sup>17</sup>

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when Mendez has no access to e—statement, and Mendez has not consented to the charge. To the contrary, Mendez has repeatedly told the bank to stop charging the fee, to which Banner has responded that they are in compliance with law and he must sign electronically. However, the bank does not explain why they keep charging the fee to customers who explicitly ask them to stop....logically, the thing to do would be to just stop providing paper statement at all. Clearly, the evidence shows that Banner Bank is acting maliciously. B. FRAUD. IC-5-518. 23) Banner Bank has told Mendez multiple times that they complied with Federal law by disclosing they would charge for paper statements going forward. Specifically, Mendez received letter from Executive office explaining to him that 'banks are permitted to charge fees for paper statements, when such fees are properly disclosed' 'the bank continues to provide paper statements to all clients who need or want them, but there is now \$2 fee.' 24) Banner Bank is intentionally deceiving and misleading customers like Mendez when they fail to meet the requirements mandated by the E-Sign Act. Banner cannot charge fee for something they are mandated by law (Truth in Savings Act, 12 CFR 1030) to provide. The E-sign Act states that customer's consent to receiving electronic statements must demonstrate that he/she has access to the equipment and programs necessary to receive, open, and read the relevant electronic documents. 25) Banner bank has not informed Mendez that by 'consenting' to electronic statements that he has the right to withdraw consent to electronic statements at any time and go back to paper statements. Banner Bank has not disclosed that he is not required to agree to use or accept electronic statements. 26) Mendez is low income and does not have the means to access e-statements and his only option is paper statements on an account that had no fees when it was opened. Banner was fully aware of Mendez income at the time of opening the account. 27) Banner is not informing customers of their full rights in regards to how to get their statements, so that in order for them to avoid paper statement fee they 'consent to electronic statements. 28) Banner engages in unfair and deceptive acts or practices in the conduct of trade or commerce when failing to disclose customers their full rights in regards to getting statements while profiting from charging fees for providing paper statements. C. IDAHO CONSUMER PROTECTION ACT. IC 48-601 to 48-619. 29) Banner Bank has told Mendez multiple times that they complied with Federal law by disclosing they would charge for paper statements going forward. Specifically, Mendez received letter from Executive office explaining to him that 'banks are permitted to charge fees for paper statements, when such fees are properly disclosed' the bank continues to provide paper statements to all clients who need or want them, but there is now \$2 fee. 30) Banner Bank is intentionally deceiving and misleading customers like Mendez when they fail to meet the requirements mandated by the E—Sign Act. Banner cannot charge fee for something they are mandated by law (Truth in Savings Act, 12 CFR 1030) to provide. The E-sign Act states that customer's consent to receiving electronic statements must demonstrate that he/she has access to the equipment and programs necessary to receive, open, and read the relevant electronic documents. 31) Banner engages in unfair and deceptive acts Or practices in the conduct of trade or commerce when failing to disclose customers their full rights in regards to getting statements while profiting from charging fees for providing paper statements. (April 14, 2022) Amended Complaint, at 4-7.

<sup>17</sup>His pro se complaint in this case was filed on July 1, 2024. An Order on Defendant's Motion to Dismiss was filed on May 22, 2025, along with a corresponding **Judgment dismissing all claims with prejudice**. An Amended Judgment was filed on July 2, 2025, as was a Notice of Appeal. Later, an (July 2, 2025) Amended Judgment was filed, awarding Intermountain Gas attorney fees and costs in the sum of \$14,891.56.

- CV01-24-06458 (Mendez v. Russell Swainston, Nicholas Lewis, Eva Bingham, and Lyndon Box),<sup>18</sup>
- CV01-24-10297 (Mendez v. Banner Bank, Hawley Troxell Ennis & Hawley LLP);<sup>19</sup>
- CV01-24-20493 (Mendez v. Banner Bank, Hawley Troxell Ennis & Hawley LLP).<sup>20</sup>

A review of Mr. Mendez's recent (in the immediately preceding seven years) pro se litigation history reveals the following Idaho federal district court cases (as identified in the Declaration of Kersti H. Kennedy in Support of Motion to Declare Raul Mendez a Vexatious Litigant CV01-24-10291, as well as in her supplemental declaration):

- Mendez v. Ada County et al., United States District Court, District of Idaho, Case No. 1:19-cv-00301-BLW;<sup>21</sup>

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A previous related case by him, CV01-22-107945 (Mendez v. Intermountain Gas) was dismissed without prejudice. See (June 6, 2023) Order of Dismissal Without Prejudice.

<sup>18</sup>In this case, Mr. Mendez filed a frivolous appeal of an order rescinding a prior determination of indigency in the case. See (February 14, 2025) Order Rescinding Finding of Indigency; (March 10, 2025) Notice of Appeal to the Idaho Supreme Court Re: Order Rescinding Indigency; (April 28, 2025) Idaho Supreme Court Order of Dismissal ("IT IS ORDERED that the above entitled appeal is DISMISSED, as the Order Rescinding Finding of Indigency filed in the District Court on February 14, 2025, is not an appealable order, pursuant to Idaho Appellate Rule 11(a).").

<sup>19</sup>In this case, Mr. Mendez filed an appeal of an order denying his motion for a fee waiver, which was denied. See (June 24, 2024) Order Denying Fee Waiver. See (October 8, 2024) Order Denying Motion for Permission to Appeal Per I.A.R. 12 and/or Allow to Proceed as Regular Appeal Per I.R.E.F.S. 10(c) ("A MOTION FOR PERMISSION TO APPEAL PER I.A.R. 12 AND/OR ALLOW TO PROCEED AS REGULAR APPEAL PER I.R.E.F.S. 10(C) was filed by Plaintiff Raul Mendez on July 29, 2024. Therefore, after due consideration, IT IS ORDERED that Plaintiff Raul Mendez's MOTION FOR PERMISSION TO APPEAL PER I.A.R. 12 AND/OR ALLOW TO PROCEED AS REGULAR APPEAL PER I.R.E.F.S. 10(C) is DENIED."). See also (December 4, 2024) Order Denying Plaintiff's Motion and Affidavit for Fee Waiver.

<sup>20</sup>See n. 53, *infra*.

<sup>21</sup>In this case, Mr. Mendez sued "Ada County, Ada County Commissioners, Ada County Treasurer, Ada County Billing Services, Scott Williams, Lyn Call, and any other employees of the Ada County Billing Services, Ammon Taylor, Republic Services" in Idaho federal district court. His complaint was filed on August 2, 2019. See Complaint. He sought 'damages for the violation of his fifth and fourteenth amendments under the constitution, 42 U.S.C. 1983. Mr. Mendez seeks damages afforded to him for violations under the Fair Debt Collections Practices Act (FDCPA). 15 U.S.C. 1692. Mr. Mendez seeks damages for Defendant's Intentional Infliction of Emotional Distress. Mr. Mendez seeks damages for Defendant injuring his reputation. Mr. Mendez seeks injunctive relief against Ada County that would prevent them from continuing to certify the unlawful trash billing to the property tax roll. Mr. Mendez seeks relief

- Mendez v. Ada County et al., United States District Court, District of Idaho, Case No. 1:21-cv-00447-BLW;<sup>22</sup>

afforded under the Federal Trade Commission Act and Idaho Consumer Protection Act.' See *id.* at 2 (internal numbering omitted). His federal court action was based on a trash collection dispute. See also Exhibit W, to Declaration of Kersti H. Kennedy in Support of Motion to Declare Raul Mendez a Vexatious Litigant, pp. 261-275. On August 3, 2020, the federal district judge issued a Memorandum Decision and Order. The order notes that: "[o]n January 10, 2020, Mendez filed an amended complaint, which adds the Ada County Clerk and Recorder as defendants, adds RICO and fraud claims, and alleges facts which occurred after his original complaint was filed. Dkt. 25'. *Id.* at 2. The order dismissed Mendez's § 1983 claims without prejudice. *Id.* at 15-16. His Fair Debt Collection Practices Act and Federal Trade Commission Act claims were dismissed with prejudice. *Id.* at 17. His RICO claims were also dismissed with prejudice. *Id.* at 19. His state law claims were dismissed without prejudice. *Id.* at 19-20. On August 26, 2020, Mendez filed a Notice of Appeal. See Exhibit Y to Declaration (pp. 300-06). On September 18, 2020, his appeal was dismissed by the Ninth Circuit for lack of jurisdiction ("the order challenged in the appeal is not final or appealable . . . order is not appealable unless it disposes of all claims as to all parties or judgment is entered in compliance with rule[.]"). See Exhibit Z to Declaration. (p. 318). On October 19, 2020, Mendez filed another Notice of Appeal. See Exhibit AA to Declaration. On April 23, 2021, a decision was issued in reference to his appeal. The Ninth Circuit affirmed the district's judge's decisions. (Exhibit BB to Declaration - pp. 340-43).

<sup>22</sup>On November 20, 2021, Mr. Mendez filed another complaint suing Ada County, Ada County Commissioners, Ada County Treasurer, Ada County Billing Services, Scott Williams, Lyn Call, and any other employees of the Ada County Billing Services, Ammon Taylor, Republic Services, and Ada County Clerk and Ada County Record in Idaho federal district court. In his complaint: "Mendez seeks damages for the violation of the Equal Protection Clause under the fourteenth amendment of the constitution, 42 U.S.C. 1983. Mendez seeks damages for the filing of fraudulent liens and certification to the property tax roll in violation of the Takings Clause under the fourteenth amendment of the constitution. Mendez seeks damages for the violation of his liberty interests under the fourteenth amendment of the constitution. 42 U.S.C. 1983. Mendez seeks damages afforded to him for violations under the Fair Debt Collections Practices Act (FDCPA). 15 U.S.C. 1692. Mendez seeks damages for Defendant's Intentional Infliction of Emotional Distress, Mendez seeks damages for Defendant injuring his reputation. 7) Mendez seeks damages for Defendant's Fraud. Mendez seeks damages for Defendant's unlawful conduct under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961-1968." See Exhibit CC to Declaration (pp. 349-69). On March 21, 2022, the federal district judge issued a Memorandum Decision and Order. See Exhibit DD to Declaration (pp. 377-78). The order states: "Raul Mendez is no stranger to litigation. Prior to November 15, 2021, Mendez had filed ten civil lawsuits on his own behalf and one on behalf of his mother in federal court in the District of Idaho. On November 15, 2021, Mendez filed three additional suits. As will be explained below, **each of the three new lawsuits are repetitious of prior suits Mendez has brought in this District. In fact, the above-captioned case is Mendez's third lawsuit involving the same operative facts. In any District, but particularly one such as Idaho strapped for judicial resources, these abusive litigation tactics must be addressed head-on.** Accordingly, the Court is considering deeming Mendez a vexatious litigant and entering a pre-filing review order." Memorandum Decision and Order, at 1-2. (emphasis added).

The judge in that case (*Mendez v. Ada County et al.*, United States District Court, District of Idaho, Case No. 1:21-cv-00447-BLW) specifically noted Mr. Mendez's vexatious litigation conduct as exhibited in his federal court filings (footnotes omitted except where noted):

The above-captioned case is the impetus for the Court's decision to analyze whether Mendez should be classed as vexatious. That said, the Court will recap all of Mendez's federal filings for three reasons.

First, the above-captioned case is not the only repeat case Mendez has filed. As noted, the other two cases filed on November 15, 2021, are substantially similar to two previous cases as well.

Second, the final prong of the test at issue asks whether the Court can narrowly tailor any restrictions it plans to impose. The Ninth Circuit has consistently held that any vexatious litigant status or pre-filing requirement must be specific to the 'wrongful behavior.' *Molski*, 500 F.3d at 1061. That is to say, the Court cannot wholesale prohibit Mendez from filing lawsuits in federal court. Such would deny him his constitutional rights. It can, however, prohibit him from filing 'the type of claims' that have been subject to dismissal and/or deemed frivolous. *Id.*

Third, and finally, while the Court need not rely on some of Mendez's cases for its finding of vexation as to the claims at issue here, those cases—and specifically Mendez's behavior in those cases—illustrate a pattern of behavior that the Court can take into account when determining an appropriate remedy. See *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (cleaned up) (A court 'may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue').

### **1. General Civil Cases**

The cases summarized below are all general civil cases. They are not as relevant to the Court's conclusion as it relates to the above-entitled action, but are, nonetheless, helpful for context in determining whether Mendez should be deemed vexatious.

a. *Mendez v. St Alphonsus* (1:12-cv-00026-EJL-CWD) In 2012, Mendez filed suit against his former employer, Saint Alphonsus Regional Medical Center, alleging unlawful discrimination in the



workplace. While represented on two occasions in that case by licensed attorneys, both found Mendez difficult to work with and eventually withdrew, leaving Mendez to proceed pro se. After discovery, the defendant filed a Motion for Summary Judgment. On referral, United States Magistrate Judge Candy W. Dale recommended defendant's Motion be granted. Dkt. 78.3 Over Mendez's objections, Judge Edward J. Lodge adopted Judge Dale's report, granted Defendant's Motion for Summary Judgment, and dismissed all of Mendez's claims.

b. Mendez v. Community Health (1:16-cv-00425-DCN) In 2016, Mendez filed suit against another former employer, Community Health Clinics, Inc., alleging unlawful discrimination in the workplace. After four and a half years, the undersigned ultimately granted the defendant's motion for case terminating sanctions based upon Mendez's litigation tactics and behavior in that case. Dkt. 75. The Court will not delve into the ongoing saga particular to this case other than to note three things that will become relevant when discussing later cases and as part of the Court's decision today. First, in this particular case, Mendez sought on three occasions to add a claim for Retaliation under the First Amendment. Dkts. 36, 41, 63. The Court denied Mendez's request on procedural and substantive grounds each time. Dkts. 40, 49, 75. Second, in this case, Mendez also filed two motions for reconsideration. Dkts. 20, 41. Third, Mendez frequently contacted the Court's law clerk assigned to this particular case. Such is permissible in limited circumstances. See Dkt. 75, at 16 n.8. Mendez, however, would then use informal communications between himself and the Court's clerk as fodder for motion practice. See, e.g., Dkts. 68, 72, 75, at 22 n.9. The Court summarized Mendez's fairly egregious behavior in its final order dismissing the case. Dkt. 75, at 22. This case is now on appeal before the Ninth Circuit. Ninth Circuit Case No. 21- 35179. Of note, Defendants have asked the Ninth Circuit to declare Mendez a vexatious litigant. Ninth Circuit Case No. 21-35179, Dkt. 15. Mendez awaits the Ninth Circuit's decision.

c. Mendez v. State of Idaho (1:18-cv-00063-DCN) In this case, Mendez sought to 'remove' a pending Idaho Supreme Court Appeal stemming from a traffic ticket Mendez failed to pay—to the Ninth Circuit Court of Appeals via the District Court. The undersigned explained Mendez's request was not proper and 'remanded' the case back to the Idaho Supreme Court. Dkt. 6. Mendez appealed. Dkt. 8. The Ninth Circuit dismissed the appeal for lack of jurisdiction. Ninth Circuit Case No. 18- 35162, Dkt. 2. Mendez asked the Circuit to

Reconsider. Id. at Dkt. 3. The Circuit denied the request. Id. at Dkt. 4.

d. *Mendez v. Moonridge* (1:19-cv-00092-DCN) This case stems from Mendez's refusal to pay his HOA dues. After he contested the dues—and failed to pay—the HOA (Moonridge) filed a small claims action in Ada County, Idaho, against Mendez. Mendez then removed the case to Federal District Court and alleged four counterclaims. The undersigned ultimately remanded the case to Idaho State Court finding it lacked jurisdiction over the matter. Dkt. 24. The Court explained that while Mendez's counterclaims may invoke federal jurisdiction, the original claims did not, and the Court's analysis only looks at the original complaint. Mendez sought reconsideration (Dkt. 25); the Court denied the request (Dkt. 30).

e. *Mendez v. Moonridge* (1:19-cv-00507-DCN) Following the Court's decision that it did not have jurisdiction over a removed statelaw cause of action with no original federal matters at issue, Mendez filed his own federal case against Moonridge asserting the same four counterclaims as in Case No. 1:19-cv00092, except this time as original causes of action. Dkt. 2. The undersigned granted in part and denied in part Defendants' Motion to Dismiss (Dkt. 21) and denied Mendez's subsequent Motion to Reconsider (Dkt. 25). This case is still pending.<sup>23</sup>

f. *Mendez v. Sony* (1:20-cv-00588-DCN) In this case, Mendez alleges Sony removed the majority of the digital content he had purchased from the PlayStation store for use on his home gaming devices. Sony asked for an early stay order so the parties could arbitrate. Dkt. 5. The Court agreed (Dkt. 17) and the case is currently stayed pending arbitration. Mendez later sought to lift the stay (Dkt. 19) which the Court denied (Dkt. 22). Mendez recently sought reconsideration of that decision. Dkt. 24. The Court notes that Mendez has also specifically targeted the law clerk in this particular

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<sup>23</sup>See also Exhibit RR to Declaration (pp. 512-14) (April 21, 2023) Analysis and Findings (*Mendez v. Moonridge* (1:19-cv-00092-DCN) – “Second, Mendez’s appeal is frivolous. An appeal is frivolous ‘when the result is obvious, or the appellant’s arguments are wholly without merit.’ *Blixseth v. Yellowstone Mountain Club, LLC*, 796 F.3d 1004, 1007 (9th Cir. 2015). Here, Mendez sued his homeowner’s association under a number of theories. The fatal problem was that he never made initial disclosures or participated in discovery. Dkt. 41, at 6. Thus, the Court granted summary judgment on his claims because they were ‘factually unsupported.’ *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Now, after choosing not to prosecute his case before the District Court, Mendez files an appeal. The result of such an appeal is obvious: with discovery closed, there is no way for Mendez to offer a new ‘genuine dispute of material fact.’ Fed. R. Civ. P. 56(a). Absent such a factual dispute, summary judgment is appropriate. See *Celotex*, 477 U.S. at 323. Because its result is legally obvious, the Court finds that the instant appeal is frivolous.”).

case for some ire as the clerk purportedly 'refus(ed) to respond to matters (i.e. questions Mendez's posed via email) that they are allowed to assist the parties with.' Dkt. 15, at 3.<sup>24</sup>

g. *Mendez v. Ada County Libraries* (1:20-cv-00589-DCN) In this case, Mendez has sued various library boards claiming they violated his rights when each curtailed operations to combat the COVID-19 pandemic. The Court granted Defendants' Motion to Dismiss (Dkt. 13) and denied Mendez's Motion for Reconsideration (Dkt. 17). Mendez recently indicated he will no longer be pursuing his claims in this case. Dkt. 22.4 The Court dismissed Mendez's complaint consistent with his desire. Dkts. 23, 24. Mendez has appealed. Dkt. 25.

h. *Mendez v. Community Health* (1:21-cv-00448-BLW) As mentioned, this recently filed case is almost identical to the case the undersigned presided over for almost five years and which is now on appeal. In the prior case Mendez brought seven causes of action. Case No. 1:16-cv-00425, Dkt. 2. In the above-captioned case, Mendez brings seven causes of action. Dkt. 2. Each complaint shares six of the same claims. The only difference between the two complaints is Mendez has substituted out a previously asserted alleged Eight[h] Amendment for a new First Amendment claim (which he tried unsuccessfully to add to the case on multiple occasions). Because of the undersigned's extensive history with the prior case, Judge B. Lynn Winmill has determined that it will be best to transfer the case to the undersigned for resolution.<sup>25</sup>

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<sup>24</sup>See also Exhibit TT to Declaration (p. 531) (July 15, 2022) Order, 1 (9<sup>th</sup> Circuit) (*Mendez v. Sony* (1:20-cv-00588-DCN) – "A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable. See 28 U.S.C. § 1291; *Dees v. Billy*, 394 F.3d 1290, 1294 (9<sup>th</sup> Cir. 2005) (district court order staying judicial proceedings and compelling arbitration is not appealable); see also *Branson v. City of Los Angeles*, 912 F.2d 334 (9<sup>th</sup> Cir. 1990) (denial of reconsideration of non-appealable order is itself not appealable). Consequently, this appeal is dismissed for lack of jurisdiction."); Exhibit VV to Declaration (p. 548) (November 21, 2023) Order, 1 (9<sup>th</sup> Circuit) (*Mendez v. Sony* (1:20-cv-00588-DCN) – "Upon a review of the record and the responses to the court's August 30, 2023 order, we conclude this appeal is frivolous. We therefore deny appellant's motions to proceed in forma pauperis (Docket Entry Nos. 3, 5), see 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious). No further filings will be entertained in this closed case.").

<sup>25</sup>See also Exhibit OO to Declaration (pp. 481-83) (June 29, 2022) Memorandum, 1-2 (9<sup>th</sup> Circuit) (*Mendez v. Community Health* (1:21-cv-00448-BLW) - "Raul Mendez appeals pro se from the district court's judgment dismissing his employment discrimination action as a discovery sanction under Federal Rule of Civil Procedure 37(b). We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1022 (9<sup>th</sup> Cir. 2002). We affirm. The district court did not abuse its discretion in dismissing Mendez's action after Mendez twice failed to appear for his deposition and the court found that Mendez's behavior was willful and in bad faith. See Fed. R. Civ. P. 37(b)(2); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1233 (9<sup>th</sup> Cir. 2006) ('Rule 37 sanctions,

i. *Rosales v. Idaho Department Health and Welfare* (1:19-cv-000426-DCN) Alma Rosales brought this case alleging her food stamp benefits had been impermissibly lowered by the Idaho Department of Health and Welfare. After an initial review, the Court allowed the case to proceed but required that Rosales pay the requisite filing fee over time. Dkt. 7. Rosales filed a Motion for Reconsideration (Dkt. 10) which was denied (Dkt. 11). Rosales appealed that decision. Dkt. 12. The Circuit dismissed for lack of jurisdiction. Ninth Circuit Case No. 20-35101, Dkt. 2. In subsequent filings, it became clear that Mendez—Alma’s son—was ‘attempting to represent (her) in the() proceedings.’ Dkt. 26, at 1. The Court indicated that because Mendez is not a licensed attorney, he could not represent her and struck the items he had filed on her behalf. *Id.* at 3. Rosales never obtained legal counsel, could not proceed pro se, and, eventually, the Court had no choice but to dismiss the complaint. Dkt. 53. Rosales appealed. Dkt. 55. The matter has been briefed before the Ninth Circuit and the parties await a decision. Ninth Circuit Case No. 20-35668.<sup>26</sup>

## **2. The Trash and Sewer Cases**

The following civil cases all revolve around Mendez’s allegations that because he does not reside at his primary residence—he instead resides at his mother’s home as her caregiver—he should not be required to pay various base utility fees.

a. *Mendez v. City of Boise* (1:19-cv-00049-BLW) After Mendez refused to pay mandatory sewer service fees, the City of Boise filed a claim in Ada County against him.<sup>27</sup> Mendez removed the claim to federal court and asserted five counterclaims. Dkt. 1. Defendants filed a Motion for Remand. Dkt. 3. Judge B. Lynn Winmill determined that the Court did not, in fact, have jurisdiction because the original complaint lacked any federal nexus and remanded the matter to state court. Dkt. 7. Mendez filed a Motion for Reconsider (Dkt. 10) which

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including dismissal, may be imposed where the violation is due to willfulness, bad faith, or fault of the party.’ (citation and internal quotation marks omitted)); *Rio Props.*, 284 F.3d at 1022 (discussing five factors courts must weigh in determining whether to dismiss a case for failure to comply with a court order).”).

<sup>26</sup>See also CV01-24-14812 (*Raul Mendez, Alma Rosales v. US Postal Service Boise, US Postal Service Meridian*).

<sup>27</sup>See CV01-19-00229 (*City of Boise v. Mendez*). Judgment was entered against him on October 17, 2019. See (October 17, 2019) Judgment. His appeal to the district court was dismissed on June 10, 2022. See (June 10, 2022) Order Denying Motion for Reconsideration and Dismissing Appeal. On October 14, 2022, the Idaho Supreme Court dismissed his appeal as frivolous. See (October 14, 2022) Order Denying Motion and Affidavit for Fee Waiver and Dismissing Appeal. On December 29, 2022, his petition for a rehearing was denied. See (December 29, 2022) Order Re: Petition for Rehearing.



Judge Winmill denied (Dkt. 13). Mendez appealed. Dkt. 14. The Ninth Circuit dismissed the case for lack of jurisdiction. Ninth Circuit Case No. 19-35874. Dkt. 3. Mendez asked the Circuit to Reconsider. Id. at Dkt. 4. The Circuit denied the request. Id. at Dkt. 5.

b. *Mendez v. Ada County* (1:19-cv-00301-BLW) In this case, Mendez brought claims against Ada County alleging their requirement that he pay for trash services at his home when he does not reside there was a violation of his rights. Dkt. 1. He asserted five different causes of action. Id. Various Defendants moved to dismiss the claims. Dkts. 32, 39. Judge Winmill eventually dismissed one of Mendez's federal claims without prejudice, three claims with prejudice, and declined to exercise jurisdiction over his state law claims. Dkt. 65. Mendez appealed. Dkt. 66. The Ninth Circuit affirmed Judge Winmill in all respects. Dkt. 74.

c. *Mendez v. City of Boise* (1:20-cv-00061-BLW) Here, Mendez again sought review over the City of Boise's decision to charge him sewage fees at his unoccupied home. Unlike his prior case, however—which he removed from Idaho state court—Mendez brought these claims in federal court of his own accord. Dkt. 2. **Judge Winmill reviewed Mendez's complaint and dismissed his federal claims as lacking merit and declined to exercise supplemental jurisdiction over his state law claims.** Dkt. 4. Mendez appealed. Dkt. 5. The Ninth Circuit affirmed Judge Winmill in all respects. Dkt. 10. Mendez sought en banc review and to stay the Ninth Circuit's mandate. Ninth Circuit Case No. 20-35474. Dkts. 7, 9. Each request was denied. Id. at Dkts. 8, 10.

d. *Mendez v. Ada County* (1:21-cv-00447-BLW) Mendez recently filed a new federal civil case again seeking review of Ada County's decision to charge him trash fees. Dkt. 2. **Mendez brings this case against the exact same ten defendants as in his prior case. Additionally, as the following graph illustrates, many of the claims Mendez now brings were part of his prior complaint and have been fully adjudicated by the District Court and the Ninth Circuit.** [chart omitted] As illustrated—and construing all claims liberally—while the order is slightly different, at least six of the claims in Mendez's new case are identical to claims he brought in his prior case and a ruling on those six claims has already been entered and affirmed.

e. *Mendez v. City of Boise* (1:21-cv-00446-DCN) Mendez also recently filed the above-captioned case. **This case seeks—for the third time —a decision as it relates to the City of Boise's**

**decision to enforce its sewer fees. In his original case (Case No 1:19-cv-00049), Mendez brought suit against ten defendants.** In his subsequent suit (Case No. 1:21-cv-00446), Mendez brought suit against five of the ten previously-named defendants. In his current suit, Mendez retains the same group of five defendants from the second case. And, as before, the claims are substantially similar to prior lawsuits on the same topic. Claim Case 19-49 (Dkt. 1) [chart omitted] **Similar to the trash cases, while it appears Mendez has consistently added more claims with each new case, many were also the subject of prior lawsuits and prior adverse rulings.** Here, for example, it appears Mendez has split apart his Fifth and Fourteenth Amendment claims (from a combined single claim) but, other than that, the remaining claims are identical.

#### C. Substantive Findings of Frivolousness or Harassment

‘(B)efore a district court issues a pre-filing injunction . . . it is incumbent on the court to make ‘substantive findings as to the frivolous or harassing nature of the litigant’s actions.’ De Long, 912 F.2d at 1148 (quoting *In re Powell*, 851 F.2d 427, 431 (D.C. Cir. 1988) (per curiam)). To determine whether the litigation is frivolous, district courts must ‘look at ‘both the number and content of the filings as indicia’ of the frivolousness of the litigant’s claims.’ *Id.* While the Ninth Circuit has not established a numerical definition for frivolousness, it has held that ‘even if (a litigant’s) petition is frivolous, the court (must) make a finding that the number of complaints was inordinate.’ *Id.* Litigiousness alone is not enough, either: ‘The plaintiff’s claims must not only be numerous, but also be patently without merit.’ *Molski*, 500 F.3d at 1059 (quoting *Moy v. United States*, 906 F.2d 467, 470 (9th Cir. 1990)).

The Court is careful to reiterate that it has not yet determined whether it will deem Mendez vexatious and enter a pre-screening order. It will wait to hear from Mendez as required. The Court also wishes to reiterate that, consistent with the Ninth Circuit’s comments, it is not finding that there is anything wrong with being ‘litigious’ in general. Mendez files more federal lawsuits than most citizens; however, such is not inherently wrong. Additionally, it is not necessarily bad faith to file anew a lawsuit that was dismissed if circumstances permit. Nevertheless, such is not the case here.

For example, the fact that Mendez has filed a second, subsequent case against Community Health is not—standing alone—a grave concern. However, that case contains six causes of action that were a part of the prior case that is currently on appeal. Ninth Circuit Case

No. 21-448, Dkt. 2. Additionally, that the sole new claim in the new case was the subject of three prior adverse rulings from the undersigned in the prior case appears to 'constitute an intent to harass the defendant or the court.' De Long, 912 F.2d at 1148 n.3.

More to the point, however, **as it relates to the sewer fee cases: Mendez is trying to refile a case that has already been adjudicated.** His minor additions do not change this outcome. The facts are the same. The pleadings are largely the same. That Mendez continues to throw federal causes of action (or quasi-federal causes of action) at the wall in the hopes that something sticks is inappropriate.

And it is not so much the number of cases or the number of motions that gives the Court pause—**although asking for reconsideration on virtually all matters and appealing almost every case does show a general disregard for the Court's time and resources.** The Court's greater concern is Mendez's apparent belief that the federal courts can quell all of his woes. **From traffic infractions gone sideways to unpaid sewer and trash fees; from disagreements with his HOA and Fortune 500 Companies, to true federal employment causes of action, Mendez feels federal court is the place for him to air his grievances.**

**Mendez has sought on three occasions to remove matters to federal court that are not removable. He has brought claims before that were unsupported by evidence. And he has pressed the Court time and again for leniency as a pro se party (and been granted many accommodations) only to turn around and squander those courtesies. As the Court has previously noted: 'it appears sometimes that Mendez is purposefully trying to make his situation, opposing counsel's situation, and the Court's situation more difficult. He then, in turn, blames the Court, opposing counsel, or 'the system' for the difficulties he faces.'** Case No. 1:16-cv-000425, Dkt. 75, at 22–3.

**These general observations aside, the Court specifically finds that filing three cases on the same issues constitutes frivolousness or harassment.** Even discounting the first sewer suit (Case No. 1:19-cv-00049), which Mendez erroneously tried to remove, the claims Mendez brings now in Case No. 1:21-cv-00446 are almost identical to the claims he brought in Case No. 1:20-cv-00061. As mentioned, Mendez essentially split up his Fourteenth Amendment claim, but other than that, the lawsuits are virtually identical. Critically, the Ninth Circuit already ruled on Mendez's

federal claims—his Due Process and Fair Debt Collection Practices Act Claims—in that case and found that Judge Winmill was correct in dismissing them. Mendez’s efforts now to expand his Due Process claim— from procedural due process to equal protection, takings, and defamation—are little more than a reframing of prior arguments under different titles.

In like manner, the Ninth Circuit already found Judge Winmill’s determination as to Mendez’s federal claims in his prior trash case, Case No. 1:19-cv-00301—Equal Protection, Fair Debt Collection Practices Act, and Racketeering claims—were properly dismissed. Again, the fact that Mendez included those claims in his new case strains reason and is an affront to the Court. *Id.* at 5-17 (pp. 381-393). (emphasis added).

The judge concluded:

In sum, the Court’s intention today is to make clear that Mendez, like all parties who come before the District of Idaho, has enjoyed the Court’s leniency and patience and he will continue to receive the same. However, Mendez is on notice generally that he may be classed as a vexatious litigant in the future if he does not comply with the Court’s orders. In addition, before the Court will review his application to proceed in forma pauperis status and complaint in this case, Mendez must explain why he should not be classed as vexatious, and why an order should not be entered curtailing any future lawsuits on sewer fees—a matter that has twice been decided.

Mendez is at a crossroad. He is not like some litigants the Court sees who have filed hundreds of non-sensical cases. Many of Mendez’s cases have some merit. However, the way in which Mendez has prosecuted his cases—seeking reconsideration on virtually everything; appealing almost every case—puts a strain on the resources of the District of Idaho. Mendez often discusses fair access to justice. He is entitled to that, but so is everyone else. The Court has spent a great deal of time and resources dealing with Mendez’s various claims. Many Defendants have likewise expended time and resources defending themselves against Mendez’s attacks. This is par for the course in our adversarial process. Nevertheless, **Mendez has begun to waste the Court’s (and many Defendants’) time and resources attempting to relitigating claims that have already been adjudicated. Such is improper.** Moy, 906 F.2d at 471. The Court hopes Mendez will take this warning to heart, clean



up his recently filed causes of action, and more forward. *Id.* at 19-20 (pp. 395-96).<sup>28</sup> (emphasis added).

- Mendez v. Ada County et al., United States District Court, District of Idaho, Case No. 1:22-cv-00493-BLW.<sup>29</sup>

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<sup>28</sup>On November 4, 2022, the judge in the case issued another Memorandum Decision and Order in the case. See Exhibit EE to Declaration (pp. 399-402). The order noted: "In this civil rights case, Plaintiff names ten defendants: Ada County, Ada County Commissioners, Ada County Treasurer, Ada County Clerk, Ada County Recorder, Ada County Billing Services, Scott Williams, Lynn Call, Ammon Taylor, and Republic Services. (Dkt. 2.) He seeks review of Ada County's decision to charge him trash fees. (*Id.*) In a previous case filed by Plaintiff, Mendez v. Ada County, et al., Case No. 1:19-cv-00301-BLW (the 2019 case), Plaintiff brought a civil rights case against the same ten defendants that he named in the present case. **The claims that he brought in the 2019 case were fully adjudicated by this Court when it dismissed all of Plaintiff's claims, some with prejudice, some without.** (2019 Case Dkt. 65.) The Ninth Circuit affirmed that dismissal. (2019 Case, Dkt. 74, Memorandum in Mendez v. Ada County, et al., Case No. 20-35917 (9th Cir. 2021).) . . . Finally, as set forth above, the 2019 case was fully adjudicated by this Court when it dismissed all of Plaintiff's claims, some with prejudice, some without, and the Ninth Circuit affirmed that dismissal. (2019 Case, Dkts. 65, 74.) **Plaintiff is precluded under the doctrine of res judicata from proceeding with this action.** Accordingly, Plaintiff's Complaint will be dismissed without leave to amend." Memorandum Decision and Order, at 1-4. (emphasis added).

On March 1, 2023, the judge filed another order noting: "Before the Court is Plaintiff's Motion for Reconsideration as well as an Expedited Motion for Preliminary Injunction. Dkts. 16, 17. For the reasons explained below, **the Court will deny both motions, enter judgment in defendants' favor, and direct the Clerk not to accept any further filings in this closed case.**" Memorandum Decision & Order, at 1 (Exhibit FF to Declaration). (emphasis added).

On March 31, 2023, Mendez filed a Notice of Appeal. See Exhibit GG to Declaration (p. 411). On June 6, 2023, the Ninth Circuit entered a Referral Notice stating: "This matter is referred to the district court for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith. See 28 U.S.C. § 1915(a)(3); see also *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of forma pauperis status is appropriate where district court finds the appeal to be frivolous)." Exhibit HH to Declaration (p. 420). On September 19, 2024, the Ninth Circuit entered an order denying the petition for a panel rehearing or a rehearing en banc. "No further filings will be entertained in this closed case." Exhibit II to Declaration (p. 422). The docket sheet notes that the appeal had been affirmed. Exhibit JJ to Declaration (p. 424).

<sup>29</sup>On December 5, 2022, Mr. Mendez filed yet another complaint in Idaho federal district court naming: "Ada County, Ada County Commissioners, Ada County Treasurer, Ada County Clerk, Ada County Recorder, Ada County Billing Services, Scott Williams, Lyn Call and any other employees of the Ada County Billing Services, Ammon Taylor, Republic Services". See Exhibit KK to Declaration (p. 430). His complaint was once again related to his trash collection dispute assertions: "1) Mendez seeks damages for the violation of the Equal Protection Clause under the fourteenth amendment of the constitution. 42 U.S.C, 1983. 2) Mendez seeks damages for the filing of fraudulent liens and certification to the property tax roll in violation of the Takings Clause under the fourteenth amendment of the constitution. 42 U.S.C, 1983. Case 1:22-cv-00493-BLW Document 2 Filed 12/05/22 Page 2 of 23 3) Mendez seeks damages for the violation of his liberty interests under the fourteenth amendment of the constitution. 42 U.S.C. 1983. 4) Mendez seeks damages afforded to him for violations under the Fair Debt Collections Practices Act (FDCPA). 15 U.S.C. 1692. 5) Mendez seeks damages for Defendant's Intentional Infliction of Emotional Distress, 6) Mendez seeks damages for Defendant's injuring his reputation. 7) Mendez seeks damages for Defendant's Fraud. 8) Mendez seeks damages for Defendant's unlawful conduct under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961-1968. 9) Mendez seeks damages for Defendant's Breach of Contract."

In sum, a review of his litigation history, in Idaho state court and in Idaho federal court, reveals that Mr. Mendez, “[i]n the immediately preceding seven-year period . . . commenced, prosecuted or maintained pro se *at least three litigations* . . . that have been finally determined adversely to [him].” See I.C.A.R. 59(d)(1).<sup>30</sup> (emphasis added).

#### **B. I.C.A.R. 59(d)(2)**

A review of his litigation history also reveals that Mr. Mendez, “[a]fter a litigation has been finally determined against [him] has repeatedly relitigated or attempted to relitigate, pro se, either (A) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (B) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the

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See id. at pp. 430-31. On June 30, 2023, a Judgment was entered in the case: **“Based on the Court’s order filed herewith, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that judgment be entered in defendants’ favor and that this case be dismissed, in its entirety, with prejudice.”** Exhibit LL to Declaration. On July 19, 2023, Mendez filed a Notice of Appeal. Exhibit MM to Declaration. On June 3, 2024, the Ninth Circuit issued a decision affirming the district court decision: **“The district court properly dismissed Mendez’s claims that accrued before Mendez filed the operative complaint in his prior federal action concerning trash collection fees because those claims were raised or could have been raised in that prior federal action, which was between the same parties and resulted in a final judgment on the merits.** See Howard, 871 F.3d at 1039 (setting forth requirements for claim preclusion under federal law). The district court properly dismissed Mendez’s claims that accrued after Mendez filed the operative complaint in his prior federal action because whether Mendez stated claims on the basis of defendants’ attempts to collect unpaid trash fees and certification of those unpaid amounts to Mendez’s property tax roll was decided in Mendez’s prior federal action. See id. at 1040-41 (setting forth requirements for issue preclusion under federal law.”). Exhibit NN to Declaration ( pp. 473-75). (emphasis added).

<sup>30</sup>Even if it is necessary to take his Idaho federal court proceedings into consideration to satisfy the criteria in I.C.A.R. 59(d)(1) and they were also found inapplicable to I.C.A.R. 59, Mr. Mendez’s Idaho state court litigation history alone clearly satisfies the criteria set forth in I.C.A.R. 59(d)(2) and I.C.A.R. 59(d)(3), as noted hereinafter. See *Re Khurana*, 169 Idaho 120, 125, 492 P.3d 1079, 1084 (2021) (“In sum, the ADJ, acted consistently with Rule 59(d)(2) and reached its decision by the exercise of reason when it declared Khurana to be a vexatious litigant based upon the evidence before it. As such, the ADJ did not abuse its discretion in declaring Khurana a vexatious litigant pursuant to Rule 59(d)(2). Because we affirm under Rule 59(d)(2), we need not reach the ADJ’s decision to declare Khurana to be a vexatious litigant pursuant to Rules 59(d)(3) and (4).”).

final determination against the same defendant or defendants as to whom the litigation was finally determined.” I.C.A.R. 59(d)(2).

As previously noted herein, Mr. Mendez repeatedly relitigated *or attempted to relitigate*, pro se, the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined in the following related cases:

- Mendez v. Moonridge (1:19-cv-00092-DCN);
- Mendez v. Moonridge (1:19-cv-00507-DCN);
- Mendez v. Sony (1:20-cv-00588-DCN);
- Mendez v. Sony (1:23-cv-00333-DCN);
- Mendez v. City of Boise (1:19-cv-00049-BLW);
- Mendez v. City of Boise (1:20-cv-00061-BLW);
- Mendez v. City of Boise (1:21-cv-00446-DCN);
- Mendez v. Ada County (1:19-cv-00301-BLW);
- Mendez v. Ada County (1:21-cv-00447-BLW);
- Mendez v. Ada County (1:22-cv-00493-BLW);
- Mendez v. Banner Bank (CV01-21-17728);<sup>31</sup>
- Mendez v. Banner Bank, Hawley Troxell Ennis & Hawley (CV01-24-10297);<sup>32</sup>

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<sup>31</sup>See also n. 16, *supra*.

<sup>32</sup>His proposed complaint in that case asserted:

CAUSES OF ACTION A. BREACH OF CONTRACT AND IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING. 49) Mendez opened his checking account with Banner on January 2020 and had no fees attached to it. year later, the bank decided to start charging two dollars for providing paper statement to Mendez even though the E-Sign act and Truth in Savings Act, 12 CFR 1030 require that the financial institution provide paper statement if customers have no way to access the e-statement. Furthermore, disclosure of the fee is not enough because customers must consent to e-statements and they can revoke the consent and decide to go back to paper statements if they so choose to. The charge for the statement is to coerce customers to 'consent' to e-statements. Furthermore, Banner is passing e-statements as free 'benefit' and profiting from their deception in charging for the paper statement. 50) In addition, IC 28-4-401 further reinforces the principle that banks can only make charges for which customers have consented to and in accordance with the agreement between the bank and customers. 51) Mendez has the simplest checking account that he opened with no charges. The paper statement charge violates the agreement because Banner has to provide paper statements if Mendez has no way to access statements electronically. 52) Furthermore, Banner conduct violates the Implied Covenant of Good Faith and Fair Dealing inherent in every agreement requiring they act in good faith and deal fairly in the performance of the contract. Banner set up Mendez with the simplest checking account with no fees when it was opened because of his low-income, they are now charging fee for something they must provide when Mendez has no access to e-statement, and Mendez has not consented to the charge. To the contrary, Mendez has repeatedly told the bank to stop charging the fee, to which Banner has responded that they are in compliance with law and he must sign electronically. However, the bank does not explain why they keep charging the fee to customers who explicitly ask them to stop....logically, the thing to do would be to just stop providing paper statement at all. Clearly, the evidence shows that Banner Bank is acting maliciously. B. FRAUD. IC-5-518. 53) Banner Bank has told Mendez multiple times that they complied with Federal law by disclosing they would charge for paper statements going forward. Specifically, Mendez received letter from Executive office explaining to him that 'banks are permitted to charge fees for paper statements, when such fees are properly disclosed' 'the bank continues to provide paper statements to all clients who need or want them, but there is now \$2 fee' 54) Banner Bank is intentionally deceiving and misleading customers like Mendez when they fail to meet the requirements mandated by the E-Sign Act. Banner cannot charge fee for something they are mandated by law (Truth in Savings Act, -12 CFR 1030) to provide. The E-sign Act states that customer's consent to receiving electronic statements must demonstrate that he/she has access to the equipment and programs necessary to receive, open, and read the relevant electronic documents. 55) Banner bank has not informed Mendez that by 'consenting' to electronic statements that he has the right to withdraw consent to electronic statements at any time and go back to paper statements. Banner Bank has not disclosed that he is not required to agree to use or accept electronic statements. 56) Mendez is low income and does not have the means to access e-statements and his only option is paper statements on an account that had no fees when it was opened. Banner was fully aware of Mendez income at the time of opening the account. 57) Banner is not informing customers of their full rights in regards to how to get their statements, so that in order for them to avoid paper statement fee they 'consent' to electronic statements. 58) During the proceedings for CV01-21-17728, Banner and its attorneys provided Reply Brief to Summary Judgment and an Objection to Amend complaint two months after Mendez pleadings. They filed the late pleadings after committing perjury indicating among other things that the reason for the late filings is because they don't receive electronic notification in the Idaho Electronic Case filing System whenever filings are entered in the docket. In addition Banner drafted all the court's orders despite Mendez objections and set up unripe hearings. 59) On 3/28/2023 during proceedings for CV01-21-17728, Banner



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and its attorneys filed lien on Mendez property. However, later on 11/29/2023 appeal, Banner filed Respondent's Brief specifically stating that Mendez appeal of the 3/8/2023 Orders granting defendant's application for Attorney fees and costs, and denying plaintiff's motion to vacate the judgment are not proper for the Idaho Supreme Court review AND that such orders must be addressed by the district court. Attorneys for Banner admit that they have improperly filed fraudulent lien before the proceedings have been adjudicated and finalized. C. IDAHO CONSUMER PROTECTION ACT. IC 48-601 to 48-619. 60) Banner Bank has told Mendez multiple times that they complied with Federal law by disclosing they would charge for paper statements going forward. Specifically, Mendez received letter from Executive office explaining to him that 'banks are permitted to charge fees for paper statements, when such fees are properly disclosed' 'the bank continues to provide paper statements to all clients who need or want them, but there is now \$2 fee.' 61) Banner Bank is intentionally deceiving and misleading customers like Mendez when they fail to meet the requirements mandated by the E-Sign Act. Banner cannot charge fee for something they are mandated by law (Truth in Savings Act, 12 CFR 1030) to provide. The E-sign Act states that customer's consent to receiving electronic statements must demonstrate that he/she has access to the equipment and programs necessary to receive, open, and read the relevant electronic documents. 62) Banner engages in unfair and deceptive acts or practices in the conduct of trade or commerce when failing to disclose customers their full rights in regards to getting statements while profiting from charging fees for providing paper statements. D. CONSTRUCTIVE FRAUD. 63) Mendez opened his checking account with Banner on January 2020 and had no fees attached to it. year later, the bank decided to start charging two dollars for providing paper statement to Mendez even though the E-Sign act and Truth in Savings Act, 12 CFR 1030 require that the financial institution provide paper statement if customers have no way to access the e-statement. Furthermore, disclosure of the fee is not enough because customers must consent to e-statements and they can revoke the consent and decide to go back to paper statements if they so choose to. The charge for the statement is to coerce customers to 'consent' to e-statements. Furthermore, Banner is passing e-statements as free 'benefit' and profiting from their deception in charging for the paper statement. 64) Constructive fraud usually arises from breach of duty where relation of trust and confidence exist whenever trust or confidence is reposed by one person in the integrity and fidelity of another. E. ABUSE OF PROCESS AND CONSPIRACY TO COMMIT ABUSE OF PROCESS. 65) In Idaho one who uses the legal process, whether criminal or civil, against another primarily to accomplish purpose for which it is not designed, is subject to liability to the other for harm caused by the abuse of process. 66) Abuse of process is malicious misuse and/or misapplication of regularly issued civil process to accomplish purposes not permitted by the Idaho Rules of Civil Procedure. 67) During the proceedings for CV01-21-17728, Banner and its attorneys provided Reply Brief to Summary Judgment and an Objection to Amend complaint two months after Mendez pleadings. They filed the late pleadings after committing perjury indicating among other things that the reason for the late filings is because they don't receive electronic notification in the Idaho Electronic Case filing System whenever filings are entered in the docket. In addition Banner drafted all the court's orders despite Mendez objections and set up unripe hearings. Perjury during proceedings and benefiting from said perjury is not permitted or designed to be used during the normal course of legal proceedings. 68) On 3/28/2023 during proceedings for CV01-21-17728, Banner and its attorneys filed lien on Mendez property. However, later on 11/29/2023 appeal, Banner filed Respondent's Brief specifically stating that Mendez appeal of the 3/8/2023 Orders granting defendant's application for Attorney fees and costs, and denying plaintiff's motion to vacate the judgment are not proper for the Idaho Supreme Court review AND that such orders must be addressed by the district court. Attorneys for Banner admit that they have improperly filed fraudulent lien before the proceedings have been adjudicated and finalized. Banner and its attorneys maliciously



- Mendez v. Banner Bank, Hawley Troxell Ennis & Hawley CV01-24-20923.<sup>33</sup>

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used the legal process to injure Mendez. F. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS. 69) claim of intentional infliction of emotional distress arises when the conduct of defendants is deemed outrageous and arising to the level of moral turpitude. 69) Mendez has not only has to dealt with the stress of litigation, but Magistrate that allowed Banner and its attorneys to control and misbehave during an entire case. Banner's perjury and improper filing of fraudulent lien has caused Mendez lot of anxiety. G. DEFAMATION. 70) On 3/28/2023 during proceedings for CV01-21-17728, Banner and its attorneys filed lien on Mendez property. However, later on 11/29/2023 appeal, Banner filed Respondent's Brief specifically stating that Mendez appeal of the 3/8/2023 Orders granting defendant's application for Attorney fees and costs, and denying plaintiff's motion to vacate the judgment are not proper for the Idaho Supreme Court review AND that such orders must be addressed by the district court. Attorneys for Banner admit that they have improperly filed fraudulent lien before the proceedings have been adjudicated and finalized. 71) lien is public record and Banner admits it was filed before the finality of proceedings. is record that is fraudulent and falsely put Mendez in negative light. (June 17, 2024) Proposed Complaint, at 9-15.

<sup>33</sup>He subsequently paid the filing fee and his complaint in this case asserts:

Causes of Action A. BREACH OF CONTRACT AND IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING. 55) Mendez opened his checking account with Banner on January 2020 and had no fees attached to it. year later, the bank decided to start charging two dollars for providing paper statement to Mendez even though the E-Sign act and Truth in Savings Act, 12 CFR 1030 require that the financial institution provide paper statement if customers have no way to access the e-statement. Furthermore, disclosure of the fee is not enough because customers must consent to e-statements and they can revoke the consent and decide to go back to paper statements if they so choose to. The charge for the statement is to coerce customers to 'consent' to e-statements. Furthermore, Banner is passing e-statements as free 'benefit' and profiting from their deception in charging for the paper statement. 56) In addition, IC 28-4-401 further reinforces the principle that banks can only make charges for which customers have consented to and in accordance with the agreement between the bank and customers. 57) Mendez has the simplest checking account that he opened with no charges. The paper statement charge violates the agreement because Banner has to provide paper statements if Mendez has no way to access statements electronically. 58) Furthermore, Banner conduct violates the Implied Covenant of Good Faith and Fair Dealing inherent in every agreement requiring they act in good faith and deal fairly in the performance of the contract. Banner set up Mendez with the simplest checking account with no fees when it was opened because of his low-income, they are now charging fee for something they must provide when Mendez has no access to e-statement, and Mendez has not consented to the charge. To the contrary, Mendez has repeatedly told the bank to stop charging the fee, to which Banner has responded that they are in compliance with law and he must sign electronically. However, the bank does not explain why they keep charging the fee to customers who explicitly ask them to stop....logically, the thing to do would be to just stop providing paper statement at all. Clearly, the evidence shows that Banner Bank is acting maliciously. B. FFRAUD. IC-5-518. 59) Banner Bank has told Mendez multiple times that they complied with Federal law by disclosing they would charge for paper statements going forward. Specifically, Mendez received letter from Executive office explaining to him that 'banks are permitted to charge fees for paper statements, when such fees are properly disclosed' 'the bank continues to provide paper statements to all clients who need or want them, but there is now \$2 fee.' 60) Banner Bank is intentionally deceiving and misleading customers like Mendez when

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they fail to meet the requirements mandated by the E-Sign Act. Banner cannot charge fee for something they are mandated by law (Truth in Savings Act, 12 CFR 1030) to provide. The E-sign Act states that customer's consent to receiving electronic statements must demonstrate that he/she has access to the equipment and programs necessary to receive, open, and read the relevant electronic documents. 61) Banner bank has not informed Mendez that by 'consenting' to electronic statements that he has the right to withdraw consent to electronic statements at any time and go back to paper statements. Banner Bank has not disclosed that he is not required to agree to use or accept electronic statements. 62) Mendez is low income and does not have the means to access e-statements and his only option is paper statements on an account that had no fees when it was opened. Banner was fully aware of Mendez income at the time of opening the account. 63) Banner is not informing customers of their full rights in regards to how to get their statements, so that in order for them to avoid paper statement fee they 'consent' to electronic statements. 64) During the proceedings for CV01-21-17728, Banner and its attorneys provided Reply Brief to Summary Judgment and an Objection to Amend complaint two months after Mendez pleadings. They filed the late pleadings after committing perjury indicating among other things that the reason for the late filings is because they don't receive electronic notification in the Idaho Electronic Case filing System whenever filings are entered in the docket. In addition Banner drafted all the court's orders despite Mendez objections and set up unripe hearings. 65) On 3/28/2023 during proceedings for CV01-21-17728, Banner and its attorneys filed lien on Mendez property. However, later on 11/29/2023 appeal, Banner filed Respondent's Brief specifically stating that Mendez appeal of the 3/8/2023 Orders granting defendant's application for Attorney fees and costs, and denying plaintiff's motion to vacate the judgment are not proper for the Idaho Supreme Court review AND that such orders must be addressed by the district court. Attorneys for Banner admit that they have improperly filed fraudulent lien before the proceedings have been adjudicated and finalized. 66) On 8/19/2024, the Idaho Supreme Court reversed confirming the fraud by Banner and its attorneys. C. IDAHO CONSUMER PROTECTIONACT. IC 48-601 to 48-619. 67) Banner Bank has told Mendez multiple times that they complied with Federal law by disclosing they would charge for paper statements going forward. Specifically, Mendez received letter from Executive office explaining to him that 'banks are permitted to charge fees for paper statements, when such fees are properly disclosed' 'the bank continues to provide paper statements to all clients who need or want them, but there is now \$2 fee.' 68) Banner Bank is intentionally deceiving and misleading customers like Mendez when they fail to meet the requirements mandated by the E-Sign Act. Banner cannot charge fee for something they are mandated by law (Truth in Savings Act, 12 CFR 1030) to provide. The E-sign Act states that customer's consent to receiving electronic statements must demonstrate that he/she has access to the equipment and programs necessary to receive, open, and read the relevant electronic documents. 69) Banner engages in unfair and deceptive acts or practices in the conduct of trade or commerce when failing to disclose customers their full rights in regards to getting statements while profiting from charging fees for providing paper statements. D. CONSTRUCTIVE FRAUD. 70) Mendez opened his checking account with Banner on January 2020 and had no fees attached to it. year later, the bank decided to start charging two dollars for providing paper statement to Mendez even though the E-Sign act and Truth in Savings Act, 12 CFR 1030 require that the financial institution provide paper statement if customers have no way to access the e-statement. Furthermore, disclosure of the fee is not enough because customers must consent to e-statements and they can revoke the consent and decide to go back to paper statements if they so choose to. The charge for the statement is to coerce customers to 'consent' to e-statements. Furthermore, Banner is passing e-statements as free 'benefit' and profiting from their deception in charging for the paper statement. 71) Constructive fraud usually arises from breach of duty where relation of trust and confidence exist whenever trust or confidence is reposed by one person in the

### C. I.C.A.R. 59(d)(3)

Finally, a review of his litigation history also reveals that Mr. Mendez, in any litigation while acting pro se, repeatedly filed unmeritorious motions,<sup>34</sup> pleadings, or other

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integrity and fidelity of another. E. ABUSE OF PROCESS AND CONSPIRACY TO COMMIT ABUSE OF PROCESS. 72) In Idaho one who uses the legal process, whether criminal or civil, against another primarily to accomplish purpose for which it is not designed, is subject to liability to the other for harm caused by the abuse of process. 73) Abuse of process is malicious misuse and/or misapplication of regularly issued civil process to accomplish purposes not permitted by the Idaho Rules of Civil Procedure. 74) During the proceedings for CV01-21-17728, Banner and its attorneys provided Reply Brief to Summary Judgment and an Objection to Amend complaint two months after Mendez pleadings. They filed the late pleadings after committing perjury indicating among other things that the reason for the late filings is because they don't receive electronic notification in the Idaho Electronic Case filing System whenever filings are entered in the docket. In addition Banner drafted all the court's orders despite Mendez objections and set up unripe hearings. Perjury during proceedings and benefiting from said perjury is not permitted or designed to be used during the normal course of legal proceedings. 75) On 3/28/2023 during proceedings for CV01-21-17728, Banner and its attorneys filed lien on Mendez property. However, later on 11/29/2023 appeal, Banner filed Respondent's Brief specifically stating that Mendez appeal of the 3/8/2023 Orders granting defendant's application for Attorney fees and costs, and denying plaintiff's motion to vacate the judgment are not proper for the Idaho Supreme Court review AND that such orders must be addressed by the district court. Attorneys for Banner admit that they have improperly filed fraudulent lien before the proceedings have been adjudicated and finalized. Banner and its attorneys maliciously used the legal process to injure Mendez. F. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS. 76) claim of intentional infliction of emotional distress arises when the conduct of defendants is deemed outrageous and arising to the level of moral turpitude. 77) Mendez has not only has to dealt with the stress of litigation, but Magistrate that allowed Banner and its attorneys to control and misbehave during an entire case. Banner's perjury and improper filing of fraudulent lien has caused Mendez lot of anxiety. G. DEFAMATION. 78) On 3/28/2023 during proceedings for CV01-21-17728, Banner and its attorneys filed lien on Mendez property. However, later on 11/29/2023 appeal, Banner filed Respondent's Brief specifically stating that Mendez appeal of the 3/8/2023 Orders granting defendant's application for Attorney fees and costs, and denying plaintiff's motion to vacate the judgment are not proper for the Idaho Supreme Court review AND that such orders must be addressed by the district court. Attorneys for Banner admit that they have improperly filed fraudulent lien before the proceedings have been adjudicated and finalized. 79) lien is public record and Banner admits it was filed before the finality of proceedings. It is record that is fraudulent and falsely put Mendez in negative light. H. PRIVACY VIOLATION. 80) Idaho recognizes the right to privacy in tort law. Furthermore, no proof of malice is required. 81) Hawley Troxell made filing for CV01-24-06458 that included Judge Hippler decisions for this case, so there is no question they are aware of being party on this case. However, the firm also included information that invades Mendez privacy and the right to be safe and secure on his property by including diagrams and pictures of his home the kicker being that they made said filing while alleging the client is not even party to that case. (March 25, 2025) Complaint, at 10-16.

<sup>34</sup>As for any motions in these cases that were not expressly ruled on, see *State v. Wolfe*, 158 Idaho 55, 61-62, 343 P.3d 497, 503-04 (2015) ("[W]e have held that where a district court fails to rule on a motion, we

papers, conducted unnecessary discovery, or engaged in other tactics that were frivolous or solely intended to cause unnecessary<sup>35</sup> delay.<sup>36</sup>

In the underlying referral case, CV01-24-10291, Mr. Mendez filed the following motions or pleadings that were unmeritorious:

- Plaintiff's (March 25, 2025) Motion to Strike Reply Memorandum in Support of Motion to Dismiss;<sup>37</sup>
- Plaintiff's (March 25, 2025) Objection to Court Hearings;<sup>38</sup>

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presume the district court denied the motion. See, e.g., *Sales v. Peabody*, 157 Idaho 195, 202, 335 P.3d 40, 47 (2014); see also *United States v. Claxton*, 766 F.3d 280, 291 (3d Cir.2014) (noting that several federal circuit courts of appeals treat a district court's failure to rule on an outstanding motion as an implicit denial of that motion); *United States v. Jasso*, 634 F.3d 305, 307 n. 2 (5th Cir.2011) (treating a district court's failure to rule on a motion for reconsideration as an implicit denial based on the entry of a final judgment); *Norman v. Apache Corp.*, 19 F.3d 1017, 1021 (5th Cir.1994) ("The denial of a motion by the district court, although not formally expressed, may be *implied* by the entry of a final judgment or of an order inconsistent with the granting of the relief sought by the motion."). Therefore, although the district court did not explicitly rule on Wolfe's motion for reconsideration, we presume the district court denied that motion. That presumption becomes a conclusion once we consider the district court's January 4, 2007 order of dismissal. That order dismissed Wolfe's entire civil case, which included both Wolfe's petition for post-conviction relief and his motion for reconsideration. Thus, the January 4, 2007 order of dismissal effectively denied Wolfe's motion for reconsideration.").

<sup>35</sup>See, e.g., *Drain v. Wells Fargo Bank, Minnesota, NA*, 2005 WL 8163798, \*5 (D. N.M.) (noting "the filing of voluminous vexatious pleadings and motions designed to harass and delay these proceedings. See *Doc. 117 and exhibits attached thereto.*"); *Tafari v. Weinstock*, 2010 WL 3420424, \*9 n. 7 (W.D. N.Y.) ("These multiple, baseless motions for reconsideration serve no purpose but to delay the proper resolution of these cases. These filings are vexatious in nature, causing the defendants to perform unnecessary work and burdening the Court's motion calendar.").

<sup>36</sup>See *In re Prefiling Order Declaring Vexatious Litigant, Pursuant to I.C.A.R. 59, Mark D. Colafranceschi*, 164 Idaho 771, 779, 435 P.3d 1091, 1099 (2019). ("Colafranceschi also argues that the administrative judge erred by declaring him a vexatious litigant based on his conduct in one case. However, this is not a limitation in the Rule. I.C.A.R. 59(d)(3) does not require multiple cases for its application. The language only states '(i)n any litigation while acting pro se.' *Id.* Therefore, while multiple cases might bolster a court's decision, it is not a requirement under the Rule."). (emphasis added).

<sup>37</sup>See (May 22, 2025) Order on Defendant's Motion to Dismiss, Requests for Judicial Notice, Plaintiff's Motion to Strike, and Plaintiff's Objection to Court Hearings.

<sup>38</sup>See (May 22, 2025) Order on Defendant's Motion to Dismiss, Requests for Judicial Notice, Plaintiff's Motion to Strike, and Plaintiff's Objection to Court Hearings.

- Plaintiff's (March 25, 2025) Motion to Strike and for Sanctions Re: Motion to Declare Raul Mendez a Vexatious Litigant;<sup>39</sup>
- Plaintiff's (June 25, 2025) Motion for Disqualification Per IRCP 40(b).<sup>40</sup>

In CV01-21-17728, Mr. Mendez filed the following motions or pleadings that were unmeritorious:

- Plaintiff's (April 14, 2022) Motion to Get a Printed Copy of the Idaho Rules of Civil Procedure/Rules of Evidence;
- Plaintiff's (October 18, 2022) Second Motion for Leave to Amend Complaint;<sup>41</sup>
- Plaintiff's (December 27, 2022) Motion to Strike;
- Plaintiff's (January 25, 2023) Motion to Vacate the Judgment;<sup>42</sup>
- Plaintiff's (December 12, 2024) Motion for Contempt;<sup>43</sup>
- Plaintiff's (June 6, 2025) Second Motion for Contempt.

In CV01-24-06458, he filed the following motions or pleadings that were without merit:

- Plaintiff's (December 2, 2024) Motion for Sanctions;
- Plaintiff's (December 12, 2024) Motion to Strike;<sup>44</sup>

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<sup>39</sup>See (May 20, 2025) Order on Defendant's Motion to Declare Raul Mendez a Vexatious Litigant and Findings in Support of Referral of Vexatious Litigant, at 18 (denying Plaintiff's Motion to Strike).

<sup>40</sup>See (July 1, 2025) Order on Motion for Disqualification.

<sup>41</sup>See (January 6, 2023) Order Denying Plaintiff's Second Motion for Leave to Amend Complaint With Prejudice.

<sup>42</sup>See (February 23, 2023) Court Minutes (court denied motion to vacate judgment); (March 8, 2023) Order Denying Plaintiff's Motion to Vacate the Judgment.

<sup>43</sup>See (February 25, 2025) Order Denying Motion for Contempt.

<sup>44</sup>See (December 18, 2024) Order Granting Motion to Dismiss as to Defendant's Lewis, Bingham, and Box; and Granting in Part and Denying in Part Defendant Swainston's Motion to Dismiss, at 3 (denying motions to strike and for sanctions).



- Plaintiff's (December 30, 2024) Motion for Permissive Appeal;
- Plaintiff's (December 30, 2024) Motion for a (Free) Paper Copy of Transcript;
- Plaintiff's (January 15, 2025) Motion for a (Free) Paper Copy of Transcript;
- Plaintiff's (January 15, 2025) Objection to Reconsideration of Indigency and Notice of Courts Being Preempted;<sup>45</sup>
- Plaintiff's (January 29, 2025) Motion for Continuance in Order to Provide Interpreter/Transcript;
- Plaintiff's (February 13, 2025) Motion to Seal/Expunge Exhibit A of January 31, 2025 Declaration of Counsel;
- Plaintiff's (March 7, 2025) Motion for Disqualification;
- Plaintiff's (March 7, 2025) Motion to Strike Scheduling Order;
- Plaintiff's (March 25, 2025) Objection to Court Hearings;<sup>46</sup>
- Plaintiff's (April 16, 2025) Response to Defendants Opposition to Plaintiff's Motion to Disqualify Judge.<sup>47</sup>

In CV01-24-10297, he filed the following motions or pleadings that were without merit:

- Plaintiff's (June 17, 2024) Motion for Fee Waiver;<sup>48</sup>
- Plaintiff's (July 8, 2024) Motion for Permissive Appeal;<sup>49</sup>

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<sup>45</sup>See (February 14, 2024) Order Rescinding Finding of Indigency.

<sup>46</sup>For the other above motions, *see* (April 9, 2025) Order Denying Plaintiff's Motions.

<sup>47</sup>This "response" was filed after his disqualification motion had already been denied.

<sup>48</sup>See (June 24, 2024) Order Denying Fee Waiver.

<sup>49</sup>See (July 15, 2024) Order Denying Permissive Appeal.

- Plaintiff's (October 31, 2024) Motion for Fee Waiver.<sup>50</sup>

In CV01-24-20923, he filed the following motions or pleadings that were without merit:

- Plaintiff's (December 12, 2024) Motion for Fee Waiver;<sup>51</sup>
- Plaintiff's (December 30, 2024) Motion for Reconsideration of Fee Waiver;<sup>52</sup>
- Plaintiff's (January 15, 2025) Motion for Fee Waiver;<sup>53</sup>
- Plaintiff's (March 25, 2025) Motion for Disqualification;
- Plaintiff's (June 6, 2025) Motion for Decision (Disqualification) to be Made on Briefs;
- Plaintiff's (June 23, 2025) Motion for Change of Venue to Different Judicial District (Disqualification).<sup>54</sup>

#### **IV. Conclusion**

A review of the pro se litigation history of Raul Mendez reveals that it satisfies the criteria set forth in I.C.A.R. 59(d)(1), I.C.A.R. 59(d)(2), and I.C.A.R. 59(d)(3).

It is the intention of the court to issue an I.C.A.R. 59(e) prefiling order and a proposed prefiling order will be issued.

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<sup>50</sup>See (December 4, 2024) Order Denying Fee Waiver.

<sup>51</sup>See (December 19, 2024) Order Denying Fee Waiver.

<sup>52</sup>See (January 17, 2025) Order Denying Motion for Reconsideration.

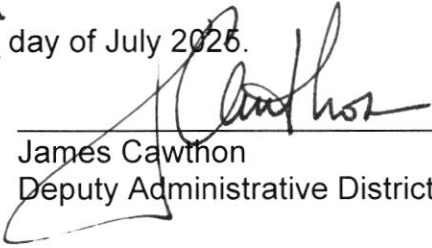
<sup>53</sup>See (February 12, 2025) Order Recommending No Waiver of Appellate Filing Fee. See *also* Plaintiff's (January 15, 2025) Notice of Appeal to the Idaho Supreme Court Re: Denial of Fee Waiver; (February 19, 2025) Idaho Supreme Court Order Dismissing Appeal ("IT IS ORDERED that the above entitled appeal is DISMISSED as the Order Denying Motion for Fee Waiver filed in the District Court on December 19, 2024, is not a judgment or order from which Notice of Appeal to the Supreme Court may be filed from, pursuant to Idaho Appellate Rule 11(a)."; (March 12, 2025) Idaho Supreme Court Order Denying Motion for Reconsideration ("IT IS ORDERED that Appellant's MOTION FOR RECONSIDERATION is DENIED. This appeal is closed.").

<sup>54</sup>For the above motions, see (July 1, 2025) Order on Motion for Disqualification.

Mr. Mendez is afforded fourteen days from the date of this order to file a response to the court's proposed findings and its notice of intent to issue a prefiling order.

IT IS SO ORDERED.

DATED THIS 16<sup>th</sup> day of July 2026.



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James Cawthon  
Deputy Administrative District Judge

## CERTIFICATE OF MAILING

I hereby certify that on the 16<sup>th</sup> day of July 2025, I mailed or emailed a true and correct copy of the foregoing document as notice pursuant to the Idaho Rules to each of the following:

RAUL MENDEZ  
2712 N. GOLDENEYE WAY  
MERIDIAN, ID 83646  
[Raulmendez02@yahoo.com](mailto:Raulmendez02@yahoo.com)

CC:

PRESTON N. CARTER  
KERSTI H. KENNEDY  
MATTHEW E. LIEBERTZ  
GIVENS PURSLEY LLP  
601 WEST BANNOCK ST.  
PO BOX 2720  
BOISE, ID 83701-2720  
[prestoncarter@givenspursley.com](mailto:prestoncarter@givenspursley.com)  
[kerstikennedy@givenspursley.com](mailto:kerstikennedy@givenspursley.com)  
[mattliebertz@givenspursley.com](mailto:mattliebertz@givenspursley.com)

HONORABLE CYNTHIA YEE-WALLACE

TRENT TRIPPLE  
Clerk of the District Court  
Ada County, Idaho

By   
Deputy Clerk