IN THE SUPREME COURT OF THE STATE OF NEVADA

BOBBY L. FRANKLIN

Appellant,

v.

D.J. LAUGHLIN, D/B/A/ BWD PROPERTIES 2, LLC; BWD PROPERTIES 3, LLC; AND BWD PROPERTIES 4, LLC,

Respondents.

Supreme Court Case No.: 67364

District Court No.: A-14-707291-C

OPPOSITION TO MOTION FOR STAY

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. D.J. Laughlin (Don Laughlin) is an individual and has no parent entity.

2. BWD Properties 2, LLC has no parent entity, and no publicly-held company owns 10% or more of this entity.

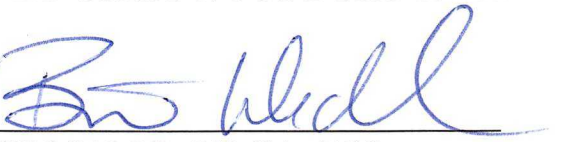
3. BWD Properties 3, LLC has no parent entity, and no publicly-held company owns 10% or more of this entity.

4. BWD Properties 4, LLC has no parent entity, and no publicly-held company owns 10% or more of this entity.

5. The law firm of Jolley Urga Woodbury & Little has appeared on behalf of Respondents in the district court and is the only law firm that is expected to appear on behalf of Respondents in the Nevada Supreme Court.

DATED this 27th day of February, 2015.

JOLLEY URGA WOODBURY & LITTLE

By: 

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Respondents, D.J. Laughlin, BWD Properties 2, LLC, BWD Properties 3, LLC, and BWD Properties 4, LLC, by and through their attorneys, Jolley Urga Woodbury & Little, hereby respond to Mr. Franklin's Motion for Stay.

I.

INTRODUCTION AND SUMMARY OF ARGUMENT

This action stems from Mr. Franklin's efforts to create a dispute over title to real property located near Laughlin, Nevada. Beginning in 1988, the Franklin family attempted, but ultimately failed, to obtain title to land near Laughlin through the Desert Land Entry Act codified in 43 U.S.C. § 321 *et seq*. The history of this attempt is explained in full detail below, but the end result is that the Franklins did not obtain title to the land, and it remained with the BLM.

In 2006, Defendant, D.J. Laughlin, purchased land from the BLM – a portion of which was the land that the Franklins attempted to obtain years earlier. Mr. Laughlin then transferred the land to BWD Properties 2, LLC, BWD Properties 3, LLC, and BWD Properties 4, LLC (collectively "BWD").

Since Mr. Laughlin's purchase and subsequent transfer to BWD, the Franklin family has been on a misguided quest to assert its ownership in the property in question. For years, the Franklins have been filing lawsuits and recording various documents clouding title to the land. As a result of the numerous lawsuits, United States District Judge Roger L. Hunt issued an order on April 21, 2008 enjoining Appellant, Bobby L. Franklin, from filing "any civil action based on his 1988 Desert Land Entry application or the property at issue in that application without first obtaining leave of the Court."[1]

Also in 2008, BWD obtained an order from Unites States District Judge

[1] *See* Order and Injunction filed April 21, 2008, attached hereto as Exhibit A, 5:7-9 (hereinafter the "Hunt Order").

Brian Sandoval enjoining the Franklins, "and anyone claiming under or through them, . . . from asserting, claiming, or setting up any right, title, or interest in or to the property" in question and "from filing any instruments, documents, and claims in the office of the Clark County Recorder that would slander, interfere with, compromise, or cloud BWD's title to the property."[2] The Franklins have violated both the Hunt Order and Sandoval Order on multiple occasions, with the Complaint underlying this appeal being the latest in a long line of violations.

Mr. Franklin's claims have been reviewed by the BLM and federal courts, both of which have concluded that Mr. Franklin has no right to this property. He has been prohibited from filing lawsuits such as the underlying Complaint, and he has been enjoined from recording documents that would cloud title to the property. Despite all of this, BWD and Mr. Laughlin are once again in court defending against Mr. Franklin's frivolous claims.

II.

FACTS

A. Plaintiff's Desert Land Entry Act Claims and Subsequent Actions Against the United States

On August 18, 1988, Appellant, Bobby Len Franklin, filed application N-49548 under the Desert Land Entry Act ("DLE") concerning 80 acres of land located in Southern Nevada. (The "N-49548 Property"). *See* Sandoval Order attached hereto as Exhibit B. The Bureau of Land Management ("BLM") denied Franklin's application because the land was appropriated by mining claims and thus unsuitable for disposition under the DLE. *Id.* at 2:9-12. Franklin appealed the decision to the Interior Board of Land Appeals ("IBLA") which reversed and

[2] *See* Order filed September 29, 2008, attached hereto as Exhibit B, 8:27-9:2 (hereinafter the "Sandoval Order").

remanded to BLM for further findings because the record lacked sufficient evidence that the land was mineral in character. *Id.* at 2:12-15. On remand, the BLM denied the application for a second time and advised Franklin of his right to appeal the decision to the IBLA within 30 days. *Id.* at 2:15-17. Franklin did not appeal to the IBLA but instead filed an action against the United States in Federal Court which was dismissed for failure to exhaust administrative remedies. *Id.* at 2:17-19. The Ninth Circuit Court of Appeals affirmed. *Id.* at 2:20-21.

On November 21, 1989, Bobby Dean Franklin, Appellant's father, filed application N-52292 under the DLE concerning another 80 acres of land located North of and abutting the N-49548 Property (the "N-52292 Property"). *Id.* at 2:22-25. The BLM denied the application because the lands for which the application was filed were mineral in character. *Id.* at 2:25-26. Bobby Dean Franklin was advised of his right to appeal the decision within 30 days; however, Bobby Dean Franklin did not appeal. *Id.* at 2:26-28. Instead, Bobby Dean Franklin filed an action against the United States in federal court which was dismissed for failure to exhaust administrative remedies. The Ninth Circuit Court of Appeals affirmed. *Id.* at 3:1-4.

B. The Franklin Family's History of Improper Actions

Over the years, the Franklins were involved in a number of actions related to the N-49548 Property and the N-52292 Property, none of which resulted in any success for the Franklins. These actions are described in the Sandoval Order attached hereto as Exhibit B and involve Franklin recording at least eight (8) different Notices and agreements in the Office of the Clark County Recorder between 1999 and 2006. *Id.* at 3:17-27. He has also filed numerous lawsuits detailed in the Hunt Order attached hereto as Exhibit A.

C. D.J. Laughlin Purchased the Land at Issue From the BLM

In 2006, as the result of a BLM land auction, the United States granted D.J. Laughlin title to three (3) parcels located in Clark County, Nevada (the "Property"). Exhibit B at 3:5-6. The Property was granted by way of land patents, including patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069. *Id.* at 3:7-8. Laughlin then transferred his interest in the Property to BWD. *Id.* at 3:16-17. The Property included the acreage upon which the Franklins had submitted DLE applications. *Id.* at 3:6-7.

D. The Court Granted BWD's Quite Title Action and Ordered Injunctive Relief

On November 21, 2006, BWD brought suit in the United States District Court, District of Nevada seeking an order quieting title in its favor and enjoining the Franklins from asserting, claiming, or setting up any rights title or interest in the Property. The Franklins answered BWD's complaint and counterclaimed, requesting the court quiet title in their favor. BWD filed a motion for summary judgment which was granted.

To this end, Judge Sandoval issued an order that stated, in pertinent part:

> IT IS FURTHER ORDERED that Defendants, and anyone claiming under or through them, are permanently enjoined from asserting, claiming or setting up any right, title or interest in or to the property described in patent 27-2006-071, patent 27-2006-0070, and patent 27-2006-0069 under the DLE applications N-49548 and N-52292, or on any other ground or basis.
>
> IT IS FURTHER ORDERED that Defendants, and anyone claiming under or through them, are enjoined from filing any instruments, documents, and claims in the office of the Clark County Recorder that would slander, interfere with, compromise, or cloud Plaintiffs' title to the property.

See Exhibit B, 8:21-9:11. The Sandoval Order was affirmed by the Ninth Circuit. *See* Exhibit C.

After BWD brought suit to quiet title, but before Judge Sandoval issued his order, Mr. Franklin filed a separate suit on October 28, 2007 in the U.S. District Court, District of Nevada. The lawsuit was disguised as a *Bivins* lawsuit but was yet another attempt to quiet title to the Property. *See* Exhibit A, 4:14-16. At the request of the Defendants, Judge Hunt issued a vexatious litigant order enjoining Bobby L. Franklin from filing:

> any civil action based on his 1988 Desert Land Entry application or the property at issue in that application without first obtaining leave of the Court. In seeking leave of the Court, Bobby L. Franklin must submit a copy of this Order with his proposed complaint, and certify and demonstrate that the claims he wishes to present are new claims never before raised and disposed of by any federal court. Upon failure to certify or upon a false certification, Bobby L. Franklin may be found in contempt of court and punished accordingly.

See, Hunt Order, Exhibit A, 5:7-13.

E. Franklin Violated the Hunt Order and Filed Suit in Texas

On or about December 20, 2010, Franklin violated the Hunt Order and filed an action in United States District Court for the Western District of Texas, San Antonio Division. Based on the Report and Recommendation of United States Magistrate Judge Nancy Stein Nowak, Franklin's claim was dismissed because it violated the Hunt Order. *See* Report and Recommendation and Order attached hereto as Exhibit D. The Texas Order was affirmed by the Fifth Circuit, and the appeal was "dismissed as frivolous." *See* Exhibit E. Just as Franklin had done in his previous actions, he filed a writ of certiorari with the Supreme Court of the United States. In March 2012, the writ of certiorari was denied. *See* Exhibit F.

The Order dismissing the writ petition noted that the "petitioner has repeatedly abused this Court's process." *Id.*

F. Franklin Violated the Sandoval Order When He Recorded a Notice of Action to Quiet Title in Clark County, Nevada

On or about April 10, 2012, Franklin, under the guise of Daydream Land & Systems Development Co., recorded, a "Notice of Action to Quiet Title" with the Clark County Recorder. *See* Exhibit G. While this two page "Notice of Action to Quiet Title" was improper because Franklin had not actually filed an action, it was sufficient to cloud title to the subject Property.

On October 9, 2012, BWD filed a Motion to Expunge the Notice of Action to Quiet Title. On March 7, 2013, the US District Court ordered that the Notice of Action to Quiet Title be expunged. *See* Exhibit H. In that Order, the Court noted that Franklin had done exactly what he was prohibited from doing. *Id.* at 6:9-11. The Court declined to award sanctions against Franklin at that time but warned that future violations would warrant sanctions.

G. Franklin Violated the Hunt Order When He Filed the Underlying Complaint, and He Violated the Sandoval Order When He Recorded The Lis Pendens

On September 22, 2014, Mr. Franklin filed the underlying Complaint with the Eighth Judicial District Court. He also recorded a Notice of Pendency of Quite Title Action with the Clark County Recorder on September 17, 2014. A copy of the lis pendens is attached hereto as Exhibit I. Both documents violate the orders discussed herein. Judge Hunt enjoined Mr. Franklin from filing any action regarding the Property without first seeking leave to do so, and Judge Sandoval enjoined Mr. Franklin from recording any documents that would cloud title to the Property. Respondents moved to dismiss the Complaint and expunge the lis pendens, and the District Court properly granted the motion. This appeal and the

Motion For Stay followed. As will be shown herein, the stay request should be denied.

III.

FRANKLIN CANNOT SATISFY THE STAY REQUIREMENTS OF NRAP 8(c)

The Nevada Rules of Appellate Procedure identify four (4) factors when determining whether a stay is appropriate. *See* NRAP 8(c). Mr. Franklin cannot satisfy any of these factors, and as such, the stay should be denied.

A. The Object Of The Appeal Will Not Be Defeated If A Stay Is Denied

Mr. Franklin is appealing an order that dismissed his Complaint and expunged the lis pendens that clouded title to the Property. There is nothing more to be done. The order merely concludes the lawsuit, and Mr. Franklin did not request that the District Court stay the order. Respondents have already filed the order, provided notice of entry of the order, and have recorded the order with the office of the Clark county Recorder. *See* Exhibit J. In short, there is nothing to stay. The current appeal is just the last in a long line of frivolous pleadings regarding a dispute that only exists in Mr. Franklin's mind and has long since been resolved by numerous courts. Therefore, the object of the appeal will not be defeated if the stay is denied.

B. Mr. Franklin Cannot Demonstrate Irreparable Or Serious Injury If A Stay Is Denied

Mr. Franklin's motion is devoid of proof of irreparable harm or injury. Respondents have legally owned the Property since 2006. BWD's title to the Property has been confirmed far too many times by federal district courts and federal appellate courts. Mr. Franklin has litigated this matter to the point of

harassment, and every court has concluded he does not have a recognizable ownership claim to the Property. There will be no harm to Mr. Franklin if the stay is denied.

C. Respondent Will Suffer Further Irreparable And Serious Injury If A Stay Is Granted

Respondents have been forced to defend against Mr. Franklin's baseless claims for almost a decade. There is no reason to stay the order at the center of this appeal, and doing so would only allow Respondents' title to the Property to be further clouded. Any cloud upon title to Respondents' Property constitutes a serious and unwarranted injury.

D. Mr. Franklin Will Not Succeed On The Merits Of His Appeal

As has been shown, Mr. Franklin's lawsuits are completely without merit. He has been prohibited from filing complaints (a prohibition he violated by filing the underlying action), and he has been enjoined from recording documents concerning the Property (an injunction he violated by recording the lis pendens). He has no ownership interest in the Property, his Complaint was properly dismissed, and the lis pendens was properly expunged. He is currently making the same arguments that have been routinely dismissed as frivolous. He will not succeed on the merits of his appeal.

IV.

MR. FRANKLIN SHOULD BE SANCTIONED FOR FILING A FRIVOLOUS APPEAL

Pursuant to NRAP 38, the Court may require a party to pay costs and attorney's fees for filing or processing a frivolous appeal. *See* NRAP 38; *See also Works v. Kuhn*, 103 Nev. 65, 732 P.2d 1373 (1987) (sanctioning appellant when the contentions on appeal are so lacking in merit as to constitute a frivolous appeal

and misuse of the appellate process). Here, the underlying Complaint was filed in violation of the Hunt Order, and the lis pendens was recorded in violation of the Sandoval Order. Mr. Franklin's claims have been adjudicated on numerous occasions always in favor of Respondents. The appeal is not only frivolous, but Mr. Franklin's continued litigious behavior is nothing short of harassment. Therefore, Respondents request that the Court sanction Mr. Franklin in an amount sufficient to discourage like conduct in the future.

V.

CONCLUSION

For the reasons set forth herein, Mr. Franklin's Motion to Stay should be denied. Respondents further request that Mr. Franklin be sanctioned pursuant to NRAP 38 for filing this frivolous appeal and Motion For Stay.

DATED this 27th day of February, 2015.

JOLLEY URGA WOODBURY & LITTLE

By: _____

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CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Jolley Urga Woodbury & Little, 3800 Howard Hughes Parkway, Suite 1600, Las Vegas, Nevada 89169.

On this day I served the **OPPOSITION TO MOTION FOR STAY** by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

Bobby L. Franklin
3520 Needles Hwy.
Box 233
Needles, CA 92363

and placed the envelope in the mail bin at the firm's office.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U. S. Postal Service on the same day it is placed in the mail bin, with postage thereon fully prepaid at Las Vegas, Nevada, in the ordinary course of business. I certify under penalty of perjury that the foregoing is true and correct, and that this Certificate of Service by Mail was executed by me on February 27th, 2015 at Las Vegas, Nevada.

An employee of JOLLEY URGA WOODBURY & LITTLE

EXHIBIT "A"

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

BOBBY L. FRANKLIN, Plaintiff, vs. MARK CHATTERTON; DON LAUGHLIN; THOMAS SMITLEY; UNITED STATES OF AMERICA; and BRUCE WOODBURY, Defendants.	Case No.: 2:07-cv-1400-RLH-RJJ **ORDER AND INJUNCTION** (Motion to Consolidate, or alternatively, for Recusal–#21; Motion to Enjoin Further Lawsuits–#47)

Before the Court is Plaintiff Bobby L. Franklin's **Motion to Consolidate into Related Case pursuant to FRCP 42(a), or alternatively, Motion for Recusal** (#21), filed January 16, 2008. The Court has also considered Defendant Bruce Woodbury's Opposition (#29), filed January 28, 2008, Defendants Mark Chatterton and the United States of America's Opposition (#34), filed February 1, 2008, Defendant Don Laughlin's Opposition (#35), filed February 1, 2008, and Plaintiff's Reply (#42), filed February 11, 2008.

Also before the Court is Defendants Mark Chatterton and the United States of America's **Motion to Enjoin Further Lawsuits** (#47), filed March 12, 2008. The Court has also considered Defendant Bruce Woodbury's Joinder (#48), filed March 14, 2008, Defendant Thomas

Smitley's Joinder (#49), filed March 25, 2008, Defendant Don Laughlin's Joinder (#51), filed March 31, 2008, Plaintiff's Opposition (#50), and Defendants Mark Chatterton and the United States of America's Reply (#53), filed April 3, 2008.

BACKGROUND

This case arises out of the denial of Plaintiff's 1988 Desert Land Entry ("DLE") application to acquire property under the Desert Land Act, 43 U.S.C. §§ 321 *et seq*. The act allows individuals to claim up to 320 acres of unappropriated public desert lands by asserting that they intend to reclaim the lands for irrigated agriculture. "Desert lands" are defined as "[a]ll lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop." § 322.

In 1988, Plaintiff filed a DLE application for a plot of desert land near Laughlin, Nevada. The Bureau of Land Management ("BLM") denied the application because the property was the subject of prior mining claims. Plaintiff properly appealed the denial to the Interior Board of Land Appeals ("IBLA"), which reversed and remanded the BLM's initial decision for further review. In so doing, the IBLA required the BLM to make a determination of whether the land should be classified as open to the DLE. *Bobby L. Franklin*, 116 IBLA 29, 31, 1990 WL 308036 (1990).

In compliance with the instructions in the 1990 IBLA decision, the BLM conducted a mineral report on the property. The BLM found that the property was mineral in character and thus it properly denied Plaintiff's DLE application. The BLM's decision notified Plaintiff of his appeal rights. Rather than file an appeal with the IBLA, however, Plaintiff filed an action in federal court to quiet title to the property. *Franklin v. United States*, No. cv-s-93-01140-PMP-LRL (D. Nev. 1993). After finding that Plaintiff had failed to exhaust his administrative remedies, the Court dismissed the case for lack of subject matter jurisdiction. Plaintiff appealed to the Ninth Circuit, which affirmed the dismissal. *Franklin v. United States*, 46 F.3d 1140 (9th Cir. 1995) (unpublished), *cert. denied*, 516 U.S. 829 (1995).

In 1995, Plaintiff enclosed approximately one acre of the property and began to occupy it. The BLM notified Plaintiff that his enclosure and use of the property was unauthorized and asked that he remove the fence and stop using the property. When Plaintiff failed to do so, the United States filed a trespass action. *United States v. Franklin*, No. cv-s-96-1089-LDG-LRL (D. Nev. 1996). In response, Plaintiff filed a counterclaim asserting ownership to the property and seeking to quiet title. On October 14, 1997, the Court permanently enjoined Plaintiff from further using or occupying the property or from further trespass on any other land owned by the United States and dismissed Plaintiff's counterclaim for lack of subject matter jurisdiction.

In 1997, Plaintiff filed his third suit regarding the property. *Franklin v. Bilbray*, No. cv-s-97-037-PMP (D. Nev. 1997). In that action, Plaintiff filed a 42-count complaint against more than twenty defendants. The United States moved to dismiss for a variety of reasons, including lack of subject matter jurisdiction. The Court again granted the United States' motion to dismiss, which was affirmed on appeal by the Ninth Circuit. *Franklin v. Bilbray*, 172 F.3d 56 (9th Cir. 1999) (unpublished), *cert. denied*, 528 U.S. 863 (1999).

In 2004, Plaintiff made another attempt to litigate the BLM's decision that the property was mineral in character. *Franklin v. United States Dep't of the Interior*, 2:04-cv-0128-RLH-PAL (D. Nev. 2004). In granting the United States' motion to dismiss, the Court held that it "lack[ed] jurisdiction to hear this case for the same reason it lacked jurisdiction to hear [Plaintiff]'s four previous claims arising from the rejection of his DLE claim. [Plaintiff] failed to appeal the 1993 rejection of his claim to the IBLA within 30 days of its issuance and therefore he has failed to exhaust his administrative remedies." *Id.* at Dkt. #18. The Court further held that even if it had jurisdiction, Plaintiff's claims were barred by the applicable statute of limitations and claim preclusion. *Id.* The Ninth Circuit affirmed. *Franklin v. United States BLM*, 125 F. App'x 152 (9th Cir. 2005) (unpublished), *cert. denied*, 546 U.S. 1004 (2005).

In November 2005, Plaintiff filed suit in the United States District Court for the District of Arizona against the United States, Assistant United States Attorney Blaine Welsh, and

United States District Court Judge Roger L. Hunt, requesting relief from this Court's June 7, 2004, Order under 28 U.S.C. § 1361 and Fed. R. Civ. P. 60(b). *Franklin v. United States*, No. cv'05 3719 PHX NVW (D. Ariz. 2005). The Arizona court dismissed the complaint with prejudice because it failed to state a claim upon which relief could be granted and ordered that no amended complaint be filed because it would have been futile to do so. The Ninth Circuit affirmed. *Franklin v. Welsh*, 189 F. App'x 675 (9th Cir. 2006) (unpublished), *cert. denied*, 127 S. Ct. 1277 (2007).

In 2006, Plaintiff filed a third-party complaint against the United States seeking yet again to quiet title to the property. *BWD Props. 2, LLC v. Franklin*, No. 2:06-cv-01499-BES-PAL (D. Nev. Nov. 21, 2006). The Court dismissed Plaintiff's third-party complaint for a variety of reasons, including lack of subject matter jurisdiction for failing to exhaust his administrative remedies, res judicata, and the running of the statute of limitations. *Id.* at Dkt. #62. Plaintiff filed a motion for reconsideration, which was denied. *Id.* at Dkt. #83.

On October 28, 2007, Plaintiff filed the instant action. Although disguised as a civil rights and *Bivens* action, the Complaint again attempted to quiet title to the same property at issue in all of Plaintiff's prior lawsuits. Consequently, the Court dismissed Plaintiff's Complaint for lack of subject matter jurisdiction, res judicata, and the running of the statute of limitations, but directed the Clerk of the Court not to close the case. (Dkt. #43.) Defendants Mark Chatterton and the United States of America subsequently filed their Motion to Enjoin Further Lawsuits, asking the Court to enter a pre-filing order enjoining him from filing further suits against the United States, its agencies, and its agencies' past or present employees arising out the denial of his DLE application to acquire property under the Desert Land Act. Defendants Don Laughlin, Thomas Smitley, and Bruce Woodbury filed separate joinders asking the Court to also enjoin further suits against Clark County, its past and present employees and commissioners, Thomas Smitley, Don Laughlin and his successors in title, BWD Properties 2, LLC, BWD Properties 3, LLC, and BWD Properties 4, LLC.

Based on Plaintiff's history of repeatedly filing frivolous and harassing claims arising from his 1988 DLE application, the Court enjoins Plaintiff from filing further lawsuits as detailed below. Consequently, the Court grants Defendants Mark Chatterton and the United States of America's Motion to Enjoin Further Lawsuits and denies Plaintiff's Motion to Consolidate, or alternatively, for Recusal as frivolous.

INJUNCTION

IT IS HEREBY ORDERED that Bobby L. Franklin may not file any civil action based on his 1988 Desert Land Entry application or the property at issue in that application without first obtaining leave of the Court. In seeking leave of the Court, Bobby L. Franklin must submit a copy of this Order with his proposed complaint, and certify and demonstrate that the claims he wishes to present are new claims never before raised and disposed of by any federal court. Upon failure to certify or upon a false certification, Bobby L. Franklin may be found in contempt of court and punished accordingly.[1]

DISCUSSION

The All Writs Act, 28 U.S.C. § 1651(a), authorizes district courts to enter pre-filing injunctions against vexatious litigants. *Moy v. U.S.*, 906 F.2d 467, 469 (9th Cir. 1990). Pre-filing orders, however, are an extreme remedy and courts should not issue them "with undue haste because such sanctions can tread on a litigant's due process right of access to the courts." *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007). "Nevertheless, flagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." *Id.* (internal quotations omitted).

[1] The wording of the Court's Injunction is based in part on the Ninth Circuit's opinion in *Franklin v. Murphy*, 745 F.2d 1221, 1232 (9th Cir. 1984) (quoting *In re Green*, 669 F.2d 779, 787 (D.C. Cir. 1981)).

In *De Long v. Hennessey*, the Ninth Circuit set forth four guidelines for district courts to follow before entering pre-filing injunctions. 912 F.2d 1144, 1147–48 (9th Cir. 1990). First, the litigant must be afforded notice and an opportunity to oppose the pre-filing order before it is entered. *Id.* at 1147. Second, the court must create an adequate record for appellate review. *Id.* Third, the court must make substantive findings as to the frivolous or harassing nature of the litigant's actions. *Id.* at 1148. Fourth, the court must narrowly tailor the pre-filing order to the litigant's specific vice. *Id.*

I. Notice and the Opportunity to Oppose

"Due process requires notice and an opportunity to be heard." *De Long*, 912 F.2d at 1147 (quoting *In re Powell*, 851 F.2d 427, 431 (D.C. Cir. 1988)). But "an opportunity to be heard does not require an oral or evidentiary hearing on the issue . . . [because] the opportunity to brief the issue fully satisfies due process requirements." *Molski*, 500 F.3d at 1059 (quoting *Pac. Harbor Capital, Inc. v. Carnival Air Lines, Inc.*, 210 F.3d 1112, 1120 (9th Cir. 2000)). Here, Plaintiff has availed himself of the opportunity to oppose Defendants' Motion to Enjoin Further Lawsuits by filing his Opposition (#50). Moreover, the Court finds that Franklin was given adequate notice of Defendants' Motion and thus had sufficient time to prepare his Opposition. It also finds that oral argument is unnecessary because the Parties have adequately briefed the issue of whether the Court should enter a pre-filing order.

II. Adequate Record for Review

"An adequate record for review should include a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed." *De Long*, 912 F.2d at 1147. "At the least, the record needs to show, in some manner, that the litigant's activities were numerous or abusive." *Id.* Here, the record before the Court is detailed in the Background section of this Order. Further, the Court hereby incorporates as part of its record Exhibits 1–17 (Plaintiff's prior complaints and orders dismissing those complaints) submitted to the Court as part of Defendants Mark Chatterton and the United States of America's Motion to Enjoin Further

Lawsuits. (Dkt. #49, Attachments #1–18.) The Court also incorporates Plaintiff's Opposition in which he continues to assert the same failed arguments that have been dismissed time and time again, including in this case.

III. Frivolous or Harassing Nature of the Litigation

Before a district court issues a pre-filing injunction against a pro se litigant, it must make substantive findings concerning the frivolous or harassing nature of the litigant's actions based on the number and the content of the litigant's filings. *De Long*, 912 F.2d at 1148. Here, the Court finds that Plaintiff's claims in *United States v. Franklin*, No. cv-s-96-1089-LDG-LRL (D. Nev. 1996), *Franklin v. Bilbray*, No. cv-s-97-037-PMP (D. Nev. 1997), *Franklin v. United States Dep't of the Interior*, 2:04-cv-0128-RLH-PAL (D. Nev. Feb. 2, 2004), *Franklin v. United States*, No. cv'05 3719 PHX NVW (D. Ariz. 2005), *BWD Props. 2, LLC v. Franklin*, No. 2:06-cv-01499-BES-PAL (D. Nev. Nov. 21, 2006), and *Franklin v. Chatterton*, No. 2:07-cv-1400-RLH-RJJ are "patently without merit," *Moy*, 906 F.2d at 470, because they seek to relitigate the same issues that this Court dismissed in *Franklin v. United States*, No. cv-s-93-01140-PMP-LRL (D. Nev. 1993), which the Ninth Circuit affirmed, 46 F.3d 1140 (9th Cir. 1995), and in which the Supreme Court denied Plaintiff's petition for writ of certiorari, 516 U.S. 829 (1995). Moreover, the Court finds that Plaintiff has also used his filings as a means of harassment. While his initial filing in *Franklin v. United States*, No. cv-s-93-01140-PMP-LRL (D. Nev. 1993), involved only the United States as a defendant, his quixotic crusade has grown to include the BLM, current and former employees of the BLM, a federal judge,[2] state officials, county officials, a justice of the peace, an assistant United States Attorney, police, and a news publisher. The Court, therefore, finds that Plaintiff's filings have become increasingly frivolous and harassing.

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[2] Chief Judge Hunt was a defendant in *Franklin v. United States*, No. cv'05 3719 PHX NVW (D. Ariz. 2005). He is also a target of Plaintiff's current Motion for Consolidation, or alternatively, for Recusal, which the Court finds is both harassing and frivolous.

IV. Narrowly Tailored to Specific Vice

"The fourth and final factor in the *De Long* standard is that the pre-filing order must be narrowly tailored to the vexatious litigant's wrongful behavior." *Molski*, 500 F.3d at 1061. Here, the Court's pre-filing injunction is narrowly tailored to the Plaintiff's wrongful conduct. The Injunction only requires Plaintiff to submit a copy of his complaint and this Order to the Court for screening before he may file another lawsuit arising out of the facts and circumstances of this case. The Court believes that its Order appropriately prevents Plaintiff from harassing Defendants because he will not be permitted to serve them with another frivolous lawsuit, while also preserving Plaintiff's right of access to the courts for any potentially meritorious claim. Moreover, the requirement that he certify that his proposed complaint does not contain claims previously adjudicated prevents further abuse of the Court's limited time and resources.

CONCLUSION

Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that Plaintiff Bobby L. Franklin's Motion to Consolidate, or alternatively, for Recusal (#21) is DENIED.

IT IS FURTHER ORDERED that Defendants Mark Chatterton and the United States of America's Motion to Enjoin Further Lawsuits (#47) is GRANTED.

The Clerk of the Court is directed to close the case.

Dated: April 21, 2008.

Roger L. Hunt

ROGER L. HUNT
Chief United States District Judge

EXHIBIT "B"

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BWD PROPERTIES 2, LLC, a Nevada Limited Liability Company; BWD PROPERTIES 3, LLC, a Nevada Limited Liability Company; and BWD PROPERTIES 4, LLC, a Nevada Limited Liability Company,

Plaintiffs,

v.

BOBBY LEN FRANKLIN, an individual and d.b.a. DAYDREAM LAND & SYSTEMS DEVELOPMENT COMPANY; ROBERT LEE FRANKLIN, an individual; BOBBY DEAN FRANKLIN, an individual,

Defendants.

BOBBY LEN FRANKLIN; BOBBY DEAN FRANKLIN,

Third-Party Plaintiffs,

v.

UNITED STATES,

Third-Party Defendant.

2:06-CV-01499-BES-PAL

ORDER

Presently before the Court is Plaintiff BWD Properties 2, LLC, BWD Properties 3, LLC, and BWD Properties 4, LCC's (collectively "BWD") Renewed Motion for Summary Judgment (#93) filed on March 14, 2008. Defendant Bobby Len Franklin filed his Opposition to Plaintiffs' Renewed Motion for Summary Judgment (#100) on March 27, 2008. BWD filed its Reply in

Support of Plaintiffs' Renewed Motion for Summary Judgment (#102) on April 10, 2008. Franklin filed his Opposition to Plaintiffs' Supplement Reply to its Renewed Motion for Summary Judgment (#104) on May 5, 2008. Also before the Court is Plaintiff Bobby Len Franklin's Motion to Consolidate Cases (#66), filed on October 29, 2007.

I. Background

On August 18, 1988, Bobby Len Franklin filed application N-49548 under the Desert Land Entry Act ("DLE") concerning eighty acres of land located in the Southern one-half of the Southeast quarter of Section 16, Township 32 South, Range 66 East, Mount Diablo Meridian, Clark County, Nevada (the "N-49548 Property"). (Mot. Summ. J. (#93) Ex. 1.) In October 1988, the Bureau of Land Management ("BLM") denied Bobby Len Franklin's application because the property was appropriated by mining claims and thus unsuitable for disposition under the DLE. Id. Bobby Len Franklin appealed the decision to the Interior Board of Land Appeals ("IBLA"), which reversed and remanded to BLM for further findings because the record did not contain evidence to support the conclusion that the land was mineral in character. Id. On remand, BLM denied the application. Id. at Ex. 2. BLM advised Bobby Len Franklin of his right to appeal the decision to the IBLA, and of the requirement that the appeal be filed within thirty days of receipt of the decision. Id. Bobby Len Franklin did not appeal the decision, however. Instead, he filed an action against the United States in federal court. Id. at Ex. 4. The action was dismissed for failure to exhaust administrative remedies. Id. at Ex. 5. The district court's decision was affirmed by the Ninth Circuit Court of Appeals ("Ninth Circuit"). See Franklin v. United States, 46 F.3d 1140 (9th Cir. 1995) (unpublished).

On November 21, 1989, Bobby Dean Franklin filed application N-52292 under the DLE concerning eighty acres of land located in the Northern one-half of the Southeast quarter of Section 16, Township 32 South, Range 66 East, Mount Diablo Meridian, Clark County, Nevada (the "N-52292 Property"). Id. Ex. 6. BLM denied the application in 1993 because the lands for which the application was filed were mineral in character. Id. at Ex. 7. Bobby Dean Franklin was advised of his right to appeal the decision and that his notice of appeal must be filed within thirty days of receipt of the decision. Id. Bobby Dean Franklin did not appeal.

Instead, he filed an action against the United States in federal court. Id. at Ex. 8. The action was dismissed by the court for failure to exhaust administrative remedies. Id. at Ex. 6. The court's order was affirmed by the Ninth Circuit. See Franklin v. United States, 46 F.3d 1141 (1995).

In 2006, the United States granted to D.J. Laughlin title to three parcels located in Clark County, Nevada ("the property"). The property included the acreage upon which the Franklins had submitted their DLE applications. The three parcels were granted by way land patents, including patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069. Id. at Ex. 9; (Laughlin Aff. (#94) ¶ 4.) Patent 27-2006-0071 relates to real property described as the East one-half of the Southeast quarter of the Southeast quarter of Section 16, township 32 South, Range 66 East, Mount Diablo Meridian, Nevada ("parcel two"). (Mot. Summ. J. Ex. 9). Patent 27-2006-0070 relates to land described as the West one-half of the Southeast quarter of the Southeast quarter of Section 16, Township 32 South, Range 66 East, Mount Diablo Meridian, Nevada ("parcel three"). Id. Ex. 11. Patent 27-2006-0069 relates to property described as the Southwest quarter of the Southeast quarter of Section 16, Township 32 South, Range 66 East, Mount Diablo, Meridian, Nevada ("parcel four"). Id. Ex. 13. Laughlin then transferred his interest in all three parcels to BWD. Id. at Exs. 10, 12, 14. Since 1999, the defendants have recorded the following documents against the property with the office of the Clark County Recorder:

1. Notice of Lis Pendens, recorded October 6, 1999. Id. at Ex. 15.
2. Notice of Statutory Lien, recorded October 12, 1999. Id. at Ex. 16.
3. Notice of Lien, recorded October 12, 1999. Id. at Ex. 17.
4. Joint Notice of Artisans Lien, recorded October 18, 1999. Id. at Ex. 18.
5. Agreement to Sell Real Estate, recorded September 23, 2002. Id. at Ex. 19.
6. Agreement to Sell Real Estate, recorded October 11, 2002. Id. at Ex. 20.
7. Notice of Abeyance, recorded May 4, 2005. Id. at Ex. 21.
8. Notice of Joint Trespass, recorded April 13, 2006. Id. at Ex. 22.

In 1996, the United States filed a complaint against Bobby Len Franklin asserting a

trespass claim. Id. at Ex. 23. Bobby Len Franklin counterclaimed, arguing that he was in lawful possession of the property pursuant to his DLE application. Id. Bobby Len Franklin's counterclaim was dismissed for failure to exhaust administrative remedies. Id. The court also granted the United States's motion for summary judgment, and permanently enjoined Bobby Len Franklin from occupying the site or further trespassing any other land owned by the United States. Id.

BWD initiated the instant action on November 21, 2006, seeking an order quieting title in its favor. (Compl. (#1) ¶¶ 31-37.) BWD also seeks an permanent injunction enjoining the defendants from asserting, claiming, or setting up any right, title or interest in the property, attorney's fees and costs, and declaratory relief. Id. ¶¶ 38-58. On December 14, 2006, Bobby Len Franklin and Bobby Dean Franklin filed their answer and counterclaim, requesting the Court quiet title in their favor. (Bobby Len Franklin and Bobby Dean Franklin Ans. (#11).) The same day, Bobby Len Franklin and Bobby Dean Franklin filed third-party complaint against the United States. (Third-Party Compl. (#14).) On December 26, 2006, Robert Lee Franklin filed his answer and counterclaim asserting ownership in a portion of the property. (Robert Lee Franklin Ans. (#16).) On February 2, 2007, Donna Sue Owens filed her answer and counterclaim also asserting ownership in a portion of the property. (Donna Sue Owens Ans. (#26).) On September 28, 2007, the Court dismissed Bobby Len Franklin and Bobby Dean Franklin's third-party complaint for lack of subject matter jurisdiction. (Order (#62).) The Court based its decision on Bobby Len Franklin and Bobby Dean Franklin's failure to appeal the denials of their DLE applications. Id. at 4. On February 8, 2008, the Court denied Bobby Len Franklin's motion for reconsideration. (Order (#83).) BWD now seeks an order granting summary judgment in its favor, as well as a declaratory judgment and permanent injunction. (Mot. Summ. J. (#93) 10-11.) The only party to oppose the motion is Bobby Len Franklin.[1]

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[1]On March 9, 2007, the United States filed a suggestion of death in which it states that Bobby Dean Franklin died during the course of the instant litigation. (Suggestion of Death (#43) 1-2.) On November 5, 2007, the Court entered an order allowing the substitute of Shirley Eckles as Special Administratrix for purposes of this suit. (Order (#69) 5.) On March 26, 2008, the Court granted Donna Sue Owens's motion to substitute Bobby Len Franklin in her place because she quitclaimed her interest in a portion of the property at issue to Bobby Len Franklin. (Order) (#97) 1-2.) Thus, Bobby Len

II. Legal Standard

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The burden of demonstrating the absence of a genuine issue of material fact lies with the moving party, and for this purpose, the material lodged by the moving party must be viewed in the light most favorable to the nonmoving party. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Martinez v. City of Los Angeles, 141 F.3d 1373, 1378 (9th Cir. 1998). A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the differing versions of the truth. Lynn v. Sheet Metal Workers Int'l Ass'n, 804 F.2d 1472, 1483 (9th Cir. 1986); S.E.C. v. Seaboard Corp., 677 F.2d 1301, 1306 (9th Cir. 1982).

If the moving party presents evidence that would call for judgment as a matter of law at trial if left uncontroverted, then the respondent must show by specific facts the existence of a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). "[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Id. at 243-50 (citations omitted). "A mere scintilla of evidence will not do, for a jury is permitted to draw only those inferences of which the evidence is reasonably susceptible; it may not resort to speculation." British Airways Board v. Boeing Co., 585 F.2d 946, 952 (9th Cir. 1978); see also Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 596 (1993) ("[I]n the event the trial court concludes that the scintilla of evidence presented supporting a position is insufficient to allow a reasonable juror to conclude that the position more likely than not is true, the court remains free . . . to grant summary judgment."). Moreover, "[i]f the factual context makes the non-

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Franklin's opposition can be construed as opposing the motion on behalf of himself, as well as the interests originally asserted by Donna Sue Owens. Because the issues presented in the opposition are common to the claims of Bobby Dean Franklin's estate and Robert L. Franklin, however, the Court will consider the opposition as filed on their behalf as well.

moving party's claim of a disputed fact implausible, then that party must come forward with more persuasive evidence than otherwise would be necessary to show there is a genuine issue for trial." Blue Ridge Ins. Co. v. Stanewich, 142 F.3d 1145, 1143 (9th Cir. 1998) (citing Cal. Architectural Bldg. Products, Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir. 1987)). Conclusory allegations that are unsupported by factual data cannot defeat a motion for summary judgment. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

III. Discussion

In this action, BWD seeks to quiet title to the property identified in the patents issued to it by the United States. In a quiet title action under Nevada law, "the burden of proof rests with the plaintiff to prove good title in himself." Breliant v. Preferred Equities Corp., 112 Nev. 663, 669, 918 P.2d 314, 318 (1996) (citations omitted). It is undisputed that BWD received patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069 from Laughlin, who received them from the United States at auction. (Opp'n (#100) 2-3.) That notwithstanding, the defendants contend that both Bobby Len Franklin and Bobby Dean Franklin properly obtained an interest in the land upon which they originally filed their DLE applications, and therefore to the extent that land falls within the boundaries of what the United States patented to Laughlin, the Court should quiet title in their favor. (Opp'n (#100) 2.)

"When the regulations governing an administrative decision-making body require that a party exhaust its administrative remedies prior to seeking judicial review, the party must do so before the administrative decision may be considered final and the district court may properly assume jurisdiction." Doria Mining and Eng'g Corp. v. Morton, 608 F.2d 1255, 1257 (9th Cir. 1979), cert. Denied, 455 U.S. 962 (1980). Under Department of Interior regulations, a potential plaintiff must exhaust administrative remedies before any administrative decision is subject to judicial review. 43 C.F.R. § 4.21(c). The disposition of public lands is subject to review by the IBLA. 43 C.F.R. § 4.1(b)(3)(i). Therefore, exhaustion of administrative remedies only occurs upon disposition of such an appeal by the IBLA. Id. § 4.21(c). The Franklins' DLE applications of 1988 and 1989 were denied by BLM. (Mot. Summ. J. Exs. 2, 7.) The Franklins, though, did not appeal the decisions to the IBLA. Instead, they immediately filed

suit in federal court. Id. at Exs. 4, 8. As a result, the Franklins failed to exhaust their administrative remedies. Because the Franklins failed to exhaust their administrative remedies as to their original DLE applications, any claim to an interest in the property asserted on the basis of the Franklins' alleged ownership of parcels described in those applications must fail. Therefore, the defendants have no right, title or interest in the property.

Because the defendants have no right, title or interest in the property, the documents recorded with the Clark County Recorder's office constitute a cloud on title. The Court, therefore, declares those documents to be null and void and hereby orders them expunged from the record. Furthermore, the Court finds that BWD is entitled to a permanent injunction preventing the defendants from further clouding title. "To obtain permanent injunctive relief, a plaintiff must show '(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for the injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.'" Geertson Seed Farms v. Johanns, No. 07-16458, Slip Op. 12009, 12023 (9th Cir. Sept. 2, 2008) (citations omitted).

Here, BWD has suffered irreparable injury insofar as the defendants have continually clouded the title of the property with unfounded recordings. Moreover, the possibility of future unfounded recordings could make it difficult for BWD to obtain title insurance or convey clean title. The remedies available at law are not sufficient because they will not compensate BWD for the ramifications of improper recordings–e.g., the difficulties associated with potentially conveying such property to a third party. The balance of hardships favors BWD because an injunction prohibiting future recordings will work no harm on the defendants, who have no rights in the property. The public will not be disserved. Rather, preserving the integrity of the title of the property is in the benefit of the public. Therefore, the defendants are enjoined from further clouding BWD's title by filing recordings related to their purported interest in the property. BWD's request for attorney's fees is denied.

IV. Conclusion

In accordance with the foregoing, the Court orders as follows:

IT IS ORDERED that BWD's Motion for Summary Judgment (#93) is GRANTED.

IT IS DECLARED that Defendants, and anyone claiming under or through them, have no right, title or interest in or to the property described in patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069 on the basis of DLE applications N-49548 and N-52292.

IT IS FURTHER DECLARED that Plaintiffs are the 100% fee simple owners of the property described in patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069.

IT IS FURTHER DECLARED that all instruments, documents, and claims recorded by or on behalf of Defendants against the property in the office of the Clark County Recorder are null and void.

IT IS FURTHER ORDERED that the documents recorded in the Clark County Recorder's Office against the property, described here as Notice of Lis Pendens (recorded October 6, 1999), Notice of Statutory Lien (recorded October 12, 1999), Notice of Lien (recorded October 12, 1999), Joint Notice of Artisans Lien (recorded October 18, 1999), Agreement to Sell Real Estate (recorded September 23, 2002), Agreement to Sell Real Estate (recorded October 11, 2002), Notice of Abeyance (recorded May 4, 2005), and Notice of Joint Trespass (recorded April 13, 2006) are ordered expunged from the record of all such instruments or documents filed in the office of the Clark County Recorder.

IT IS FURTHER ORDERED that Defendants, and anyone claiming under or through them, are permanently enjoined from asserting, claiming, or setting up any right, title, or interest in or to the property described in patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069 under the DLE, applications N-49548 and N-52292, or on any other ground or basis.

IT IS FURTHER ORDERED that Defendants, and anyone claiming under or through them, are enjoined from filing any instruments, documents, and claims in the office of the Clark

County Recorder that would slander, interfere with, compromise, or cloud Plaintiffs' title to the property.

THE CLERK is ORDERED to enter judgment in favor of Plaintiffs and against Defendants on Plaintiffs' claims.

THE CLERK is further ORDERED to enter judgment in favor of Plaintiffs and against Defendants on Defendants' counterclaims.

IT IS FURTHER ORDERED that Plaintiff Bobby Len Franklin's Motion to Consolidate Cases (#66) is DENIED as moot.

THE CLERK is ORDERED to CLOSE THE CASE.

DATED: This 29th day of September, 2008.

UNITED STATES DISTRICT JUDGE

EXHIBIT "C"

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BWD PROPERTIES 2, LLC; et al., Plaintiffs-counter-defendants - Appellees, v. BOBBY LEN FRANKLIN, DBA Daydream Land & Systems Development Company; et al., Defendants-counter-claimants - Appellants, v. SHIRLEY ECKLES, Special Administratrix of the Estate of Bobby Dean Franklin; et al., Third-party-defendant - Appellees.	No. 08-17643 D.C. No. 2:06-cv-01499-BES-PAL MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

NW/Research

Brian E. Sandoval, District Judge, Presiding

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Bobby Len Franklin and Robert Lee Franklin appeal pro se from the district court's judgment dismissing their third-party complaint against the United States, granting summary judgment in favor of BWD Properties 2, 3, and 4 ("BWD"), and permanently enjoining the Franklins from clouding title to certain lands in Nevada. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The district court properly dismissed the third-party claims against the United States because the Franklins failed to exhaust the required administrative procedures and the district court therefore lacked subject matter jurisdiction. *See Doria Mining and Eng'g Corp. v. Morton*, 608 F.2d 1255, 1257 (9th Cir. 1979) ("When the regulations governing an administrative decision-making body require that a party exhaust its administrative remedies prior to seeking judicial review, the party must do so before the administrative decision may be considered final and the district court may properly assume jurisdiction."); *United States v. Alisal Water Corp.*, 431 F.3d 643, 650 (9th Cir. 2005) (stating de novo standard of review). We

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

previously rejected the Franklins' contentions regarding the Confirmation Statute, 43 U.S.C. § 1165, and *Stockley v. United States*, 260 U.S. 532 (1923), and they remain unavailing. *See Franklin v. United States*, 46 F.3d 1140 (9th Cir. Jan. 10, 1995) (unpublished mem.); *Franklin v. United States*, 46 F.3d 1141 (9th Cir. Jan. 10, 1995) (unpublished mem.).

The district court did not abuse its discretion by denying the Franklins' motion to reconsider. *See Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (stating standard of review and grounds for relief). To the extent the Franklins sought to bring a claim under the Quiet Title Act, it was time-barred because they knew of the interest of the United States in 1993 or earlier, but commenced the action more than twelve years later. *See* 28 U.S.C. § 2409a(g) ("Any civil action under this section . . . shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff . . . knew or should have known of the claim of the United States.").

The district court properly granted summary judgment on the claims made by BWD because BWD offered undisputed evidence that they owned the properties over which they sought to quiet title, and the Franklins failed to raise a triable issue of their own cognizable interest in these properties. *See Breliant v.*

Preferred Equities Corp., 918 P.2d 314, 318 (Nev. 1996) (per curiam) (stating burden of proof under Nevada law); *Alisal Water*, 431 F.3d at 651 (stating de novo standard of review for summary judgment).

The district court correctly determined that the various documents recorded by the Franklins were a cloud on the title of BWD's property and ordered the documents expunged, and did not abuse its discretion when it granted a permanent injunction against the Franklins. *See N. Cheyenne Tribe v. Norton*, 503 F.3d 836, 843 (9th Cir. 2007) (stating standard of review and listing factors to be considered for injunctive relief).

The Franklins' remaining contentions, including those regarding the denial of their motion to present supposedly new evidence, their proposed joint pre-trial order, and the substitution of Shirley Eckles, are unpersuasive.

AFFIRMED.

EXHIBIT "D"

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

BOBBY L. FRANKLIN,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO.
v.	§	
	§	SA-10-CV-1027 XR
D.J. LAUGHLIN, d/b/a BWD Properties 2, LLC, a Nevada Limited Liability Company, d/b/a BWD Properties 3, LLC, a Nevada Limited Liability Company, d/b/a BWD Properties 4, LLC, a Nevada Limited Liability Company; and UNITED STATES,	§	
	§	
Defendants.	§	

REPORT AND RECOMMENDATION

TO: Honorable Xavier Rodriguez
United States District Judge

This report and recommendation recommends dismissing this case. Previously, the district judge referred to me plaintiff Bobby L. Franklin's motion to proceed in forma pauperis (IFP).[1] In considering the motion, I observed that this case is appropriately dismissed under 28 U.S.C. § 1915(e). Section 1915(e) directs the court to dismiss an IFP proceeding at any time if the court determines that the action is frivolous or malicious, or fails to state a claim on which relief may be granted.[2] Similarly, the "district court may dismiss an action on its own motion

[1] Docket entry # 1.

[2] 28 U.S.C. § 1915(e). *See Newsome v. E.E.O.C.*, 301 F.3d 227, 232 (5th Cir. 2002) (affirming dismissal of pro se plaintiff's Title VII claim under section 1915(e)); *Gant v. Lockheed Martin Corp.*, 152 Fed. App'x 396, 397 (5th Cir. 2005) (affirming dismissal of non-prisoner's claim under section 1915(e)). *But see Allen v. Fuselier*, No. 01-30484, 2001 WL 1013189, at *1 (5th Cir. 2001) (determining that section 1915(e)(2)(B)(I) & (ii) do not apply to an INS detainee because he is not a prisoner under the Prison Litigation Reform Act and then affirming the

under Rule 12(b)(6) [of the Federal Rules of Civil Procedure] 'as long as the procedure employed is fair.'"[3] Analyzing the merits of a plaintiff's claim in a report and recommendation and giving the plaintiff an opportunity to object to the recommendation is a fair process for dismissing a case.

Franklin seeks to sue defendants D.J. Laughlin, d/b/a BWD Properties 2 LLC, BWD Properties 3 LLC, BWD Properties 4 LLC, and the United States. In considering Franklin's motion, I observed that in District of Nevada Cause No. 07-CA-1400, Chief United States District Judge Roger L. Hunt enjoined Franklin from filing a civil action based on Franklin's 1988 Desert Land Entry (DLE) application or the property at issue in that application without first obtaining leave of court. Chief Judge Hunt instructed Franklin to submit a copy of the injunction order with any proposed future complaint, and certify and demonstrate that the claims he wishes to present are new claims never before raised and disposed of by any federal court.[4] Chief Judge Hunt warned Franklin that he may be found in contempt of court if he failed to certify, or falsely certified, to the same. Because these instructions are clear about what is required to pursue a future claim, Franklin's motion presents the following question: Does Franklin seek to pursue a claim based on his 1988 DLE application or the property at issue in that application? Franklin's proposed complaint answers the question—the answer is "yes."

In the proposed complaint, Franklin asserted that this court has jurisdiction over the

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dismissal of the detainee's claim under Federal Rule of Civil Procedure 12(b)(6)).

[3] *Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998). *See Carroll v. Fort James Corp.*, 470 F.3d 1171, 1177 (5th Cir. 2006) (explaining that the "district court may dismiss a complaint on its own for failure to state a claim" so long as a fair procedure is employed).

[4] *See* attached pre-filing injunction order in Cause No. 07-CV-1400 (D. Nev.).

United States as a defendant "to independently review and relieve the false court *proceedings* that ended on November 29, 2010." Franklin identified that date—November 29, 2010—as the day the Supreme Court of the United States "denied reconsideration of its order denying Franklin leave to proceed in forma pauperis, which ended the *proceedings* under F.R.C.P. 60(b)." Franklin's motion to proceed IFP was part of his effort to challenge an order in which Chief Judge Hunt dismissed Franklin's claims about his 1988 DLE application for lack of subject matter jurisdiction because Franklin failed to exhaust his administrative remedies.[5] Franklin's reference to "F.R.C.P. 60(b)" refers to Rule 60 of the Federal Rules of Civil Procedure. Rule 60 permits the district court to "relieve a party or its legal representative from a final judgment, order, or proceeding" for specified reasons. Franklin's proposed complaint in this case shows he seeks relief from Chief Judge Hunt's dismissal order.

In the proposed complaint, Franklin alleged that he purchased 80 acres of public land from the Department of the Interior in 1988 under the Desert Land Act. Under that statute,[6] "individuals may apply for a desert-land entry to reclaim, irrigate, and cultivate arid and semiarid public lands."[7] If an applicant meets the statute's final proof requirements, the Bureau of Land Management will issue a patent giving the applicant legal title to the land. Franklin complained in his proposed complaint that his patent application was denied. He complained further that

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[5] *See* attached dismissal order in Cause No. 07-CV-1400 (D. Nev.).

[6] 43 U.S.C. §§ 323-339.

[7] "On March 3, 1877, the Desert Land Act was passed . . . to encourage and promote the economic development of the arid and semiarid public lands of the Western United States. Through the Act, individuals may apply for a desert-land entry to reclaim, irrigate, and cultivate arid and semiarid public lands." U.S. Dep't of Interior, Bureau of Land Mgmt., *available at* http://www.blm.gov/wo/st/en/prog/more/lands/desert_land_entries.html.

named defendants BWD corporations sought to quiet title on the land in the Nevada district court. He alleged that the Nevada district court falsely stated that he failed to exhaust his administrative remedies in administrative case nos. IBLA 96-111 and 96-163, and granted summary judgment in favor of BWD. Franklin alleged that the Nevada district court "wrongfully transferred Franklin's eighty acres of real property onto BWD, by falsely stating Franklin did not exhaust his administrative remedies. . . ." As relief, Franklin would ask the district court to "review the evidence to be re-filed, and relieve [Franklin] from all Court proceedings that falsely state Franklin failed to exhaust administrative remedies." These allegations show that Franklin seeks to pursue a claim based on his 1988 DLE application or the property at issue in that application, because he complains about 80 acres purchased under the Desert Land Act and the disposition of his application for a land patent. In addition, the proposed complaint shows that Franklin seeks to challenge Chief Judge Hunt's dismissal order, because the complaint refers to the order and complains about 80 acres of land purchased under the Desert Land Act. Because he seeks to pursue a claim based on his 1988 DLE application and/or the property at issue in that application, Franklin's case is foreclosed.

Chief Judge Hunt's dismissal order traced Franklin's protracted litigation history challenging the denial of his 1988 DLE application. In his complaint in that case,[8] Franklin characterized defendants named in this case—Don Laughlin and BWD Properties—as co-conspirators to joint trespass on the land. Franklin stated that he had sought to resolve the dispute by seeking relief from the proper administrative officials in case nos. IBLA 96-111 and 96-163. About that effort, Chief Judge Hunt explained the following:

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[8]*See* attached complaint in Cause No. 07-CV-1400 (D. Nev.).

> In this, Plaintiff's seventh lawsuit regarding the denial of his 1988 DLE application, Plaintiff again asserts no basis on which to grant relief. This Court and others have found that Plaintiff's failure to exhaust his administrative remedies deprives them of subject matter jurisdiction to hear his claim. Additionally, this Court and others have found that even it had jurisdiction, Plaintiff's claim would nevertheless be barred by both the statute of limitations and the doctrine of res judicata. The Court need not explain, yet again, the justifications for its findings. . . . Accordingly, the case is dismissed with prejudice.

Like the Nevada district court, this court need not explain why Franklin may not pursue a claim based on Franklin's 1988 DLE application or the property at issue in that application. The Nevada courts have provided Franklin with sufficient explanation. Rather than accept the explanation, Franklin seeks to use Rule 60(b) to avoid the result in Nevada district court. The Fifth Circuit has explained that "[t]ypically, relief under Rule 60(b) is sought in the court that rendered the judgment at issue."[9] Moreover, the Fifth Circuit explained that, "Traditional rules of preclusion as adopted in federal case law—whether under the doctrine of collateral estoppel or res judicata—require that the party to be estopped from re-litigating a claim have had a full and fair opportunity to litigate the issue."[10]

Chief Judge Hunt's injunction order is clear. Franklin may not file another civil action based on his 1988 DLE application or the property at issue in that application without first obtaining leave of court. To obtain leave of court, Franklin must submit a copy of Chief Judge Hunt's injunction order with any proposed future complaint and certify and demonstrate that the claims he wishes to present are new claims never before raised and disposed of by any federal court. Although Franklin's proposed complaint in this case shows that he seeks to file a civil

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[9] *Harper Macleod Solicitors v. Keaty & Keaty*, 260 F.3d 389, 394 (5th Cir. 2001).

[10] *Harper Macleod Solicitors*, 260 F.3d at 395.

action based on his 1988 DLE application and/or the property at issue in that application, Franklin did not submit a copy of the injunction order or certify and demonstrate that the claims he wishes to present are new claims never before raised and disposed of by any federal court. Moreover, the Ninth Circuit addressed the issues presented in Franklin's proposed complaint in Franklin's appeal of Chief Judge Hunt's dismissal order. The Ninth Circuit affirmed the dismissal of Franklin's claims, as well as the pre-filing injunction.[11]

Based on the foregoing, a Rule 11 warning is appropriate. Rule 11 requires a party to certify that his claims are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.[12] Franklin knows his claims are frivolous because Chief Judge Hunt has repeatedly explained why the court lacks jurisdiction over Franklin's claim about the 1988 DLE application and the property at issue in that application.[13] Franklin violated Rule 11's requirement in this case by pursuing claims already presented in the Nevada district court and by pursuing claims for which a federal court lacks jurisdiction. This effort is not a new strategy for Franklin. While living in Arizona, Franklin sought to avoid Chief Judge Hunt's decision by relying on Rule 60(b) and asking the District of Arizona for a writ of mandamus.[13] The District of Arizona dismissed Franklin's complaint with prejudice. Franklin now resides in Texas. He should not be permitted to continue his challenges

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[11] *See* attached Ninth Circuit opinion.

[12] Fed. R. Civ. P. 11(b)(2).

[12] *See also* attached dismissal order in Cause No. CV-S-04-0128-RLH & summary judgment order in Cause No. 06-CV-1499-BSE-PAL.

[13] *See* attached orders in Cause No. CV-05-3719-PHX-NVW (D. Ariz.).

in Texas. Rule 11 permits the court to sanction a party who violates Rule 11.[14] Because Franklin may be unaware of the consequences of frivolous claims, I recommend warning him about Rule 11's requirements and the consequences of non-compliance.

Recommendation. Because Franklin seeks to pursue a claim based on his 1988 DLE application and/or the property at issue in that application, and because Franklin did not comply with Chief Judge Hunt's instructions—because he failed to submit a copy of the injunction order, and failed to certify and demonstrate that the claims he wishes to present are new claims never before raised and disposed of by any federal court—I recommend DENYING the motion for IFP status (docket entry #s 1 & 3) and DISMISSING this claim with prejudice. I also recommend dismissing this case because traditional rules of preclusion estop a litigant from re-litigating a claim for which he has had a full and fair opportunity to litigate. Finally, I recommend warning Franklin under Rule 11 about the possibility of sanctions for filing frivolous pleadings in Texas federal courts. To the extent Franklin may complain about a lack of notice that the court is considering dismissing this case, Franklin should consider this report and recommendation as notice. Dismissing this case will moot Franklin's motion for leave to file papers electronically (docket entry # 4).

Instructions for Service and Notice of Right to Object/Appeal. The United States District Clerk shall serve a copy of this report and recommendation on all parties by either (1) electronic transmittal to all parties represented by attorneys registered as a "filing user" with the clerk of court, or (2) by mailing a copy to those not registered by certified mail, return receipt

[14] Fed. R. Civ. P. 11(c) ("If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any . . . party that violated the rule or is responsible for the violation.").

requested. Written objections to this report and recommendation must be filed within 14 days after being served with a copy of same, unless this time period is modified by the district court.[15] Such party shall file the objections with the clerk of the court, and serve the objections on all other parties and the magistrate judge. A party filing objections must specifically identify those findings, conclusions or recommendations to which objections are being made and the basis for such objections; the district court need not consider frivolous, conclusive or general objections. A party's failure to file written objections to the proposed findings, conclusions and recommendations contained in this report shall bar the party from a *de novo* determination by the district court.[16] Additionally, failure to file timely written objections to the proposed findings, conclusions and recommendations contained in this memorandum and recommendation shall bar the aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court.[17]

SIGNED on January 13, 2011.

Nancy Stein Nowak

NANCY STEIN NOWAK
UNITED STATES MAGISTRATE JUDGE

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[15] 28 U.S.C. §636(b)(1); Fed. R. Civ. P. 72(b).

[16] *Thomas v. Arn*, 474 U.S. 140, 149-152 (1985); *Acuña v. Brown & Root*, 200 F.3d 335, 340 (5th Cir. 2000).

[17] *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

BOBBY L. FRANKLIN,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. SA-10-CV-1027-XR
	§	
B.J. LAUGHLIN, d/b/a BWD PROPERTIES 2, LLC, D/B/A/ BWD PROPERTIES 3, LLC, D/B/A BWD PROPERTIES 4, LLC; AND UNITED STATES	§	

Defendants.

ORDER ACCEPTING UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

On this date the Court considered the United States Magistrate Judge's Report and Recommendation (Docket Entry No. 5) and Plaintiff's objections thereto (Docket Entry No. 9). After careful consideration, the Court will accept the recommendation and dismiss this case.

Background

Franklin filed a motion to proceed in forma pauperis (IFP) on Dec. 20, 2010.[1] Upon Magistrate Judge Nowak's order, he filed an amended motion on Jan. 4, 2011,[2] and he also filed a motion for leave to file electronically at that time.[3] Franklin's proposed complaint seeks to sue defendants based on the denial of his land patent applications for land purchased from the

[1] Mot. to Proceed IFP, Dec. 20, 2010 (Docket Entry No. 1).

[2] Am. Mot. to Proceed IFP, Jan. 4, 2011 (Docket Entry No. 3).

[3] Ex Parte Mot. for Leave to File Electronically, Jan. 4, 2011 (Docket Entry No. 4).

Department of the Interior in 1988 under the Desert Land Act. He also asserts that in 2008, a Nevada district court order falsely stated that he failed to exhaust administrative remedies.[4] He alleges that the order "wrongfully transferred Franklin's eighty acres of real property onto BWD, by falsely stating Franklin did not exhaust his administrative remedies..." and requests that this Court "review the evidence to be re-filed, and relieve [Franklin] from all Court proceedings that falsely state Franklin failed to exhaust administrative remedies." Franklin appears to rely on FED. R. CIV. P. 60(b) to bring this challenge.[5]

On April 21, 2008, Chief Judge Hunt of the District of Nevada issued an injunction requiring Franklin to present any future complaints, along with a copy of the injunction order, to Chief Judge Hunt for screening before he may file any other lawsuit based on his 1988 Desert Land Entry application or the property at issue in that application.[6] Franklin did not file such a petition for leave with Chief Judge Hunt before filing this lawsuit in this Court.

Judge Nowak issued her Report and Recommendation on January 13, 2011, recommending that Franklin's IFP motion be denied, that his claim and this case be dismissed, and that this Court warn Franklin under Rule 11 of the potential sanctions for filing frivolous pleadings in federal courts.[7] Her report concludes that Franklin's claim is foreclosed because it arises from his 1988 DLE

[4]See Franklin v. Chatterton, et al., Order, Case No. 2:07-CV-01400-RLH-RJJ (D. Nev. Feb. 12, 2008).

[5]Rule 60(b) permits a district court to "relieve a party or its legal representative from a final judgment, order, or proceeding" for certain specified reasons. FED. R. CIV. P. 60(b).

[6]Franklin v. Chatterton, et al., Order and Injunction Case no. 2:07-CV-01400-RLR-RJJ (D. Nev. Apr. 21, 2008).

[7]Report and Recommendation, Jan. 13, 2011 (Docket Entry No. 5).

application and/or the property at issue in that application, and thus falls within Chief Judge Hunt's injunction. Franklin filed objections to Judge Nowak's report on January 25, 2011, within the 14 day deadline.[1] *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).

Legal Standard

When no party has objected to the Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review of it. *See* 28 U.S.C. §636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made"). In such cases, the Court need only review the Report and Recommendation and determine whether it is either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). On the other hand, any Report or Recommendation that is objected to requires de novo review. Such a review means that the Court will examine the entire record and will make an independent assessment of the law. The Court need not, however, conduct a de novo review when the objections are frivolous, conclusive, or general in nature. *Battle v. United States Parole Commission*, 834 F.2d 419, 421 (5th Cir. 1987). In this case, Plaintiff objected to the Magistrate Judge's recommendation, so the Court will conduct a de novo review.

Analysis

Plaintiff's sole objection is that each of the cases on his prior claims "falsely state[s] that Franklin did not exhaust (his land patent) administrative remedies, and *each case* mistakenly omits any discussion, review or disposition on Franklin's land patent rights that were exhausted in the final

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[1] Pl.'s Objections to Magistrate's Report and Recommendation, Jan. 25, 2011 (Docket Entry No. 9).

IBLA 96-111, 96-163 administrative proceedings and order."[9] This assertion merely restates his claim for relief. It does not excuse Franklin from Chief Judge Hunt's injunction.

Neither does Franklin's attempt to bring a claim based on Rule 60(b) to challenge the prior dismissal of his claims excuse him from the injunction. As Judge Nowak noted, such challenges are typically brought in the court that rendered the judgment at issue.[10] Furthermore, Franklin has had full and fair opportunity to litigate this issue in numerous prior cases.[11] As Chief Judge Hunt's order concluded:

> In this, Plaintiff's seventh lawsuit regarding the denial of his 1988 DLB application, Plaintiff again asserts no basis on which to grant relief. This Court and others have found that Plaintiff's failure to exhaust his administrative remedies deprives them of the subject matter jurisdiction to hear this claim. Additionally, this Court and others have found that even if it had jurisdiction, Plaintiff's claim would nevertheless be barred by both the statute of limitations and the doctrine of res judicata.

Finally, the Ninth Circuit has considered the arguments Franklin seeks to raise in this case, and affirmed the dismissal of his claims as well as the pre-filing injunction.[12]

Despite raising claims based on his 1988 DLB application and/or the property at issue in that application, Franklin did not submit to Chief Judge Hunt a copy of the injunction order and proof that his claims are new claims that have never been raised or disposed of before by any federal court. Accordingly, this lawsuit is barred by the injunction.

Furthermore, Franklin has violated FED. R. CIV. P. 11 by pursuing claims that he knows or

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[9] Pl.'s Objections at 1.

[10] *See Harper Macleod Solicitors v. Keaty & Keaty*, 260 F.3d 389, 394 (5th Cir. 2001).

[11] *See id.* at 395.

[12] Franklin v. Chatterton, et al., Case No. 08-16439 (9th Cir. Dec. 16, 2009).

should know to be frivolous, due to repeated explanations by Chief Judge Hunt that the court lacks jurisdiction over these claims. Franklin did not respond or object to Judge Nowak's conclusion that he has violated Rule 11. The Court warns Franklin that the Court may sanction him if he again violates Rule 11 by filing frivolous claims before this Court.[13] Such sanctions may include withdrawing his ability to appear before this Court, or monetary penalties, among others, as necessary to deter repetition of the conduct violating Rule 11.[14]

Conclusion

For the reasons discussed herein, the Court ACCEPTS the Magistrate Judge's recommendation, DENIES Franklin's motion to proceed IFP, DISMISSES this claim with prejudice, and formally warns Franklin that he may be subject to Rule 11 sanctions if he continues to raise frivolous claims before this Court.

It is so ORDERED.

SIGNED this 15th day of February, 2011.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

[13] FED. R. CIV. P. 11(c).

[14] *See id.*

EXHIBIT "E"

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 11-50207
Summary Calendar

D.C. Docket No. 5:10-CV-1027

BOBBY L. FRANKLIN,

Plaintiff - Appellant

v.

D. J. LAUGHLIN, doing business as BWD Properties 2, L.L.C., a Nevada Limited Liability Company, doing business as BWD Properties 3, L.L.C., a Nevada Limited Liability Company, doing business as BWD Properties 4, L.L.C., a Nevada Limited Liability Company; UNITED STATES OF AMERICA,

Defendants - Appellees

Appeal from the United States District Court for the Western District of Texas, San Antonio

Before HIGGINBOTHAM, DAVIS, and ELROD, Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the appeal is dismissed as frivolous.

ISSUED AS MANDATE: 1 1 NOV 2011

A True Copy
Attest
Clerk, U.S. Court of Appeals, Fifth Circuit
By: _____ Deputy
New Orleans, Louisiana 1 1 NOV 2011

A

EXHIBIT "F"

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

March 19, 2012

Clerk
United States Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130

Re: Bobby L. Franklin
v. D. J. Laughlin, et al.
No. 11-8263
(Your No. 11-50207)

Dear Clerk:

The Court today entered the following order in the above-entitled case:

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin v. District of Columbia Court of Appeals*, 506 U.S. 1 (1992) (*per curiam*).

Sincerely,

William K. Suter

William K. Suter, Clerk

EXHIBIT "G"

Inst #: 201204100002345
Fees: $18.00
N/C Fee: $0.00
04/10/2012 03:02:54 PM
Receipt #: 1126897
Requestor:
DAYDREAM LAND SYSTEMS DEVEI
Recorded By: MAT Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING COVER PAGE
(Must be typed or printed clearly in BLACK ink only and avoid printing in the 1" margins of document)

APN# 264-16-000-002

(11 digit Assessor's Parcel Number may be obtained at: http://redrock.co.clark.nv.us/assrealprop/ownr.aspx)

TITLE OF DOCUMENT
(DO NOT Abbreviate)

NOTICE OF ACTION TO QUIET TITLE

Document Title on cover page must appear EXACTLY as the first page of the document to be recorded.

RECORDING REQUESTED BY:

Daydream Land & Systems Development Co

RETURN TO: Name Daydream Land & Systems Development Co

Address 526 Pecos Circle

City/State/Zip New Braunfels, TX. 78130-9127

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name N/A

Address

City/State/Zip

This page provides additional information required by NRS 111.312 Sections 1-2.
An additional recording fee of $1.00 will apply.
To print this document properly—do not use page scaling.

To: D.J. Laughlin
1650 Casino Drive, PMB 500
Laughlin, NV. 89029-1512

Re: 264-16-000-002, 264-16-000-003, 264-16-000-004.

NOTICE OF ACTION TO QUIET TITLE

NOTICE of action to quiet title is hereby given, based on the following claims:

1. On 8/26/1988, my client purchased the described real property ("80 acres") from the United States ("government").

2. On 12/19/1996, my client did exhaust all administrative remedies with the government, where his *stare decisis*[1] land patent rights were dismissed.

3. On 9/29/2008, the government granted you ownership of such 80 acres, by mistakenly declaring my client "failed to exhaust administrative remedies" and is completely *void*[2] of my client's noted *stare decisis* rights.

4. A copy of my FFN Certificate instrument #19920323315077501 is attached.

My client's *stare decisis* land patent rights were administratively exhausted, but were never reviewed in a judicial court of law and equity.

Pursuant to 28 U.S.C. 1746, I do declare and certify that the foregoing is true.

Bobby L. Franklin
Daydream Land & Systems Development Co
526 Pecos Circle
New Braunfels, TX. 78130-9127

(830) 914-7954

4/4/2012
Date

Brandon Oliva
Notary Public
State of Texas
My comm. expires 10/14/2015

State of Texas County of Comal
Subscribed and sworn before me on 4-4-12 (Date)
(Notary Signature)

[1] 43 U.S.C. §1165; 43 C.F.R. §1862.6; *Stockley v. United States*, 260 U.S. 532.
[2] Federal Rules of Civil Procedures, Rule 60(b)(4).

EXHIBIT "H"

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BWD PROPERTIES 2, LLC, et al.,

Plaintiffs,

v.

BOBBY LEN FRANKLIN, et al.,

Defendants.

2:06-cv-1499-RCJ-PAL

ORDER

Currently before the Court are Plaintiffs' Motion for an Order Expunging "Notice of Action to Quiet Title" and for Sanctions against Defendant Bobby Len Franklin dba Daydream Land & System Development for Violating this Court's Order (#135), Defendants' Motion to Extend Time to Respond (#137), and Defendants' Motion for an Order to Strike Plaintiffs' Reply (#140).

BACKGROUND

The Plaintiffs in this case are BWD Properties 2, LLC; BWD Properties 3, LLC, and BWD Properties 4, LLC (collectively "BWD"). The Defendants in this case are Bobby Len Franklin, an individual and dba Daydream Land & Systems Development Company, Robert Lee Franklin, Bobby Dean Franklin, and Donna Sue Owens.

The following facts are taken from Judge Brian Sandoval's September 29, 2008 order. (See Order (#111) at 2-3). On August 18, 1988, Bobby Len Franklin filed application N-49548 under the Desert Land Entry Act ("DLE") concerning eighty acres of land located in the Southern one-half of the Southeast quarter of Section 16, Township 32 South, Range 66 East, Mount Diablo Meridian, Clark County, Nevada (the "N-49548 Property"). In October 1988, the

Bureau of Land Management ("BLM") denied Bobby Len Franklin's application because the property was appropriated by mining claims and thus unsuitable for disposition under the DLE. Bobby Len Franklin appealed the decision to the Interior Board of Land Appeals ("IBLA"), which reversed and remanded to BLM for further findings because the record did not contain evidence to support the conclusion that the land was mineral in character. On remand, BLM denied the application. BLM advised Bobby Len Franklin of his right to appeal the decision to the IBLA, and of the requirement that the appeal be filed within thirty days of receipt of the decision. Bobby Len Franklin did not appeal the decision, however. Instead, he filed an action against the United States in federal court. The action was dismissed for failure to exhaust administrative remedies. The district court's decision was affirmed by the Ninth Circuit Court of Appeals ("Ninth Circuit"). *See Franklin v. United States*, 46 F.3d 1140 (9th Cir. 1995) (unpublished).

On November 21, 1989, Bobby Dean Franklin filed application N-52292 under the DLE concerning eighty acres of land located in the Northern one-half of the Southeast quarter of Section 16, Township 32 South, Range 66 East, Mount Diablo Meridian, Clark County, Nevada (the "N-52292 Property"). BLM denied the application in 1993 because the lands for which the application was filed were mineral in character. Bobby Dean Franklin was advised of his right to appeal the decision and that his notice of appeal must be filed within thirty days of receipt of the decision. Bobby Dean Franklin did not appeal. Instead, he filed an action against the United States in federal court. The action was dismissed by the court for failure to exhaust administrative remedies. The court's order was affirmed by the Ninth Circuit. *See Franklin v. United States*, 46 F.3d 1141 (9th Cir. 1995).

In 2006, the United States granted to D.J. Laughlin title to three parcels located in Clark County, Nevada ("the property"). The property included the acreage upon which the Franklins had submitted their DLE applications. The three parcels were granted by way land patents, including patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069. Patent 27-2006-0071 relates to real property described as the East one-half of the Southeast quarter of the Southeast quarter of Section 16, township 32 South, Range 66 East, Mount Diablo

Meridian, Nevada. Patent 27-2006-0070 relates to land described as the West one-half of the Southeast quarter of the Southeast quarter of Section 16, Township 32 South, Range 66 East, Mount Diablo Meridian, Nevada. Patent 27-2006-0069 relates to property described as the Southwest quarter of the Southeast quarter of Section 16, Township 32 South, Range 66 East, Mount Diablo, Meridian, Nevada. Laughlin then transferred his interest in all three parcels to BWD. Between 1999 and 2006, defendants had recorded multiple documents against the property in the Clark County Recorder's Office.

In his September 2008 order, Judge Sandoval granted BWD's motion for summary judgment and declared the following: (a) Defendants, and anyone claiming under or through them, had no right, title or interest in or to the property described in patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069 on the basis of DLE applications N-49548 and N-52292; (b) Plaintiffs were the 100% fee simple owners of the property described in patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069; and (c) all instruments, documents, and claims recorded by or on behalf of Defendants against the property in the office of the Clark County Recorder were null and void. (Order (#111) at 8). Judge Sandoval ordered that all documents recorded in the Clark County Recorder's Office against the property were expunged from the record. (*Id.*).

Judge Sandoval further entered a permanent injunction stating that:

> Defendants, and anyone claiming under or through them, are permanently enjoined from asserting, claiming, or setting up any right, title, or interest in or to the property described in patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069 under the DLE, applications N-49548 and N-52292, or on any other ground or basis.
>
> . . .
>
> Defendants, and anyone claiming under or through them, are enjoined from filing any instruments, documents, and claims in the office of the Clark County Recorder that would slander, interfere with, compromise, or cloud Plaintiffs' title to the property.

(*Id.* at 8-9).

In December 2009, the Ninth Circuit affirmed. (Ninth Cir. Op. (#127) at 1-2). The Ninth Circuit stated that the "district court properly granted summary judgment on the claims made by BWD because BWD offered undisputed evidence that they owned the properties over

which they sought to quiet title, and the Franklins failed to raise a triable issue of their own cognizable interest in these properties." (*Id.* at 3). The Ninth Circuit further held that the "district court correctly determined that the various documents recorded by the Franklins were a cloud on the title of BWD's property and ordered the documents expunged, and did not abuse its discretion when it granted a permanent injunction against the Franklins." (*Id.* at 4).

The pending motions now follow.

DISCUSSION

BWD files a motion to expunge the "Notice of Action to Quiet Title" that Bobby Len Franklin via Daydream Land & Systems Development Co. filed with the Clark County Recorder's Office on April 10, 2012, in violation of this Court's September 2008 order. (Mot. to Expunge (#135) at 3; Notice of Action to Quiet Title (#135) at 12-13). BWD seeks an order that expunges the notice and sanctions Bobby Len Franklin for intentionally violating this Court's order. (Mot. to Expunge (#135) at 3). BWD seeks a civil sanction and an award of attorneys' fees against Bobby Len Franklin. (*Id.* at 7-8).

The Notice of Action to Quiet Title states that: (1) on August 26, 1988, Bobby Len Franklin via Daydream Land & Systems Development Co. purchased 80 acres from the government, (2) on December 19, 1996, Bobby Len Franklin exhausted all administrative remedies with the government, and (3) on September 29, 2008, the government granted BWD ownership of the 80 acres "by mistakenly declaring [that Bobby Len Franklin] 'failed to exhaust administrative remedies.'" (Notice of Action to Quiet Title (#135) at 13). The Notice of Action to Quiet Title referenced Assessor Parcel Numbers ("APN") 264-16-000-002, 264-16-000-003, and 264-16-000-004.[1] (*Id.*).

[1] BWD notes that APN-264-16-000-002 has been subdivided and assigned new parcel numbers APN-264-16-000-003, APN-264-16-000-004, APN-264-16-000-005, and APN-264-16-000-006. (Mot. to Expunge (#135) at 6). Additionally, parcels APN-264-16-000-004, APN-264-16-000-005, and APN-264-16-000-006 are identical to the property described in patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069 which, pursuant to this Court's September 2008 order, is owned by BWD.

In response[2], Bobby Len Franklin argues that there is "no statute of limitations for judicial court review of such *void* judgments or orders under Fed. R. Civ. P. 60(b)(4)" and that he will "never give up his land ownership claims, rights, or title, until the final administrative-IBLA order that was certified on 12/19/1996 is reviewed in a judicial court of law and equity." (Resp. to Mot. to Expunge (#138) at 2).

The IBLA order, dated December 19, 1996, reiterated the facts in this case. (*See* IBLA 1996 Order (#138) at 18-19). The order IBLA order stated that, "[b]y letters dated October 27, 1995, BLM informed the Franklins that it was closing the files in their desert land entry application cases. The Franklins now appeal these letters." (*Id.* at 19). The IBLA found that the Franklins could not "use BLM's response to its questions concerning desert land entry to overcome their failure to appeal the November 12, 1993, decisions." (*Id.* at 20).

In reply[3], BWD asserts that the IBLA order did not give the Franklins appeal rights and notes that the order addresses the same issues previously addressed by this Court and the Ninth Circuit. (Reply to Mot. to Expunge (#139) at 4). BWD also asserts that Bobby Len Franklin's reliance on Rule 60(b)(4) is inaccurate because it has no bearing on the 1996 IBLA order. (*Id.*).

As an initial matter, to the extent that Bobby Len Franklin is attempting to raise a Rule 60(b)(4) motion in his response, the Court finds that the motion is without merit. Federal Rule of Civil Procedure 60(b)(4) provides that a "court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons . . . the judgment is void." Fed. R. Civ. P. 60(b)(4). Bobby Len Franklin has not demonstrated that this Court's September 2008 order and the Ninth Circuit's affirmation of that order are void. The 1996

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[2] Bobby Len Franklin filed a motion for an extension of time, until November 9, 2012, to file his response. (Mot. For Leave of Court (#137) at 1-2). The Court denies this motion as moot because that time period has passed and Bobby Len Franklin has filed a response.

[3] Bobby Len Franklin filed a motion to strike BWD's reply because it was "supported by immaterial judicial court decisions that dismissed its jurisdiction because Franklin had not yet exhausted his administrative remedies." (Mot. to Strike (#140) at 3). The Court finds that this motion is without merit and denies the motion to strike.

IBLA's order reiterates the same facts that this Court and the Ninth Circuit relied on. As such, to the extent that Bobby Len Franklin is making a Rule 60(b)(4) motion, the Court denies that motion.

Additionally, the Court grants BWD's motion to expunge the Notice of Action to Quiet Title filed on April 10, 2012, with the Clark County Recorder based on this Court's September 2008 permanent injunction prohibiting Bobby Len Franklin, or anyone claiming under or through him, from "filing any instruments, documents, and claims in the office of the Clark County Recorder that would slander, interfere with, compromise, or cloud Plaintiffs' title to the property." (*See* Order (#111) at 8-9). Bobby Len Franklin's Notice of Action to Quiet Title does exactly what the permanent injunction prohibits him from doing. As such, the Court grants BWD's motion to expunge the document.

With respect to the request for sanctions, "federal courts enjoy the inherent power to sanction the full range of litigation abuses, and dismissal of the action is an allowable sanction." *Munnings v. State of Nev.*, 173 F.R.D. 258, 261 (D. Nev. 1996) (citing *Chambers v. NASCO*, 501 U.S. 32, 45, 111 S.Ct. 2123, 2133, 115 L.Ed.2d 27 (1991)). "The inherent power is properly utilized to preserve the dignity of the court and the integrity of the judicial process." *Id.*

The Court declines to impose sanctions on Bobby Len Franklin at this time for violating this Court's September 2008 permanent injunction. Based on the record, the Court notes that Bobby Len Franklin has only filed one document over a four year period with the Clark County Recorder's Office in contravention of the permanent injunction. As such, the Court will not sanction Bobby Len Franklin at this time for his filing. However, the Court forewarns all Defendants, and anyone claiming under or through them, that if there are any future violations of the permanent injunction, this Court will sanction them appropriately through this Court's inherent powers. If a future violation occurs, BWD is directed to move for sanctions and to submit its attorneys' fees and costs associated with defending against the violation.

Accordingly, BWD's Motion to Expunge and for Sanctions (#135) is GRANTED in part and DENIED in part. The Court orders the Notice of Action to Quiet Title filed on April 10,

2012, with the Clark County Recorder's Office expunged. The Court denies BWD's request for sanctions.

CONCLUSION

For the foregoing reasons, IT IS ORDERED that the Motion for an Order Expunging "Notice of Action to Quiet Title" and for Sanctions Against Defendant Bobby Len Franklin dba Daydream Land & System Development for Violating this Court's Order (#135) is GRANTED in part and DENIED in part. The Court grants Plaintiffs' motion to expunge, but denies the motion for sanctions.

IT IS FURTHER ORDERED that Defendant's Motion for Leave of Court to Respond (#137) is DENIED as moot.

IT IS FURTHER ORDERED that Defendant's Motion for an Order to Strike Plaintiffs' Reply (#140) is DENIED.

DATED: This 7th day of March, 2013.

United States District Judge

EXHIBIT "I"

Inst #: 20140917-0002279
Fees: $18.00
N/C Fee: $0.00
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Requestor:
BOBBY FRANKLIN
Recorded By: SAO Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

(2)

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(Must be typed or printed clearly in BLACK ink only and avoid printing in the 1" margins of document)

APN# 264-16-000-002

(11 digit Assessor's Parcel Number may be obtained at: http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

NRS 14.010 - NOTICE OF PENDENCY OF QUIET TITLE ACTION

IN THE CLARK COUNTY, NEVADA DISTRICT COURT

Document Title on cover page must appear EXACTLY as the first page of the document to be recorded.

RECORDING REQUESTED BY:

BOBBY L. FRANKLIN

RETURN TO: Name BOBBY L. FRANKLIN

Address P.O. Box 42

City/State/Zip Brackettville, TX. 78832

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name

Address

City/State/Zip

This page provides additional information required by NRS 111.312 Sections 1-2.
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NRS 14.010 – NOTICE OF PENDENCY OF QUIET TITLE ACTION IN THE CLARK COUNTY, NEVADA DISTRICT COURT

Re: S½ SE¼16 T32S R66E MDM

1. Names of Parties:

BOBBY L. FRANKLIN,)
)
Plaintiff,)
vs.)
)
D.J. LAUGHLIN, dba BWD PROPERTIES 2,)
LLC, a Nevada Limited Liability Company,)
BWD PROPERTIES 3, LLC, a Nevada Limited)
Liability Company, BWD PROPERTIES 4,)
LLC, a Nevada Limited Liability Company,)
"Also all other persons unknown claiming any)
right, title, estate, lien or interest in the real)
property described in the complaint adverse)
to plaintiff's ownership, or any cloud upon)
plaintiff's title thereto.")
Defendants.)
)

2. Object of the action: Quiet Title Action.

3. Legal Description of the Property: S½ SE¼16 T32S R66E MDM "80 acres"

EXHIBIT "J"

(3)

Inst #: 20150128-0002580
Fees: $19.00
N/C Fee: $0.00
01/28/2015 01:42:00 PM
Receipt #: 2296483
Requestor:
JOLLEY URGA
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DEBBIE CONWAY
CLARK COUNTY RECORDER

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APN# 264-16-000-002, 004, 005 and 006

(11 digit Assessor's Parcel Number may be obtained at: http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

Order Granting Defendant's Motion to Expunge Lis Pendens and Motion to Dismiss the Complaint

Document Title on cover page must appear EXACTLY as the first page of the document to be recorded.

RECORDING REQUESTED BY:

Charles T. Cook. Esq.

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Address 3800 Howard Hughes Pkwy, 16th Floor

City/State/Zip Las Vegas, NV 89169

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CLERK OF THE COURT

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Attorneys for D.J. Laughlin, BWD Properties 2, LLC, BWD Properties 3, LLC and BWD Properties 4, LLC

JOLLEY URGA WOODBURY & LITTLE ATTORNEYS AT LAW
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TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

☐ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration
☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☒ Motion to Dismiss by Deft(s)

DISTRICT COURT

CLARK COUNTY, NEVADA

BOBBY L. FRANKLIN, Plaintiff, vs. D.J. LAUGHLIN, dba BWD PROPERTIES 2, LLC, a Nevada Limited Liability Company, BWD PROPERTIES 3, LLC, a Nevada Limited Liability Company, and BWD PROPERTIES 4, LLC, a Nevada Limited Liability Company, "Also all other persons unknown claiming any right, title, estate, lien or interest in the real property described in the complaint adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto." Defendants.	Case No.: A-14-707291-C Dept. No. XX **ORDER GRANTING DEFENDANT'S MOTION TO EXPUNGE LIS PENDENS AND MOTION TO DISMISS THE COMPLAINT**

The Motion to Expunge Lis Pendens and Motion to Dismiss the Complaint filed by Defendant, D.J. Laughlin, came on for hearing on January 14, 2015. The Defendant, D.J. Laughlin, appeared by and through his counsel of record, Charles T. Cook, Esq. and Brian C.

Wedl, Esq., of Jolley Urga Woodbury & Little; Plaintiff personally appeared and was not represented by counsel. The Court, having reviewed the pleadings and moving papers on file herein, having heard the arguments of counsel and Plaintiff, and good cause appearing, finds as follows:

IT IS HEREBY ORDERED that Defendant's Motion to Expunge Lis Pendens be, and hereby is, GRANTED. Accordingly, the document entitled "NRS 14.010 – NOTICE OF PENDENCY OF QUIET TITLE ACTION IN THE CLARK COUNTY, NEVADA DISTRICT COURT" recorded by Bobby L. Franklin on September 17, 2014, Instrument No. 20140917-0002279, is hereby cancelled and expunged. The cancellation has the same effect as an expungement of the original notice.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss the Complaint be, and hereby is, GRANTED, and Plaintiff's Complaint is dismissed with prejudice; and

IT IS FURTHER ORDERED that any pending motions filed by Plaintiff are rendered moot and therefore DENIED.

DATED this 16th day of January, 2015.

J. Charles Thompson
DISTRICT COURT JUDGE

JOLLEY URGA WOODBURY & LITTLE

By: Brian Wedl
WILLIAM R. URGA, ESQ.
CHARLES T. COOK, ESQ.
BRIAN C. WEDL, ESQ.
3800 Howard Hughes Parkway
Wells Fargo Tower, Sixteenth Floor
Las Vegas, Nevada 89169
Attorneys for D.J. Laughlin, BWD Properties 2, LLC, BWD Properties 3, LLC and BWD Properties 4, LLC

JAN 22 2015
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3800 HOWARD HUGHES PARKWAY, SUITE 1600, LAS VEGAS, NV 89169
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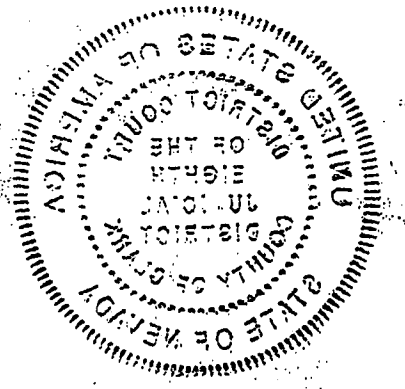
UNITED STATES OF AMERICA
DISTRICT COURT
FOR THE
DISTRICT
OF NEVADA
STATE OF NEVADA
COUNTY OF CLARK