



T. Matthew Phillips
California State Bar No. 165833
(*Not Licensed in Nevada*)

XXXXXXXXXXXXXXXXXXXX

No. XXXX

Las Vegas, Nev. 89130

Tel: (XXX) XXX-XXXX

The Respondent—

DISTRICT COURT FAMILY DIVISION

CLARK COUNTY, NEVADA

_____)	Case No: D-18-XXXXXX-D
XXXXXXXXXXXXXXXXXXXX)	
)	AFFIDAVIT of
<i>Petitioner,</i>)	T. MATTHEW PHILLIPS.
)	
)	
vs.)	
)	<u>Next Hearing Date:</u>
)	Jan. 30, 2025 (2:30 p.m.)
T. MATTHEW PHILLIPS)	
)	
<i>Respondent.</i>)	
_____)	Dept. "X" – Judge Almase

AFFIDAVIT of T. MATTHEW PHILLIPS

My name is T. MATTHEW PHILLIPS. I am a party hereto. All the within allegations are true and correct of my own personal knowledge. If called upon to testify, I could and would give competent and truthful evidence.

(1) I am a California attorney, (Calif. Bar No. 165833), in good standing for 33 consecutive years; I say this because, when I appear in front of a judicial body, I am required to identify myself as a lawyer. I am *not* licensed in Nevada.

(2) I hereby offer, in good faith, this brief affidavit—as a preview of oral arguments I anticipate I might advance on Jan. 30, 2025. Out of an abundance of caution, I did not file a formal opposition because the court issued its own order, *sua sponte*, i.e., without a motion from the other party; (EDCR 5.509 contemplates “motions” for OSC). In lieu of a formal opposition, I briefly contemplated a Rule 60 motion to vacate, but decided against it. Notably, the court’s OSC does not direct me to file a responsive pleading. I presume the court, on Jan. 30, 2025, will examine me, deposition style, regarding the allegations of vexatiousness, and I shall faithfully respond to all questions. To create a record, I respectfully request that the court grant me leave to file, at this late date, this brief affidavit (approx. 1,176 words).

(3) Notably, Nevada has no vexatious litigator statute. In this state, vexatious litigators are determined based on NRCP, Rule 11(b).

(4) In Nevada, there are three roads to vexatiousness—

(i) by presenting papers for “any ***improper purpose***, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation,” [Rule 11(b)(1)];

(ii) by asserting “***legal contentions*** [not] warranted by existing law,” [Rule 11(b)(2)];

(iii) by asserting “***factual contentions*** [that lack] evidentiary support,” [Rule 11(b)(3)].

[See NRCP, Rule 11(b); (bold italics added)].

1 (5) As to Rule 11(b)(1), I have never presented a paper for any improper
2 purpose, *e.g.*, to harass, cause unnecessary delay; *rather*, all motions were filed for
3 legitimate reasons, *e.g.*, to recover constitutional rights wrongfully taken. As to
4 needlessly increase litigation costs, I believe that is not possible in this particular “D”
5 case. Why?—because Plaintiff has no litigation costs, *i.e.*, she pays no attorney’s fees;
6 (Plaintiff receives the benefit of free legal services).

7 (6) As to Rule 11(b)(2), I have never, in this “D” case or in any civil litigation,
8 made a legal argument not warranted by existing law.

9 (7) As to Rule 11(b)(3), I have never, in this “D” case or in any civil litigation,
10 asserted a factual contention that lacks evidentiary support.

11 (8) In federal court actions in this district, I have never been found to have
12 violated Rule 11. In civil actions in Clark County, I have never been found to have
13 violated Rule 11.

14 (9) I have never filed a complaint that lacks a factual or legal basis. In multiple
15 civil complaints—both state and federal—no judge has ever dismissed a complaint based
16 on a finding of “frivolousness.”

17 (10) My son, [REDACTED] has aged-out; therefore, I have no interest in filing more
18 motions in this case. It is my wish that this “D” case be closed.

19 (11) When I filed the *Request* on Dec. 24, 2024, I did not intend for the court
20 to schedule a hearing. My pleading templates include a request for hearing. Through
21 inadvertence, this request remained on the pleading filed Dec. 24, 2024. (I offer a *mea*
22 *culpa* to the court and opposing counsel.)

23 (12) As to the other scheduled hearings, these matters have been disposed-of.
24 On Jan. 6, 2025, I filed notices to vacate the matters scheduled for Jan. 30, 2025 and
25 Mar. 11, 2025, which have since been removed from the court’s calendar.

26 (13) I have a First Amendment right to be litigious. “[L]itigiousness alone
27 would not support an injunction restricting [] filing activities.” [*In re Oliver*, 682 F.2d
28 443 (1982), citing, *Pavilonis v. King*, 626 F.2d 1075, 1079, (1st Cir. 1980); *Ruderer v.*

1 *United States*, 462 F.2d 897, 899 (8th Cir. 1972) (per curiam), *cert. denied*, 409 U.S.
2 1031 (1972)]. “A pre-filing injunction cannot issue merely upon a showing of
3 litigiousness.” [*De Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir.1990)].

4 (14) In California, I am now litigating a family-law class action. The putative
5 class is defined as all persons who lost custody of their children, but never had the benefit
6 of “strict scrutiny” analysis. In this California class action, I make the *same* legal
7 arguments that I make in Clark County. Notably, in the class action, the court mentions
8 no vexatiousness. In fact, the parties have been invited to oral arguments—now set for
9 Feb. 10, 2025—in the 9th Circuit Court of Appeals, [*D’Souza vs. Guerrero*, (9th Cir.
10 Case No. 24-2537)].

11 (15) The court’s OSC contemplates pre-filing restrictions, of which I am
12 unclear. Specifically, the court writes, “these [possible] restrictions include, but are not
13 limited to, requiring him to follow a special procedure before being able to file future
14 complaints, completely barring Todd from filing complaints about certain subjects, and
15 barring Todd from electronically filing documents with the Court,” [OSC, at p. 8].

16 (16) While this court does have the authority to issue pre-filing restrictions in
17 this “D” case, I believe the court’s jurisdiction is limited to matters before the bench—
18 because, *of course*, the court has the inherent ability to control its own proceedings;
19 (but, in any event, I have no intention of filing future motions in this “D” case).

20 (17) I believe the court lacks jurisdiction to issue pre-filing restrictions on
21 prospective complaints filed in (i) Eighth District Civil Division, (ii) United States
22 District Court, or (iii) complaints filed in California or other states.

23 (18) If the court, *respectfully*, is inclined to issue pre-filing restrictions, *i.e.*,
24 requiring me to get pre-filing approval from the Chief Judge—and if the Chief Judge
25 were to deny a prospective filing—I believe I should have a right to appeal such denial,
26 or otherwise file a writ of mandamus or motion for declaratory relief.

27 (19) I believe the court may not issue pre-filing restrictions on complaints that
28 implicate fundamental rights. “[E]ven though courts may, as a general rule, restrict

1 vexatious litigants' access, constitutional considerations prohibit a complete ban on
2 filings by indigent proper person litigants if the ban prevents the litigant from proceeding
3 in criminal cases and in original civil actions that sufficiently implicate a fundamental
4 right; such orders are impermissible.” [Jordan v. DMV, 110 P.3d 30, 43 (2005)].

5 (20) I object to the response filed by Dan R. Waite, Esq., on Jan. 22, 2025,
6 (eight days before the hearing). Though styled as a response, Mr. Waite submitted a
7 proposed order, which in reality, would mean his pleading is actually a motion for an
8 order. I briefly contemplated a motion to strike, but decided against it, (i.e., to avoid
9 making waves). If the court is inclined to consider Mr. Waite’s motion and proposed
10 order, I would ask that I be given a full 14 days to respond thereto.

11 * * *

12 *I hereby declare under penalty of perjury under the laws of the State of Nevada*
13 *the foregoing is both true and correct.*

14 Dated: **Jan. 28, 2025**

15 *Respectfully Submitted,*

16
17 

18 _____
19 T. Matthew Phillips
20 *Self-Represented*
21
22
23
24
25
26
27
28