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10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 KIARA ROBLES,

13 Plaintiff,

14 v.

15 IN THE NAME OF HUMANITY, WE
16 REFUSE TO ACCEPT A FASCIST
17 AMERICA (a.k.a. ANTIFA), CITY OF
18 BERKELEY, ET AL.,

19 Defendants.

No. 3:17-cv-04864 MEJ

**NOTICE OF MOTION AND MOTION TO
REVOKE PRO HAD VICE ADMISSION
OF LARRY KLAYMAN;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: November 2, 2017
Time: 10:00 a.m.
Crtrm: B, 15th Floor

TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

20 NOTICE IS HERBY GIVEN THAT on November 2, 2017, at 10:00 a.m., in the
21 courtroom of the Honorable Maria Elena James, located in the United States Courthouse for the
22 Northern District of California, 450 Golden Gate Avenue, San Francisco, CA, Defendant City of
23 Berkeley will and hereby does move the Court to revoke the *pro hac vice* admission of
24 Plaintiff's counsel, Larry Klayman.

25 This Motion is based upon this Notice of Motion and Motion; the accompanying
26 Memorandum of Points and Authorities; the Declaration of Lynne Bourgault in Support of
27 Motion to Revoke *Pro Hac Vice* Admission of Larry Klayman; the pleadings and papers filed in
28 this action; and such further argument and matters as may be offered at the hearing on this
Motion.

1 Dated: September 20, 2017

Lynne Bourgault, Deputy City Attorney

2 By: /s/
3 LYNNE BOURGAULT
4 Attorneys for Defendant CITY OF BERKELEY
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MEMORANDUM OF POINTS AND AUTHORITIES
INTRODUCTION AND FACTUAL ALLEGATIONS

I. INTRODUCTION

Defendant City of Berkeley respectfully moves this Court to revoke the *pro hac vice* admission of plaintiff’s counsel, Larry Klayman (“Mr. Klayman”).

II. SUMMARY OF ARGUMENT

Larry Klayman, a member of the Florida and District of Columbia bars, was admitted *pro hac vice* to this Court as Plaintiff’s counsel on August 23, 2017. Defendant City of Berkeley (“the City”) was not served with the Complaint in this case until September 12, 2017, and thus did not have the opportunity to oppose Mr. Klayman’s application for admission *pro hac vice*. The City now asks this Court to reverse its prior order and revoke Mr. Klayman’s *pro hac vice* admission.

For more than two decades, Mr. Klayman has repeatedly drawn the ire of courts across the country, resulting in sanctions, denials or revocations of *pro hac vice* admissions, and vehement criticism of his behavior by multiple judges. The Ninth Circuit Court of Appeals, in an October 2016 decision, upheld a decision by the District Court for the District of Nevada to deny Mr. Klayman’s *pro hac vice* application. In a detailed opinion reviewing Mr. Klayman’s professional history, the Ninth Circuit found that Mr. Klayman had, for more than twenty years, demonstrated a pattern of inappropriate and unprofessional behavior that justified denying his *pro hac vice* admission. In fact, on no fewer than fourteen occasions, courts have sanctioned Mr. Klayman, denied or revoked his *pro hac vice* status, and/or admonished him for his behavior. Two district courts have taken the remarkable step of banning Mr. Klayman from their courtrooms for life.

The Ninth Circuit also relied on the fact that Mr. Klayman has recently faced professional discipline by both of the state bars of which he is a member. At the time of the Ninth Circuit’s opinion, disciplinary proceedings before the D.C. bar were pending. Since then, a Hearing Committee of the D.C. Court of Appeals Board on Professional Responsibility issued a Report and Recommendation that found multiple ethical violations by Mr. Klayman and recommended that he be suspended from the practice of law for 90 days, with his reinstatement

1 conditioned on a showing of his fitness to practice law. Moreover, in Florida—the other
2 jurisdiction in which Mr. Klayman is licensed to practice law—he accepted a public reprimand
3 in 2011 from the Florida Supreme Court for violations of Florida’s rules of professional conduct.

4 Mr. Klayman’s recent conduct directed specifically at City of Berkeley, UC Regents and
5 other defendants shows that the Ninth Circuit’s opinion, like the stream of judicial criticism that
6 came before it, has done nothing to change Mr. Klayman’s behavior. During the past 12 months,
7 Mr. Klayman, acting either as plaintiff or counsel, has initiated two separate actions against the
8 City of Berkeley and other defendants in the Northern District of California. In addition to this
9 action (which attempts to hold the City liable for alleged violence by protesters at a protest at the
10 University of California, Berkeley), Mr. Klayman filed a prior nearly identical action on June 5
11 of this year, but dismissed it without prejudice when the assigned judge, the Honorable Claudia
12 Wilken, declined his request that she recuse herself based on alleged bias consisting of her
13 allegedly having attended UC Berkeley and having been appointed by President Bill Clinton.

14 Mr. Klayman’s conduct is no accident – it is a frequent and predictable pattern that
15 demonstrates why this Court should not allow him *pro hac vice* status. For two decades, Mr.
16 Klayman has used the federal courts to file frivolous, politically-motivated lawsuits and has been
17 abusive and unprofessional toward the federal judiciary. That has not changed. Local Rule 7-3
18 gives this Court discretion over whether to grant an attorney admission *pro hac vice*. For the
19 foregoing reasons and those set forth more fully below, this Court should revoke Mr. Klayman’s
20 *pro hac vice* admission in this case.

21 **III. STATEMENT OF FACTS**

22 **A. The Instant Action**

23 On August 22, 2017, plaintiff filed this action against the City of Berkeley, the UC
24 Regents, “Antifa,” and two alleged individual members of “Antifa,” alleging that they infringed
25 her First Amendment rights and subjected her to violence and bodily harm based on her political
26 affiliation and sexual orientation during a February 1, 2017 event featuring Milo Yiannopoulos
27 on the UC Berkeley campus. Complaint 1:19-26. Plaintiff alleges that she was “attacked with
28 extremely painful pepper spray and bear mace by masked assailants amongst the ‘protesters’

1 because she chose to exercise her right to freedom of speech and show support for the planned
2 speaker, Milo Yiannopoulos.” Id. 3:8-13. Plaintiff’s complaint is almost identical to the earlier
3 complaint she filed arising out of the February 1, 2017 riot, although she has dropped certain
4 parties as defendants, namely George Soros, House Minority Leader Nancy Pelosi, Berkeley
5 Mayor Jesse Arreguin and Berkeley Police Chief Andrew Greenwood.

6 **B. Mr. Klayman’s Prior Frivolous Action Against the Berkeley Police**
7 **Department, Berkeley Mayor, Berkeley Police Chief, and George Soros**

8 On June 5, 2017, Plaintiff Kiara Robles (“Plaintiff”) filed a complaint in the United
9 States District Court for the Northern District of California, Case No. 4:17-cv-03235 CW
10 naming 16 defendants (including the Berkeley Police Department, Berkeley Mayor Jesse
11 Arreguin, House Minority Leader Nancy Pelosi and George Soros) and alleging 12 causes of
12 action, all arising out of an incident on February 1, 2017 in which Plaintiff was allegedly pepper
13 sprayed on the campus of the University of California, Berkeley. See Case 4:17-cv-03235 CW
14 ECF #1. Plaintiff was represented by Larry Klayman of Freedom Watch and Michael Kolodzi of
15 the Kolodzi Law Firm in that case. Mr. Klayman, who is not admitted to the bar in California,
16 filed a *pro hac vice* application in that case on June 6, 2017. See 4:17-cv-03235 CW ECF # 4.
17 The next day, on June 7, 2017, Mr. Klayman’s application for admission *pro hac vice* was
18 granted. See 4:17-cv-03235 CW ECF # 29. One week later, on June 14, 2017, Defendant City
19 of Berkeley was served with the complaint. The complaint contained only scant allegations
20 regarding any alleged conduct by the City of Berkeley Mayor, Police Chief, and police
21 department. Mr. Klayman dismissed the June action without prejudice on July 25, 2017
22 immediately after Judge Wilken entered an Order Denying Request for Recusal, and while a
23 motion seeking to revoke his *pro hac vice* status in that case was pending. See 4:17-cv-03235
24 CW ECF # 56, #53.

25 **C. Mr. Klayman’s Prior Frivolous Actions Against prior Co-Defendant George**
26 **Soros**

27 Larry Klayman, acting as plaintiff or counsel, has filed four lawsuits against George
28 Soros in a 12 month period. Two of those matters were filed in the Northern District of Texas,

1 Dallas Division, *Klayman v. Obama*, 3:16-CV-02010-L (N.D. Tex.) (“Texas Action #1”), filed
2 on July 9, 2016, and *Zamarripa v. Farrakhan*, 3:16-cv-03109-N (N.D. Tex.) (“Texas Action #2”),
3 filed on November 7, 2016. The third action was filed in the Central District of California,
4 *Klayman v. ACLU*, 2:17-cv-01703-FFM (“California Action #1”).

5 The two Texas Actions are based on virtually identical factual allegations – 148 of 149
6 numbered paragraphs are near mirror-images of each other. Those complaints allege that Mr.
7 Soros and numerous other defendants, including President Obama, Hillary Clinton, Eric Holder,
8 and Black Lives Matter engaged in a purported conspiracy to incite a race-based “war on police”
9 that led to the shooting deaths of six Dallas police officers.

10 In Texas Action #1, Mr. Klayman twice moved to have the presiding judge recuse
11 himself, alleging that because the judge had been appointed by President Clinton, he would
12 necessarily be prejudiced against Mr. Klayman. *Obama*, 3:16-CV-02010-L at ECF 43, 51. Those
13 motions were denied. On April 14, 2017, in response to additional filings by Mr. Klayman, the
14 Court issued an Order finding that “[t]he record reflects Mr. Klayman’s predilection for filing
15 frivolous, nonsensical, and vituperative documents” and that “[t]he court has grown weary of
16 Mr. Klayman’s tactics.” *Obama*, 3:16-CV-02010-L at ECF 133. The Court went on to find that
17 “[s]uch shenanigans are degrading to the legal profession and will not be tolerated by this court.
18 If Mr. Klayman files any further frivolous or nonsensical documents in this matter, the court will
19 personally sanction him monetarily.” Ultimately, the court dismissed the complaint on the
20 grounds that there was no alleged causal chain between the defendants and Mr. Klayman’s
21 alleged injuries, and accordingly Mr. Klayman lacked standing to bring his federal law claims
22 against the federal government-related defendants. The court then declined to exercise
23 supplemental jurisdiction over the remaining state law claims, including those brought against
24 Mr. Soros.

25 In Texas Action #2, the court granted Mr. Soros’ motion to dismiss, finding that “other
26 than conclusory statements, [Plaintiff] has not pled any facts to suggest that [the murder of
27 Dallas police officers] was dependent on the actions of the Defendants.” *Zamarripa*, 3:16-CV-
28 03109-N at ECF 63 (internal citations omitted).

1 Finally, in California Action #1, Mr. Klayman brought claims for assault and intentional
2 infliction of emotional distress, based on an allegation that, while Mr. Klayman was in the
3 baggage claim at Los Angeles International Airport, a protestor who was at the airport protesting
4 President Trump's travel ban allegedly yelled and ran towards Mr. Klayman. *Klayman v. ACLU*,
5 No. 2:17-cv-01703-JAK-JEM, ECF 1, ¶¶ 37-38. Initially, Mr. Klayman named President Obama
6 as the only defendant. *Klayman v. Obama*, No. 2:17-cv-00836-JAK-JEM, ECF 1. The case was
7 assigned to Judge John Kronstadt, *id.* at ECF 4, who was appointed to the federal bench by
8 President Obama. Mr. Klayman voluntarily withdrew the case, *id.* at ECF 10, and, the same day,
9 re-filed the case with virtually the same allegations and claims, but added several new
10 defendants, including Mr. Soros. *Klayman v. ACLU*, 2:17-cv-01703-JAK-JEM, at ECF 1. He
11 alleged, based on entirely conclusory statements, that the defendants had engaged in a
12 conspiracy that led to Mr. Klayman's purported injury. *Id.*, ECF 1 at 2. Once the action was
13 assigned to Judge Kronstadt as a related case to Mr. Klayman's initial filing, Mr. Klayman
14 immediately voluntarily dismissed the suit again. *Id.* at ECF 73, 74.

15 **D. Facts Not Disclosed in Mr. Klayman's *Pro Hac Vice* Application That Bear**
16 **On Mr. Klayman's Fitness To Practice In This Court and Abide By Its Rules**

17 1. Mr. Klayman's History of Judicial Reprimands and Sanctions

18 In addition to being the subject of disciplinary proceedings, Mr. Klayman also has a
19 lengthy and well-documented history of abuse of the court system and violation of professional
20 ethics. The District Court for the District of Nevada recently rejected Mr. Klayman's application
21 to appear *pro hac vice* and the Ninth Circuit upheld that decision, finding that "[j]udges have
22 sanctioned, chastised, and rebuked Klayman repeatedly over the past twenty years: in 1997,
23 1999, 2001, 2003, 2009, 2011, and twice in 2015... '[T]his approach to litigation is the norm and
24 not the exception for [Klayman].'" *In re Bundy*, 840 F.3d 1034, 1049 (9th Cir. 2016) (quoting
25 *Klayman v. City Pages*, No. 5:13-cv-143-Oc-22PRL, 2015 WL 1546173, at *8 n.7 (M.D. Fla.
26 Apr. 3, 2015)). The Ninth Circuit found that Mr. Klayman "has shown a pattern of disregard for
27 the local rules, ethics, and decorum; and he has demonstrated a lack of respect for the judicial
28

1 process.” Id. The Court held that “[b]y any standard, the district court properly denied [Mr.
2 Klayman’s] petition to be admitted *pro hac vice*.” Id.

3 In at least fourteen cases, courts have sanctioned Mr. Klayman, criticized his behavior,
4 and/or revoked his *pro hac vice* admission. Among those cases are two courts which have
5 banned Mr. Klayman for life. See *MacDraw, Inc. v. CIT Grp. Equip. Fin., Inc.*, 157 F.3d 956,
6 963 (2d Cir. 1998) (affirming Southern District of New York court’s ruling that barred Mr.
7 Klayman from appearing *pro hac vice* in perpetuity and sanctioned him for “undignified [and]
8 discourteous conduct that is degrading to [the district court]” by, among other things, making
9 accusations of racial and political bias); *Baldwin Hardware Corp. v. FrankSu Enter. Corp.*, 78
10 F.3d 550, 555 (Fed. Cir. 1996) (affirming Central District of California court’s ruling that
11 revoked Mr. Klayman’s ability to appear *pro hac vice* in perpetuity and sanctioned him for
12 accusing the trial judge of anti-Asian bias and “unreasonably and vexatiously multiplying the
13 proceedings”). In addition to these two cases are the following examples:

- 14 • A court denied Mr. Klayman’s *pro hac vice* application because his “record
15 demonstrates more than an occasional lapse of judgment, it evinces a total
16 disregard for the judicial process.” *Stern v. Burkle*, No. 0103916/2007, 2007 WL
17 2815139 (Sup. Ct. N.Y. Cnty. Sept. 6, 2007).
- 18 • Mr. Klayman was sanctioned for filing an untimely complaint and opposing the
19 government’s motion with “frivolous filings” that “wasted time and resources of
20 defendant as well as of the court.” *Wire Rope Importers’ Ass’n v. United States*,
21 Nos. 93-04-00221, 93-04-00236, 1994 WL 235620, at *7 (Ct. Int’l. Trade May
22 26, 1994).
- 23 • A court criticized Mr. Klayman’s behavior as “often highly inappropriate” and his
24 argument was “blighted by rude and unprofessional behavior which was directed
25 toward the presiding judge and opposing counsel.” *Material Supply Int’l, Inc. v.*
26 *Sunmatch Indus., Co.*, No. Civ. A. 94-1184, 1997 WL 243223, at *8, *10, n.7
27 (D.D.C. May 7, 1997).
- 28 • Mr. Klayman “apparently misread (or never read) [the local rule]” and the court
threatened sanctions for any future failures to comply with the local rules.
Alexander v. FBI, 186 F.R.D. 197, 199 (D.D.C. 1999).
- Mr. Klayman responded to the district court’s orders with a “forked tongue” and
made arguments with “malicious glee.” *Judicial Watch of Fla., Inc. v. U.S. Dep’t*
of Justice, 159 F. Supp. 2d 763, 764 (D.D.C. 2001).
- Mr. Klayman’s arguments regarding the conduct of the district court were
criticized by the court as “bizarre” and “beyond far-fetched.” *Daly v. Far E.*
Shipping Co., 238 F. Supp. 2d 1231, 1241 (W.D. Wash. 2003).
- Mr. Klayman was sanctioned for failure “to comply with even the most basic of
discovery requirements” and the court noted that Mr. Klayman’s behavior was
“not simply an unexplained hiccup in an otherwise diligently prosecuted case.”

1 *Klayman v. Barmack*, No. 08-1005 (JDB), 2009 WL 4722803, at *1 (D.D.C. Dec.
2 4, 2009).

- 3 • Mr. Klayman was sanctioned on multiple occasions because “[h]is failures to
4 comply with [the] Court’s orders have been repeated, flagrant, and unrepentant”
5 and his “conduct rises to a level and pattern of intransigence and disrespect for
6 the Court’s authority that is not often witnessed.” *Klayman v. Judicial Watch,
7 Inc.*, 802 F. Supp. 2d 137, 150 (D.D.C. 2011).
- 8 • A court noted it had “become quite frustrated with [Mr. Klayman’s] various
9 tactics to avoid Court rules throughout the course of [the] litigation” and that Mr.
10 Klayman had “routinely shown a disregard for this Court’s Local Rules.”
11 *Klayman v. City Pages*, No. 5:13-cv-143-Oc-22PRL, 2015 WL 1546173, at *8
12 n.7 (M.D. Fla. Apr. 3, 2015).
- 13 • A court threatened sanctions after Mr. Klayman repeatedly did not “attempt to
14 comply” with local rules. *Montgomery v. Risen*, No. 15-cv-02035-AJB-JLB, 2015
15 WL 12672703, at *1 (S.D. Cal. Oct. 2, 2015).
- 16 • The Ninth Circuit stated that “[Mr.] Klayman has shown such a casual
17 acquaintance with the facts that he is guilty of at least gross negligence in his
18 representations to this court.” *In re Bundy*, 852 F.3d 945, 951 (9th Cir. 2017).

2. Disciplinary Proceedings in Florida and the District of Columbia

13 Mr. Klayman is a member of the D.C. and Florida bars and has recently been the
14 subject of disciplinary proceedings in both jurisdictions. Earlier this year, Mr. Klayman was the
15 subject of disciplinary proceedings before the District of Columbia Court of Appeals Board of
16 Professional Responsibility (the “Board”). He was charged with violating the D.C. and Florida
17 rules of professional conduct by – in three separate cases – representing a client against a former
18 client in a matter that is the same or substantially related to a matter in which he represented his
19 former client. On June 19, 2017, the Board issued a Report and Recommendation finding by
20 clear and convincing evidence that Mr. Klayman violated D.C. Rule of Professional Conduct 1.9
21 in two matters and Florida Rule of Professional Conduct 4-1.9(a) in another matter. (See District
22 of Columbia Court of Appeals, Board on Professional Responsibility, Hearing Committee
23 Number Nine, Report and Recommendation, issued June 19, 2017, attached as Exhibit A to the
24 Declaration of Lynne Bourgault in Support of Motion to Revoke *Pro Hac Vice* Admission of
25 Larry Klayman, filed concurrently herewith (“Bourgault Decl.”).)

26 In addition to finding that Mr. Klayman had violated the rules of professional
27 conduct, the Board found that Mr. Klayman’s “conduct in this [disciplinary] proceeding was
28 dishonest and lacked candor in further aggravation of his misconduct.” For instance, Mr.
Klayman “testified falsely that he acted under the advice of counsel,” his “post-hearing brief

1 repeatedly mischaracterize[d] [witness] testimony,” and his “characterizations of the evidence
2 lack[ed] the candor required of an attorney in a disciplinary proceeding.” (Id. at 37.) The Board
3 concluded that Mr. Klayman’s conduct “raises a serious doubt as to his ability to practice in
4 conformance with the rules.” (Id. at 41.)

5 The Board recommended that Mr. Klayman be suspended from the practice of
6 law for 90 days, with reinstatement conditioned upon a showing of his fitness to practice law.
7 (Id. at 43.)

8 Separately, in 2011, Mr. Klayman was reprimanded by the Supreme Court of
9 Florida for violating four of Florida’s rules of professional conduct in connection with a client
10 dispute. (See Supreme Court of Florida Order dated Aug. 29, 2011, attached as Exhibit B to the
11 Bourgault Decl.) Mr. Klayman’s client alleged that Mr. Klayman failed to provide her with legal
12 services despite having received a \$25,000 retainer. (See Consent Judgment dated July 14, 2011,
13 attached as Exhibit C to the Bourgault Decl., at ¶ 3A.) After mediation, Mr. Klayman agreed to
14 pay the client \$5,000 within 90 days. (Id. at ¶ 3B.) Mr. Klayman failed to uphold the agreement
15 and paid the client only after more than two years had passed, and after Florida bar counsel had
16 sent numerous letters requesting that Mr. Klayman comply. (Id. at ¶¶ 3C-3N.) Mr. Klayman
17 admitted that his conduct violated Florida Rules of Professional Conduct 3-4.3, 4-8.4(a), 4-
18 8.4(g), and 14-5.1(b), and he agreed to a public reprimand. (Id. at ¶¶ 4-5.)

19 **IV. ARGUMENT**

20 Federal courts have long had the authority to “establish criteria for admitting lawyers to
21 argue before them.” *United States v. Gonzalez-Lopez*, 548 U.S. 140, 151 (2006). A District
22 Court’s revocation of an attorney’s *pro hac vice* status “falls within the scope of the inherent
23 power of the federal courts because a federal court has the power to control admission to its bar
24 and to discipline attorneys who appear before it.” *Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1118
25 (9th Cir. 2005) (internal citations omitted). A District Court “need only provide notice and an
26 opportunity to be heard before revoking an attorney’s *pro hac vice* status. . . .” Id. at 1112.
27 “Where an out-of-state attorney suggests through his behavior that he will not ‘abide by the
28 court’s rules and practices,’ the district court may reject his *pro hac vice* application.” In re

1 Bundy, 840 F.3d 1034, 1042 (9th Cir. 2016); see also United States v. Panzardi Alvarez, 816
2 F.2d 813, 817 (1st Cir. 1987) (a court may, in its discretion, deny a *pro hac vice* application
3 because of unethical conduct); D.H. Overmyer Co. v. Robson, 750 F.2d 31, 34 (6th Cir. 1984)
4 (bankruptcy court did not abuse its discretion in revoking attorney’s *pro hac vice* status, where
5 the attorney failed to comply with bankruptcy rules requiring disclosure of conflicts).

6 Rule 11-3 of the United States District Court for the Northern District of California Civil
7 Local Rules provides that “an attorney who is not a member of the bar of this Court may apply
8 to appear *pro hac vice* in a particular action in this district” by submitting an application to the
9 Clerk. The rule provides that the “assigned judge shall have discretion to accept or reject the
10 application.” Id. (emphasis added).

11 The Court should exercise its discretion and revoke the *pro hac vice* admission of Mr.
12 Klayman. When Mr. Klayman’s *pro hac vice* motion was originally submitted and granted by
13 this Court, the Court was not made aware of Mr. Klayman’s voluminous record of discipline,
14 sanctions, and criticisms from courts across the country, all of which, when added together,
15 easily satisfies the standard for rejecting a *pro hac vice* application established by the Ninth
16 Circuit in Bundy.

17 In a detailed opinion, the Ninth Circuit recently held that Mr. Klayman’s checkered
18 history warranted denial of his *pro hac vice* application. In *In re Bundy*, the Ninth Circuit
19 reviewed Mr. Klayman’s history of discipline, sanctions, and criticism from courts and found
20 that it “is not a flattering record and not one that the district court should ignore,” given Mr.
21 Klayman’s “unwillingness or inability” to follow local rules. *In re Bundy*, 840 F.3d at 1046-47.
22 While noting that “the district courts must carefully balance . . . vigorous advocacy against the
23 need for order and decorum in the proceedings,” the Ninth Circuit concluded that “[w]herever
24 that line lies, Klayman has crossed it more than once, and the district court did not abuse its
25 discretion – and certainly did not come close to committing clear error – in taking account of
26 Klayman’s past behavior and denying him *pro hac vice* status.” Id. at 1047. The Ninth Circuit’s
27 opinion principally relied on two concerns, both of which are equally applicable here.
28

1 *First*, as described in detail above, Mr. Klayman has a long track record of being
2 sanctioned, having his *pro hac vice* status denied or revoked, and having his behavior criticized
3 by numerous courts across the country, all of which illustrates exactly why he should not be
4 given *pro hac vice* status in this case. There are at least fourteen examples of Mr. Klayman’s
5 conduct drawing the ire of the court. Two district courts have even taken the extraordinary step
6 of banning Mr. Klayman from their courtrooms for life.

7 *Second*, Mr. Klayman, who is admitted to the bars of Florida and D.C., has recently been
8 subject to discipline in both jurisdictions for ethical violations. Both instances demonstrate that
9 Mr. Klayman refuses to practice in conformance with court rules and practices. In 2011, the
10 Florida Supreme Court publicly reprimanded Mr. Klayman in connection with a client dispute.
11 Then, less than two weeks after Mr. Klayman was admitted *pro hac vice* in this Court, a Hearing
12 Committee of the D.C. Court of Appeals Board on Professional Responsibility issued a Report
13 and Recommendation that found, by clear and convincing evidence, that in three separate cases,
14 Mr. Klayman took on representations that were clear conflicts of interest. (Bourgault Decl.
15 Exhibit A at 43.) The Board found Mr. Klayman’s conduct so egregious that it recommended a
16 penalty even more severe than what the prosecuting bar counsel had requested: a suspension
17 from the practice of law for 90 days with reinstatement conditioned upon a showing of fitness to
18 practice law. *Id.* At 41-42.

19 In each case, Mr. Klayman has refused to accept responsibility for his actions or
20 acknowledge that he has done anything improper. The D.C. Board found that Mr. Klayman
21 “does not recognize the seriousness of the misconduct or even agree that it is misconduct at all.”
22 (*Id.* At 42.) In response to the thorough Report and Recommendation issued by the Board in
23 D.C., Mr. Klayman continued his refusal to accept responsibility and indicated that he “strongly
24 disputed the findings” and pledged to appeal. See Andrew Strickler, Ex-Judicial Watch Attorney
25 Hit With Sanction Recommendation, Law 360, June 20, 2017, available at
26 [https://www.law360.com/articles/936678/ex-judicial-watch-atty-hit-with-](https://www.law360.com/articles/936678/ex-judicial-watch-atty-hit-with-sanctionrecommendation)
27 [sanctionrecommendation](https://www.law360.com/articles/936678/ex-judicial-watch-atty-hit-with-sanctionrecommendation). Similarly, despite having accepted a reprimand in 2011 from the
28 Florida Supreme Court, in the proceedings before the D.C. Board, Mr. Klayman “denie[d]

1 responsibility for his misconduct” in Florida. (Bourgault Decl. Exhibit A at 37.) Mr. Klayman
2 told the Board that he agreed to the Florida reprimand “to simply put the matter behind [him]”
3 and that his conduct did not involve “any...ethical violation.” As the Board noted, “[t]hat simply
4 is not true.” Id.

5 Mr. Klayman’s recent behavior in the cases he has filed against the City of Berkeley and
6 George Soros plainly demonstrate that he has not changed his tactics. He continues to use the
7 federal courts as a vehicle for politically-motivated lawsuits that are pure publicity stunts. This is
8 the second case Mr. Klayman has filed against the City of Berkeley in the past three months and
9 each of them are frivolous on their face. Of four cases he filed against George Soros, two were
10 dismissed and Mr. Klayman voluntarily withdrew the third. *Klayman v. Obama*, 3:16-CV-
11 02010-L (N.D. Tex.) at ECF 145, 146; *Zamarripa v. Farrakhan*, 3:16-cv-03109-N (N.D. Tex.) at
12 ECF 63; *Klayman v. ACLU*, 2:17-cv-01703-JAK-JEM at ECF 74.

13 Moreover, Mr. Klayman has continued his pattern of inappropriate conduct that flouts the
14 court’s rules. Judge Sam Lindsay of the Northern District of Texas stated that Mr. Klayman’s
15 “shenanigans are degrading to the legal profession” and threatened him with sanctions. *Klayman*
16 *v. Obama*, 3:16-CV-02010-L (N.D. Tex.) at ECF 54, 133. That most recent admonishment – the
17 latest in a long-running history of reprimands from the courts – did not stop Mr. Klayman from
18 filing yet another frivolous case in the Central District of California and then twice voluntarily
19 dismissing it when it was assigned to a judge that Mr. Klayman did not like. *Klayman v. Obama*,
20 No. 2:17-cv-00836-JAK-JEM, at ECF 10; *Klayman v. ACLU*, No. 2:17-cv-01703-JAK-JEM,
21 ECF 74. It is obvious that no amount of threats, admonishments, or sanctions by the court will
22 cajole Mr. Klayman into following the rules of the court and meeting a basic standard of
23 professionalism. The concerns articulated by the Ninth Circuit, combined with Mr. Klayman’s
24 refusal to acknowledge any wrongdoing, give this Court every reason to think that this pattern of
25 conduct will continue, and the Court should not have to “hold its breath for the duration of [the
26 case] in hopes that misconduct will not result.” *Kampitch v. Lach*, 405 F. Supp. 2d 210, 218
27 (D.R.I. 2005) (quoting *Kohlmayer v. Nat’l Railroad Passenger Corp.*, 124 F. Supp. 2d 877, 882
28 (D. N.J. 2000)) (denying *pro hac vice* admission based on attorney’s history of inappropriate

1 behavior). The inability to practice in accordance with the court’s rules is one of the paradigm
2 bases identified by the Ninth Circuit for rejecting a *pro hac vice* application and the Court should
3 so exercise its discretion here. In re United States, 791 F.3d 945, 957 n.8 (2015) (“A district
4 court would clearly act within its discretion in denying *pro hac vice* admission if, for example,
5 an attorney’s actions led the court to conclude the attorney would not ‘abide by the court’s rules
6 and practices’ ...”); United States v. Bennett, No. 06-00068 SOM-LEK, 2006 WL 2793170, at
7 *5 (D. Haw. Sept. 27, 2006) (denying application to appear *pro hac vice* based on “questionable
8 conduct” that “does not appear to be isolated or infrequent”).

9 There must be “some point, some line at which an attorney’s repeated, documented,
10 instances of uncivilized behavior, whether or not rising to the level of a disbarable offense, strips
11 him of the privilege of *pro hac vice* admission.” Kohlmayer, 124 F. Supp. 2d at 883. After two
12 decades of repeatedly inappropriate conduct, Mr. Klayman has surely crossed that line.

13 **V. CONCLUSION**

14 For the foregoing reasons, Defendant City of Berkeley respectfully requests this Court
15 revoke the *pro hac vice* admission of Larry Klayman.

16 Dated: September 20, 2017

Respectfully submitted:

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