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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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SHIRLEY STONE and JOHN STONE, et)  
al.,

No. CV 07-1801-PHX-MHM

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Plaintiff,

**ORDER**

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vs.

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MARICOPA COUNTY, ARIZONA;  
CITY OF PEORIA, ARIZONA; DAVID  
LEONARDO, individually and as the  
former Chief of Police for the City of  
Peoria Police Department; STEVE KEMP,  
individually and as the former City  
Attorney for the City of Peoria; JOHN  
KEEGAN, individually and as the former  
mayor of the City of Peoria; THOMAS  
STEWART, individually and as a  
detective in Criminal Investigations  
Bureau with the City of Peoria Police  
Department; MICHAEL SELF,  
individually and as detective for Terrorist  
Division of the Criminal Investigations  
Bureau with the City of Peoria Police  
Department; THE HONORABLE LEX  
ANDERSON, individually and as the  
former Peoria Justice Court Judge; RON  
MEYER, individually and as Maricopa  
County Constable; KENT HARDING;  
KRISTINA HARDING; SCOTT M.  
CLARK; LAW OFFICES OF SCOTT M.  
CLARK; PAUL K. HENDERSON; BILL  
HOWARD, dba, Two Men and a Truck  
Moving Company; THE HONORABLE  
ROBERT C. HOUSER; JOHN DOE  
CONSTABLES, I-V; JOSEPH M.  
BOYLE; JANE DOES, I-L; JANE DOES,  
government employees, VI-L,

Defendants.

EXHIBIT A

1           Currently before the Court are: **(1)** Peoria Defendant's Motion to Dismiss (Dkt.# 6);  
2 **(2)** Maricopa County, The Honorable Lex Anderson, and Ron Meyer's Motion to Dimiss  
3 (Dkt # 11); **(3)** Stones' Motion to Vacate Writ of Restitution (Dkt.# 13); **(4)** Kent Harding,  
4 Kristina Harding, Scott M. Clark, Law Offices of Scott M. Clark, Paul K Henderson, Joseph  
5 M. Boyle's Motion to Dismiss (Dkt.# 16); **(5)** Michael Self's Motion to Dismiss and Motion  
6 for Joinder by the City of Peoria, Steve Kemp, John Keegan, Thomas Stewart, Michael Self  
7 (Dkt.# 21); **(6)** Stones' Motion to Vacate Judge Marlar's 9/6/05 Order Lifting Automatic Stay  
8 (Dkt.# 24); **(7)** Stones' Motion for Sanctions (Dkt.# 25); **(8)** Clark, Henderson, Harding,  
9 Boyle's Motion to Reaffirm the Vexatious Litigant Order of Judge Bury (Dkt.# 28); **(9)**  
10 Stones' Motion to Adjudge Defendants in Contempt (Dkt.# 33); **(10)** Stones' Motion for  
11 Reconsideration of Court's Order dated 12/11/07 (Dkt.# 47); **(11)** Stones' Motion Requesting  
12 Court to Take Judicial Notice of the Orders and Adjudicated Facts in Federal Case CV  
13 05-2626 (Dkt.# 50); **(12)** Stones' Emergency Motion for Leave to File Supplemental  
14 Pleading for 9/10/07 (Dkt.# 55); **(13)** Stones' Motion Requesting Court to Take Judicial  
15 Notice (Dkt.# 59);**(14)** Stones' Motion Requesting Court to take Judicial Notice of  
16 Defendant's Bankruptcy Court Filing (Dkt.# 61); and **(15)** Stones' Motion for Status. (Dkt.#  
17 62).

18           Plaintiffs John and Shirley Stone appear before the Court in what is now their tenth  
19 filing in the United States District Court for the District of Arizona on claims that are related  
20 to events and occurrences arising out of their numerous bankruptcy filings.<sup>1</sup> See Stone, et al.  
21 v. v. Jackson, et al., CV 98-1087-PHX-ROS; Stone, et al. v. v. Mason, CV 99-1738-PHX-  
22 PGR; Stone, et al. v. Albertson's Inc., CV 99-1897-PHX-MS; Stone, et al. v. Mason, et al.,  
23 CV 02-0784-PHX-PGR; Stone, et al. v. Mason, et al., CV 02-1389- PHX-PGR; Stone, et al.  
24 v. Fanfare Media Works, et al., CV 03-0562-PHX-SRB; Stone, et al. v. Curley, et al., CV 03-

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26           <sup>1</sup>Plaintiffs have filed at least five bankruptcies in the District of Arizona since 1998.  
27 See 05-BK-13837 at 2. In fact, Plaintiffs' bankruptcy filings are so prolific that Bankruptcy  
28 Judge Marlar has Ordered that any future filings by the Stones be assigned directly to his  
court. See CV-05-2626, Dkt.# 101, p.4 n.2.

1 1585-PHX-SRB; Stone, et al. v. Baum, et al., CV 05-2626-PHX-DCB; Stone v. Thomas, et  
2 al., CV 06-1324-PHX-NVW (ECV).

3         These previous cases have repeatedly resulted in decisions against the Plaintiffs on  
4 grounds ranging from the application of the preclusion doctrines of res judicata and collateral  
5 estoppel, to principles of absolute immunity for judicial officers performing their official  
6 duties, to failure to state a claim upon which relief could be granted. After each successive  
7 court defeat, Plaintiffs have attempted to re-litigate the same factual underpinnings by brining  
8 new suits that name or remove several defendants, but are otherwise identical to the previous  
9 ones. Throughout the course of their prodigious litigation efforts the Stones have been given  
10 innumerable warnings by the federal district court and others that continuing to file and re-  
11 file frivolous claims against state and federal judges, opposing counsel, and certain common  
12 defendants would result in both sanctions under Rule 11 Fed. R. Civ. P. and the issuance of  
13 a vexatious litigant order, which would prevent Plaintiffs from commencing an action in  
14 federal court without first seeking the Court's permission and pre-filing review. Yet Plaintiffs  
15 remained undeterred.

16         Given the multiplicity of lawsuits and the voluminous number of motions filed by the  
17 Stones in this and other cases, the record before the Court is somewhat confusing. The Court  
18 will, however, provide a brief overview of the historical facts and procedural posture of this  
19 action.<sup>2</sup>

20 **I. Background**

21         The heart of the Stones' court filings focus on two incidents which more or less  
22 intersect with their numerous bankruptcy petitions. The first incident concerns a running feud  
23 between the Stones and Albertsons, Inc. The second involves a dispute over a residential  
24 lease agreement between the Stones and the Harding family. The latter dispute forms the  
25 basis of the instant suit before this Court.

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27         <sup>2</sup>The Background section of this Order is drawn primarily from Judge McNamee's  
28 Dec. 1, 2005 Order in CV 05-2626 and Judge Bury's dispositive Order dated Dec. 22, 2005  
in that same case. See CV 05-2626, Dkt. ## 101,113.

1           **A.     Albertsons Litigation**

2           The Stones first sued Albertsons, Inc., in 1998 in Arizona Superior Court, alleging  
3 Albertsons breached a settlement agreement concerning use of the Stones' bulletin board  
4 advertising business. See CV 05-2626, Dkt. 113, p. 4 (citing Stone v. Albertsons, Inc., CV  
5 98-1889). Albertsons counter-claimed against the Stones for \$400,000-\$500,000 in back  
6 rent. Id. The case was ultimately dismissed as a sanction against the Stones for violating a  
7 court order. Id. The Stones then filed for Chapter 11 bankruptcy, where the two pending  
8 lawsuits became property of the bankruptcy estate. Id. (citing Memorandum Decision, BAP  
9 No. AZ 01-1498, filed Sept. 9, 2002, at 2-4). The bankruptcy was eventually converted into  
10 a Chapter 7 filing and the court appointed a trustee who attempted to resolve the Albertsons-  
11 Stone litigation—after concluding that the Stones' claims were meritless. Id. at 5. To this  
12 end, Albertsons offered to purchase both suits from the bankruptcy estate in return for  
13 \$14,000 and a waiver of any proof of claim for the value of its state court counterclaim. Id.  
14 The cases were then placed on public auction, for which no bids were submitted. Id. The  
15 bankruptcy trustee later approved sale of the Stones' lawsuits to Albertsons. Id. The Stones  
16 filed objections to the bankruptcy sale order that were denied by the bankruptcy judge as  
17 moot. Id. The sale order was appealed to the Bankruptcy Appellate Panel (BAP), and was  
18 again dismissed as moot. The Ninth Circuit later affirmed these decisions in Stone v.  
19 Albertsons, Inc., 51 Fed. Appx. 753 (9th Cir. 2002).

20           The Stones then filed four adversary actions in bankruptcy court. Id. at 5-6. These  
21 actions were dismissed after the bankruptcy court repeatedly rejected the claims on res  
22 judicata grounds. Id.

23           Following the events in Bankruptcy Court, the Stones brought numerous other  
24 lawsuits in federal district court against Albertsons, its lawyers, various judges who had ruled  
25 against them, the bankruptcy trustee, and any other individuals or entities who were  
26 perceived as being somehow complicit in effectuating the trustee's sale order. Each lawsuit  
27 attempted to re-hash the initial determination made by the bankruptcy court regarding the  
28 sale order. These lawsuits were styled as either federal civil rights actions, federal RICO

1 actions, supplemental state tort claims, requests for declaratory relief, or other less  
2 understandable causes of action. All of these suits were dismissed.

3 **B. The Harding Litigation**

4 The Hardings, who are Defendants in the instant suit, were parties to a residential  
5 lease agreement with the Stones. See CV 05-2626, Dkt.# 101, p. 2. The Hardings hired the  
6 law firm of Scott M. Clark (consisting of Clark and Paul Henderson), both of whom are  
7 Defendants here, to represent them in a forcible detainer action brought against the Stones  
8 for non-payment of rent. (Amended Complaint, Dkt.# 1 Document 4, p. 3, 4). On June 28,  
9 2005, the Hardings through their counsel petitioned the Arizona Justice Court, Peoria  
10 Division, for a forcible detainer. The petition was scheduled to be heard by the Honorable  
11 Lex Anderson on August 4, 2005.

12 In order to procedurally deadlock the Hardings' action, on July 5, 2005, the Stones  
13 filed a Chapter 13 bankruptcy petition. This petition had the desired effect of staying the  
14 forcible detainer action. (BK-05-12104, Dkt.# 1). However, on July 26, 2005, Bankruptcy  
15 Judge Marlar granted the Hardings motion for relief from the automatic stay to pursue their  
16 remedies in Arizona state court to reclaim possession of their property. CV 05-2626, Dkt.#  
17 101, p. 2. That same day, the Hardings Chapter 13 bankruptcy petition was voluntarily  
18 dismissed. Id.

19 On August 2, 2005, two days before the scheduled forcible detainer action was to be  
20 heard in Arizona Justice Court, the Stones again petitioned for bankruptcy before Judge  
21 Marlar, this time under Chapter 11. Id. Thereafter, according to Plaintiffs, they delivered  
22 a copy of the bankruptcy filings to Judge Anderson's clerk and faxed a copy to opposing  
23 counsel. Id. at 2. Nevertheless, on August 4, 2005, Judge Anderson held the hearing on the  
24 forcible detainer as scheduled, and the Stones did not attend. Id. Judge Anderson entered  
25 judgment for a forcible detainer in the amount of \$8,276. Id. at 3 (citing 05-BK-13837, Dkt.#  
26 3, Exhibit 4A, 6A, 7A). The judgment also provided for a writ of restitution if the Stones did  
27 not vacate the property. Id.

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1 On August 11, 2005, after Constable Ron Meyers, another Defendant here, posted an  
2 eviction notice on the property in question, the Stones provided Judge Anderson with a copy  
3 of the Chapter 11 petition, at which time Anderson vacated the writ of restitution but not the  
4 underlying judgment. Id. at 2-3. In response, the Hardings filed a motion for emergency  
5 relief in bankruptcy court before Judge Marlar—who ordered that a hearing be held to  
6 determine whether it was appropriate to lift the automatic stay on the forcible detainer. Id.  
7 (citing 05-BK-12104, Dkt.# 14, 34). The hearing was set for August 31, 2005. Id. (citing  
8 05-BK-12104, Dkt.# 26).

9 On August 30, 2005, the Stones filed a motion to dismiss their Chapter 11 filing. The  
10 Stones then declined to attend the August 31st hearing, after which, Judge Marlar issued a  
11 minute order immediately lifting the automatic stay, thereby allowing the Hardings to return  
12 to state court to reclaim their property. Id.

13 On September 7, 2005, the Hardings returned to Arizona Justice Court where they  
14 obtained a newly issued writ of restitution from Judge Anderson. Id. The writ was executed  
15 on September 8, 2005, resulting in the Stones' eviction. Id. at 5. After the eviction,  
16 pursuant to Arizona state law, the Hardings removed certain personal property belonging to  
17 the Stones from the rental unit. Id.; see A.R.Z. § 33-1368(E). The Stones' Chapter 11  
18 bankruptcy petition was then dismissed on October 5, 2005. On November 17, 2005, the  
19 Hardings filed a notice for a public sale of personal property belonging to the Stones that had  
20 been removed from the vacated premises and placed into storage. This sale was to have  
21 taken place on December 2, 2005. Id.

22 **C. CV 05-2626-PHX-DCB**

23 On August 30, 2005, the Stones filed a complaint in federal court in the case CV 05-  
24 2626, seeking to name all parties involved in both the Albertsons and Harding litigation as  
25 defendants in a single suit. Named were Kent Harding, Scott M. Clark, Paul K. Henderson,  
26 Lex Anderson, all of whom are Defendants in the instant case. See CV 05-2626, Dkt.# 1).  
27 The Stones also named Albertsons, Inc., and its lawyers, various state and federal district  
28 court judges, federal bankruptcy judges, FBI Director Robert Mueller, President George W.

1 Bush, Attorney General John Ashcroft, and a host of others whom the Stones believed were  
2 involved in wrongdoing related to Albertsons' purchase of its 1998 state court case, as well  
3 as the forcible detainer action and writ of restitution that allowed the Hardings to evict the  
4 Stones. Id.

5 On December 1, 2005, United States District Court Judge for the District of Arizona,  
6 Stephen M. McNamee, ruled on the merits of the Stones' claims regarding the forcible  
7 detainer and writ of restitution. See CV 05-2626, Dkt.# 101, p. 5-6. Judge McNamee found  
8 that the writ of restitution issued by Justice of the Peace Anderson allowed the Hardings,  
9 pursuant to Arizona state law, to both evict the Stones from the rental property and hold their  
10 personal property for a later sale. Specifically, the Court found that, contrary to the Stones'  
11 assertions, the rental property was not subject to the Chapter 11 estate. Id. at 5. Second,  
12 the Court found that the Stones' right to pursue a remedy for any alleged violations by the  
13 Hardings of the automatic stay had already expired. Lastly, the Court held that the Stones  
14 had waived their right to challenge Judge Marlar's Order lifting the automatic stay since they  
15 had failed to lodge a timely appeal, and attempting to collaterally attack that Order before the  
16 district court was not permissible. Id. at 6-7.

17 On December 20, 2005, Judge Bury issued a dispositive ruling in the case. See CV  
18 05-2626, Dkt.# 113. The Court's order referred the Stones back to previous orders where the  
19 Court had explained how principles of res judicata barred subsequent litigation between the  
20 same parties on the same cause of action, where there had been a final judgment on the  
21 merits. Id. at 8. With respect to these repeat defendants, Judge Bury wrote, the "Court will  
22 not, in an exercise of futility, attempt to restate what these other courts have so completely  
23 explained to the Plaintiffs. Even given the repeated explanations, it appears that Plaintiffs  
24 cannot be persuaded that res judicata bars them from re-litigating" against Albertsons. Id.  
25 The Court went on to find that, "[u]nder the circumstances Plaintiffs have been so thoroughly  
26 informed regarding the lack of any procedural and/or legal merit to their claims as to  
27 eliminate any possible confusion or questions that might have otherwise existed due to  
28 Plaintiffs' *pro se* status." Id. With respect to Plaintiffs motive to file suit, the Court found

1 that, “because Plaintiffs have been repeatedly informed that such repetitive suits are barred  
2 by res judicata, there can be no conclusion except that Plaintiffs filed this case for an  
3 improper purpose, such as to harass Albertsons and/or cause Albertsons undue litigation  
4 costs.” Id.

5 The Court went on to impose sanctions on the Stones under Rule 11 Fed. R. Civ. P.  
6 for \$27,044, an amount equaling Albertsons’ costs and attorney fees. See CV 05-2626, Dkt.#  
7 121. The Court also considered whether a blanket vexatious litigant order was warranted,  
8 one that would prevent the Stones from filing any lawsuits in federal court, regardless of the  
9 subject matter, absent pre-filing review by the Court. See CV 06-2626, Dkt.# 113, p. 9-10.  
10 Judge Bury wrote that the Stones’ practice of relitigating previously determined issues, and  
11 then later filing suit against the very judges who dismissed their cases, along with opposing  
12 counsel, amounted to a “a huge waste of judicial effort and time.” Id. at 10. The “Court  
13 [was] convinced, based on Plaintiffs’ litigious record, that unless enjoined they [would]  
14 continue their practice and pattern of vexatious and harassing attempts to relitigate cases  
15 resolved against them.” Id. Nevertheless, while Judge Bury noted that there was “adequate  
16 justification” to impose a permanent injunction against the Stones from filing suits in the  
17 District of Arizona, the Court was inclined to “give Plaintiffs one last chance to self monitor  
18 and regulate their use of the federal courts.” Id. at 11.

19 The case was thereafter dismissed with leave to amend, so long as an amended  
20 complaint did not include “any claims which have been adjudicated by other courts,”  
21 including:

22 **claims addressed in the Order issued by Judge McNamee, filed on December 1,**  
23 **2005**, which arise from the eviction proceedings against Plaintiffs and related justice  
24 court rulings and the bankruptcy court rulings lifting the bankruptcy stays to allow the  
25 eviction proceedings to go forward against the Plaintiffs, resulting in the eviction of  
Plaintiffs and ultimate sale of alleged business and personal property. As Judge  
McNamee noted, the propriety of these courts’ rulings is not before this Court because  
Plaintiffs failed to timely appeal them.

26 Id. at 20, n.1 (emphasis added). The Court further held that should the Stones attempt to re-  
27 litigate the Albertsons and Harding claims in federal court, a blanket vexatious litigant order  
28 would be issued against them.

1           **D.     CV 06-1324-PHX-NVW (ECV)**

2           Directly contravening Judge Bury’s order, on May 15, 2006, John Stone filed suit in  
3 federal district court against Kent Harding, Kristina Harding, Scott M. Clark, Paul K.  
4 Henderson, Thomas Stewart, Lex Anderson, Steve Kemp, and Ron Meyer—all Defendants  
5 in the instant case—for various claims related to the forcible detainer and writ of restitution.  
6 See CV 06-1324, Dkt.# 1. The claims contained therein were virtually identical to those  
7 addressed by Judge McNamee in the December 1, 2005 Order. Id. at 8-10.

8           On October 23, 2006, Judge Wake denied Stone’s request to proceed *In Forma*  
9 *Pauperis* on the grounds that Stone, although representing to the Court that he was “subject  
10 to house arrest . . . [and had] no other source of income since his incarceration and [was]  
11 unable to pay the filing fees,” had also recently posted a secured appearance bond for \$2,500.  
12 CV 06-1324, Dkt.# 6, p. 2. The Court further ordered that if Plaintiff chose to pay the filing  
13 fee and proceed with his claim, he must “show good cause why this action should not be  
14 summarily dismissed for failure to comply with the vexatious litigant order against him.” Id.  
15 at. 6. Thereafter, Plaintiff missed the deadline to file an amended complaint and did not  
16 appeal the Court’s Order.

17           **E.     State Court Litigation**

18           On March 2, 2006, the Stones filed a state court action against Kent Harding, Kristina  
19 Harding, the Law Offices of Scott M. Clark, Paul K. Henderson, Jane and/or John Does 1-  
20 100, in Maricopa County Superior Court, CV2006-050748. The claims brought against the  
21 defendants involved the same events adjudicated in federal district court in CV  
22 05-2626-PHX-DCB. (Dkt.# 11 Exhibit 1). The case unsurprisingly ended when the  
23 Maricopa Superior Court granted summary judgment against the Stones on September 27,  
24 2007. (Dkt.# 16 Exhibit 1.) The legal argument presented by the defendants in their motion  
25 for summary judgment was res judicata, predicated on the previous federal court ruling.  
26 (Dkt.# 11 Exhibit 1).

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1 **II. The Instant Case**

2 Following the grant of summary judgment by Maricopa County Superior Court, the  
3 Stones filed this current suit, CV 07-1801-PHX-MHM. An Amended Complaint was lodged  
4 in Arizona state court on September 10, 2007 and Defendants removed the case to federal  
5 court, where it currently sits. (Dkt.# 1). The Amended Complaint includes more or less all  
6 of the same defendants named throughout the Harding litigation, plus the Honorable Robert  
7 C. Houser, who granted summary judgment against the Stones in the above mentioned state  
8 suit, and Joseph M. Boyle, who represented Harding, Henderson and Clark in that same  
9 action. Moreover, the factual underpinnings of the suit concern the forcible detainer and the  
10 writ of restitution—again, these claims arise from the same cause of action dealt with by the  
11 bankruptcy court, this Court in CV 05-2626 and CV 06-1324, and Maricopa County Superior  
12 Court in CV2006-050748.

13 As for specific allegations made against the Defendants, the Amended Complaint  
14 reads as follows: **(1)** Kent and Kristina Harding are being sued for acts related to their rental  
15 agreement with the Stones and subsequent forcible detainer and writ of restitution; **(2)** Scott  
16 M. Clark and the Law Offices of Scott M. Clark are being sued for participating in the writ  
17 of restitution order issued against the Stones; **(3)** Paul Henderson has been named for the  
18 same reasons; **(4)** Bill Howard, bda, Two Men in a Truck Moving Company, is being sued  
19 for transporting stolen property, by aiding the Harding's in moving the Stones' personal  
20 property; **(5)** Maricopa County and the City of Peoria are being sued for failing to investigate  
21 various contentions made by the Stones relating to the forcible detainer and writ of restitution  
22 actions; **(6)** Lex Anderson for issuing the writ of restitution; **(7)** Ron Meyer, who as constable  
23 executed the writ of restitution against the Stones; **(8)** John Keegan for failing to act upon  
24 alleged wrongdoing concerning the writ of restitution while Mayor of Peoria; **(9)** David  
25 Leonardo for actions that were similarly not taken while Chief of Police; **(10)** Michael Self  
26 and Thomas Steward on similar grounds, while working as Detectives for the Peoria Police  
27 Department. (Amended Complaint, Dkt.# 1, Exhibit Set 2).

28

1 In light of the background surrounding Plaintiff's instant litigation, the named  
2 Defendants have filed motions to dismiss based on res judicata, collateral estoppel, absolute  
3 judicial immunity, qualified immunity and failure to state a claim. (Dkt.# 6, 11, 16, 21).  
4 Rather than re-hash to Plaintiffs in yet another written Order why each of the claims  
5 contained in their Amended Complaint should be properly dismissed, this Court will refer  
6 Plaintiffs back to Judge Bury's Order in CV 05-2626, dated December 20, 2005, and Judge  
7 McNamee's Order in the same case, dated December 1, 2005. The Court will not waste any  
8 more of its energy or time repeating itself. All claims contained in Plaintiff's Amended  
9 Complaint, raised against each and every Defendant, are barred on the grounds of either res  
10 judicata or collateral estoppel. Montana v. United States, 440 U.S. 147, 153 (1979)  
11 (discussing res judicata); Hinkle Northwest, Inc. v. S.E.C., 641 F.2d 1304, 1308 (9th Cir.  
12 1981) (discussing collateral estoppel).

13 As to Defendants Hardings, Anderson, Clark, Law Offices of Scott M. Clark, and  
14 Henderson, the doctrine of res judicata forces dismissal, since there have been final  
15 judgements on the merits against the Stones in lawsuits involving the same transactions and  
16 occurrences with these same Defendants in state and federal court. In re Enewally, 368 F.3d  
17 1165, 1172 (9th Cir. 2004). The rules of claim preclusion under both Arizona and federal law  
18 prevent re-litigation here. Id.; In re General Adjudication of All Rights to Use Water in  
19 Gila River, 127 P.3d. 882 (Ariz. 2006). For the remaining Defendants, the doctrine of non-  
20 mutual defensive collateral estoppel precludes the Stones from raising issues that they  
21 previously have had a full and fair opportunity to present in both state and federal court, and  
22 that were actually litigated, necessarily determined and final in the cases CV 05-2626 (D.  
23 Ariz.) and CV2006-050748 (Maricopa County Superior Court). Masson v. New Yorker  
24 Magazine, Inc., 85 F.3d 1394, 1400 (9th Cir. 1996) ("Defensive collateral estoppel applies  
25 when a defendant seeks to prevent a plaintiff from asserting a claim the plaintiff has  
26 previously litigated and lost against another defendant.").

27 Because recovery in the instant case is precluded under any construction of law or  
28 fact, the Stone's Amended Complaint does not state a claim upon which relief can be

1 granted, and the Court finds their claims both legally and factually frivolous. See Neitzke  
2 v. Williams, 490 U.S. 319, 325 (1989); 12(b)(6) Fed. R. Civ. P. Given the Stones' history  
3 of filing and re-filing the same claims against the same defendants involving the same two  
4 fact patterns, and their continued use in bad faith of federal bankruptcy court to foil the  
5 enforcement of otherwise valid state court judgments, the Court will now consider the  
6 appropriateness of a vexatious litigant order. Such an order would permanently enjoin  
7 Plaintiffs from filing future similar cases in the United States District Court for the District  
8 of Arizona absent pre-filing review.

9 **A. Motion to Declare Stones Vexatious Litigants**

10 On November 13, 2007, Defendant's Clark, the Hardings, Henderson, Boyle, Law  
11 Offices of Scott M. Clark moved the Court to re-affirm the vexatious litigant Order that had  
12 been threatened should the Plaintiffs attempt to re-file claims related to the forcible detainer  
13 and writ of restitution in federal court. (Dkt.# 28).

14 This Court may, under the All Writs Act, 28 U.S.C. § 1651(a), utilize its inherent  
15 authority to issue an order enjoining litigants from filing any further actions or papers in the  
16 district court without first obtaining leave to do so. Molski v. Evergreen Dynasty Corp., 500  
17 F.3d 1047,1057 (9th Cir. 2007); United States v. New York Tel. Co., 434 U.S.159, 171-73  
18 (1977); Parker v. Kitzhaber, 2000 WL 776646 at \*6 (Ore. April 21, 2000). The Ninth Circuit  
19 has instructed lower courts to avoid "undue haste" when issuing such orders, since litigants  
20 have a due process right of access to use the courts. Molski, 500 F.3d at 1057 (quoting  
21 Logan v. Zimmerman, 455 U.S. 422, 429 (1982) ("the Supreme Court traditionally has held  
22 that the Due Process Clauses protect civil litigants who seek recourse in the courts, either as  
23 defendants hoping to protect property or as plaintiffs attempting to redress grievances.")  
24 (internal quotations omitted)). Yet, when litigants flagrantly abuse the judicial process by  
25 "preempting the use of judicial time that properly could be used to consider the meritorious  
26 claims of other litigants," such action "cannot be tolerated." Id. (quoting DeLong v.  
27 Hennessey, 912 F.2d 1144, 1146-49 (9th Cir. 1990) (internal quotations omitted)).

1 To this end, the Ninth Circuit has adopted four factors that are to be used when a court  
2 considers the appropriateness of a pre-filing injunction against a vexatious litigant. DeLong,  
3 920 F.2d at 1147-48. First, a litigant must be given notice and a chance to be heard before  
4 the order is entered. Id. Second, the district must “compile an adequate record for review.”  
5 Id. Third, the district court must make substantive findings regarding the frivolous or  
6 harassing nature of the parties litigation. Fourth, any vexatious litigant order issued must be  
7 “narrowly tailored to closely fit the specific vice encountered.” Id. In addition, the court has  
8 instructed that pre-filing orders should rarely be imposed on *pro se* litigants. Id. (citing  
9 Pavilonis v. King, 626 F.2d 1075, 1079 (1st Cir. 1980)).

10 After considering the relevant DeLong factors, the Court finds that a vexatious litigant  
11 order is appropriate under the circumstances of the instant case. As discussed in the  
12 background section of this Order, the Stones have a long history of filing abusive and  
13 harassing lawsuits against these defendants. The suits have ended with judgments against  
14 Plaintiffs on the merits, and multiple courts have explained to Plaintiffs why principals of  
15 claim and issue preclusion and judicial immunity prevent any further litigation. Yet, the  
16 Stones only respond to these courtroom defeats with more lawsuits. When, in turn, the next  
17 lawsuit has been thrown out of court, Plaintiffs file suit again hoping that the newest lawsuit  
18 will finally bring relief that the others have denied. This is a cycle of litigation that must  
19 come to an end.

20 Plaintiffs have been repeatedly warned by this and other Courts regarding the potential  
21 consequences of filing any more frivolous lawsuits in federal court. Indeed, in CV 05-2625,  
22 Plaintiffs were subject to sanctions by this Court under Rule 11 Fed. R. Civ. P. for bringing  
23 these and other related harassing claims. In that case, Judge Bury warned the Stones that a  
24 vexatious litigant order would issue if they could not self-regulate their use of the federal  
25 courts. The Court also ordered the Stones to forebear from bringing any more lawsuits that  
26 are factually related to the underlying merits, or the prosecution of, the Albertsons or Harding  
27 disputes. Yet, by filing CV 06-1324, the Stones flagrantly disregarded Judge Bury’s order.  
28 After previous federal district court— in CV 06-1324— threatened John Stone with an order

1 to show cause why he was not in violation of the December 2005 Order, he took a voluntary  
2 dismissal to go litigate in Arizona state court, where the Stones, filing as joint plaintiffs, lost  
3 at summary judgement. Even after the latest defeat, Plaintiffs filed the instant suit in state  
4 court. The instant case essentially differs from CV 05-2626, CV 06-1324, and the state filing  
5 in CV CV2006-050748, only in that it names the Harding's latest attorney and the presiding  
6 judge, as defendants. The claims are otherwise identical. In fact, this Court's docket is  
7 replete with filings by the Stones that essentially ask this Court to re-litigate the merits of the  
8 forcible detainer, the writ of restitution and the bankruptcy order issued on September 6,  
9 2005 that lifted the automatic stay. Furthermore, because Plaintiffs chose to take a voluntary  
10 dismissal in CV 06-1324 only after the Court raised the specter of a vexatious litigant order,  
11 and then litigated those same issues two more times, this Court is left with no other  
12 conclusion than that the instant case was brought in bad faith and with the sole purpose of  
13 harassing Defendants.

14 The fact that the instant case arrived at federal court by virtue of the Defendant's  
15 removing the case from state court is unavailing. It is not relevant that Plaintiffs did not  
16 chose the federal forum in which to litigate. Plaintiffs have been provided more than  
17 adequate notice that filing this suit in any forum was vexatious and unjustified. Judge Bury  
18 so warned them in the December 2005 Order. Plaintiffs refusal to abide by court orders and  
19 their obvious lack of respect for final judgments has left this Court with no alternative but  
20 to prevent the Stones from pursuing similar claims in this District.

### 21 **III. Conclusion**

22 Plaintiffs are vexatious litigants. They have placed a undue burden on this Court's  
23 resources by continuing to force it to address claims that were previously and conclusively  
24 decided by other courts. Under the guise of vindicating their federal rights, Plaintiffs have  
25 repeatedly harassed Kent and Kristina Harding, their counsel, and all those who have  
26 stumbled into this protracted litigation. Although there exists adequate cause to issue a  
27 **blanket** vexatious litigant order to prevent the Stones from bringing any additional lawsuits  
28 without pre-filing review, the Court is hesitant to pursue such a drastic course of action. At

1 the same time, all those who have been the targets of Plaintiffs' bad faith prosecutions must  
2 be free from future action.

3 **Accordingly,**

4 **IT IS HEREBY ORDERED** dismissing with prejudice Plaintiffs' Amended  
5 Complaint as violating this Court's Order, dated December 20, 2005 in the case Stone, et al.  
6 v. Baum, et al., CV 05-2626-PHX-DC. (Dkt.#1),

7 **IT IS FURTHER ORDERED** granting Defendant's Motions to Dismiss and  
8 dismissing every named Defendant from this suit. (Dkt.# 6);(Dkt # 11); (Dkt.# 16); (Dkt.#  
9 21). The Court finds that each claim raised by Plaintiffs in their Amended Complaint is  
10 barred on the grounds of res judicata or collateral estoppel.

11 **IT IS FURTHER ORDERED** granting Defendants Clark, Henderson, Harding,  
12 Boyle's Motion to Reaffirm the Vexatious Litigant Order of Judge Bury. (Dkt.# 28).

13 **IT IS FURTHER ORDERED** denying all Motions filed by Plaintiffs. (Dkt.## 13,  
14 24, 25, 33, 47, 50, 55, 59, 61, 62).

15 **IT IS FURTHER ORDERED** that Plaintiffs John Stone and Shirley Stone are  
16 hereby declared vexatious litigants.

17 **IT IS FURTHER ORDERED** that John and Shirley Stone are enjoined from filing  
18 any further actions or lawsuits in this District without first obtaining leave of the Court,  
19 including cases originally filed in Arizona State Court that have been properly removed to  
20 federal court. This pre-filing injunction is limited to claims or allegations based upon  
21 Plaintiffs' dispute with Kent and Kristina Harding over a residential lease agreement,  
22 forcible detainer action, and writ of restitution order. This pre-filing injunction also extends  
23 to claims related to Plaintiffs' subsequent and unsuccessful lawsuits before Maricopa County  
24 Superior Court, United States District Court of Arizona and United States Bankruptcy Court.

25 **IT IS FURTHER ORDERED** that this pre-filing injunction also prevents John and  
26 Shirley Stone from brining suit against Kent Harding, Kristina Harding, Lex Anderson, Scott  
27 M. Clark, Paul K. Henderson, Joseph M. Boyle, and Law Offices of Scott M. Clark, on any  
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1 cause of action in the District of Arizona, including cases originally filed in Arizona State  
2 Court that have been properly removed to federal court, without leave of the Court.

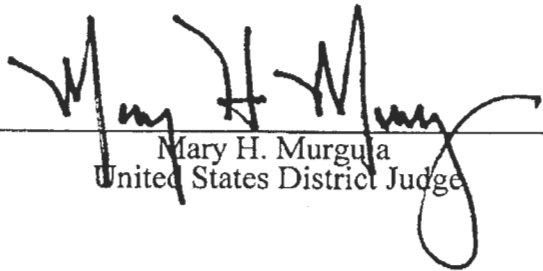
3 **IT IS FURTHER ORDERED** that in order to obtain leave of the Court, Plaintiffs  
4 shall submit with their moving papers, a copy of this Order and an affidavit stating that the  
5 claims have not been previously addressed and are not frivolous or lacking merit. Failure to  
6 comply with the Court's Order will constitute sufficient grounds to deny Plaintiffs' request  
7 for leave and to dismiss Plaintiffs' suit.

8 **IT IS FURTHER ORDERED** that the Clerk provide a copy of this Order to the  
9 judges of the United States District Court for the District of Arizona and the Honorable  
10 James M. Marlar, United States Bankruptcy Judge for the District of Arizona.

11 **IT IS FURTHER ORDERED** that the Clerk enter judgment accordingly.

12 DATED this 29<sup>th</sup> day of September, 2008.

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Mary H. Murgula  
United States District Judge