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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THOMAS GOOLSBY,
Plaintiff,

vs.

FERNANDO GONZALES, et al.,
Defendants.

1:11-cv-00394-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT DEFENDANT
STEADMAN'S MOTION TO DECLARE
PLAINTIFF A VEXATIOUS LITIGANT
AND REQUIRE PAYMENT OF SECURITY
BE DENIED, AND PLAINTIFF'S MOTION
FOR STAY AND TO CONDUCT
DISCOVERY BE DENIED
(Docs. 31, 36.)

OBJECTIONS, IF ANY, DUE WITHIN
THIRTY DAYS

I. BACKGROUND

Thomas Goolsby ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on March 8, 2011. (Doc. 1.) This case now proceeds on

1 Plaintiff's First Amended Complaint, filed on September 17, 2012, against defendant T.
2 Steadman ("Defendant") for retaliation in violation of the First Amendment.¹ (Doc. 13.)

3 On April 17, 2014, Defendant filed a motion to declare Plaintiff a vexatious litigant and
4 require payment of security. (Doc. 31.) On May 21, 2014, Plaintiff filed a motion for stay and
5 to conduct discovery, or in the alternative, a sixty-day extension of time. (Doc. 36.)

6
7 **II. MOTION TO DECLARE PLAINTIFF A VEXATIOUS LITIGANT AND
8 REQUIRE PAYMENT OF SECURITY**

9 **A. Legal Standard**

10 The All Writs Act, 28 U.S.C. § 1651, gives the Court the inherent power to enter pre-
11 filing orders against vexatious litigants. De Long v. Hennessey, 912 F.2d 1144, 1147 (9th Cir.
12 1990); Molski v. Evergreen Dynasty Corp., 500 F.3d 1047, 1057 (9th Cir. 2007). However,
13 such pre-filing orders are an extreme remedy and should rarely be used since such sanctions
14 can tread on a litigant's due process right of access to the courts. Molski, 500 F.3d at 1057. In
15 determining the basis upon which the Court may require a litigant to post security, this Court
16 has adopted "[t]he provisions of Title 3A, part 2, of the California Code of Civil Procedure,
17 relating to vexatious litigants. . . ." Local Rule 151(b). Under the law of the State of
18 California, "a defendant may move the court, upon notice and hearing, for an order requiring
19 the plaintiff to furnish security." Cal. Civ. Proc. Code § 391.1 (West 2014).

20 Under California law, a vexatious litigant is one who "[i]n the immediately preceding
21 seven-year period has commenced, prosecuted, or maintained in propria persona at least five
22 litigations other than in small claims court that have been . . . finally determined adversely to
23 the person . . ." Cal. Civ. Proc. Code § 391 (West 2014). Under federal law, however, the
24 criteria under which a litigant may be found vexatious is much narrower. While Local Rule
25 151(b) directs the Court to look to state law for the *procedure* in which a litigant may be
26 ordered to furnish security, this Court looks to federal law for the definition of vexatiousness,
27 and under federal law, the standard for declaring a litigant vexatious is more stringent.

28 ¹ On April 22, 2013, the court dismissed all remaining claims and defendants from this action based on
Plaintiff's failure to state a claim. (Doc. 17.)

1 The court has inherent power to sanction parties or their attorneys for improper conduct.
2 Chambers v. Nasco, Inc., 501 U.S. 32, 43-46 (1991); Roadway Express, Inc. v. Piper, 447 U.S.
3 752, 766 (1980); Fink v. Gomez, 239 F.3d 989, 991 (9th Cir. 2001). The imposition of
4 sanctions under the court’s inherent authority is discretionary. Air Separation, Inc. v.
5 Underwriters at Lloyd’s of London, 45 F.3d 288, 291 (9th Cir. 1995). The court’s “inherent
6 power ‘extends to a full range of litigation abuses.’” Fink, 239 F.3d at 992 (quoting Chambers,
7 501 U.S. at 46-47). However, in order to sanction a litigant under the court’s inherent powers,
8 the court must make a specific finding of “bad faith or conduct tantamount to bad faith.” Fink,
9 239 F.3d at 994. Although mere recklessness is insufficient to support sanctions under the
10 court’s inherent powers, “recklessness when combined with an additional factor such as
11 frivolousness, harassment, or an improper purpose” is sufficient. Id. at 993-94. A litigant may
12 be sanctioned for acting for an improper purpose, even if the act was “a truthful statement or
13 non-frivolous argument or objection.” Id. at 992. “[I]nherent powers must be exercised with
14 restraint and discretion.” Chambers, 501 U.S. at 44.

15 Under federal law, litigiousness alone is insufficient to support a finding of
16 vexatiousness. See Moy v. United States, 906 F.2d 467, 470 (9th Cir. 1990) (the plaintiff’s
17 claims must not only be numerous, but also be patently without merit). The focus is on the
18 number of suits that were frivolous or harassing in nature rather than on the number of suits
19 that were simply adversely decided. See De Long, 912 F.2d at 1147-48 (before a district court
20 issues a pre-filing injunction against a pro se litigant, it is incumbent on the court to make
21 substantive findings as to the frivolous or harassing nature of the litigant’s actions). The Ninth
22 Circuit has defined vexatious litigation as “without reasonable or probable cause or excuse,
23 harassing, or annoying.” Microsoft Corp. v. Motorola, Inc., 696 F.3d 872, 886 (9th Cir. 2012).
24 For these reasons, the mere fact that a plaintiff has had numerous suits dismissed against him is
25 an insufficient ground upon which to make a finding of vexatiousness.

26 **B. Discussion**

27 Defendant argues that Plaintiff qualifies as a vexatious litigant because he was declared
28 a vexatious litigant by Kern County Superior Court; and because he has commenced,

1 prosecuted, or maintained *in propria persona* at least thirteen pro se civil actions or
2 proceedings within the seven years before filing his Complaint in this case.

3 Defendant asks the Court to take judicial notice of the following prior litigation of
4 Plaintiff: 1) Thomas Goolsby v. Cate, et al., Kern County Superior Court (“KCSC”) case S-
5 1500-cv-270062 SPC, defendants’ demurrer sustained without leave to amend, order entered
6 May 31, 2011 (Request for Judicial Notice (“RJN”), Doc. 31-2, Exh. K); 2) Goolsby v. Tate, et
7 al., KCSC case S-1500-cv-270541, defendants’ motion for summary judgment granted,
8 judgment entered July 13, 2011 (RJN, Exh. L); 3) Goolsby v. Cate, et al., KCSC case S-1500-
9 CL-266864, defendants’ motion to declare Plaintiff a vexatious litigant, judgment entered
10 October 1, 2012 (RJN, Exh. M); 4. Goolsby v. Cate, et al., KCSC S-1500-AP-808, JRB,
11 defendant’s motion affirmed, order entered January 24, 2014 (RJN, Exh. N); 5) Thomas
12 Goolsby v. Neil Ridge, United States Court of Appeals, Ninth Circuit, case 11-55965,
13 appellant’s motion for voluntary dismissal of appeal granted, order entered August 3, 2011
14 (RJN, Exh. O); 6) Thomas Goolsby v. Matthew Cate, et al., California Court of Appeal, Fifth
15 Appellate District, case F062844, appeal from judgment of dismissal denied, opinion filed June
16 11, 2012 (RJN, Exh. P); 7) Thomas Goolsby v. Stainer, United States Court of Appeals for the
17 Ninth Circuit, case 12-70963, petition for writ of mandamus denied, order entered July 10,
18 2012 (RJN, Exh. Q); 8) Thomas Goolsby v. Scarlett, California Court of Appeal, Fifth
19 Appellate District, case F062974, petition for writ of mandate denied, order entered August 30,
20 2011 (RJN, Exh. R); 9) In re Thomas J. Goolsby on Habeas Corpus, California Court of
21 Appeal, Fourth Appellate District, case D055361, civil writ petition denied for failure to fully
22 exhaust administrative remedies, petition denied August 6, 2009 (RJN, Exh. S); 10) In re
23 Thomas J. Goolsby on Habeas Corpus, California Court of Appeal, Fourth Appellate District,
24 case D055747, civil writ petition denied for failure to fully exhaust administrative remedies,
25 petition denied September 25, 2009 (RJN, Exh. T); 11) In re Thomas J. Goolsby on Habeas
26 Corpus, California Court of Appeal, Fifth Appellate District, case F058733, civil writ petition
27 denied, petition denied November 10, 2009 (RJN, Exh. U); 12) In re Thomas J. Goolsby on
28 Habeas Corpus, Supreme Court of California, case S178810, civil writ petition denied, petition

1 denied January 21, 2010 (RJN, Exh. V); and 13) In re Thomas J. Goolsby on Habeas Corpus,
2 California Court of Appeal, Fifth Appellate District, case F062614, civil writ petition denied,
3 petition denied September 14, 2011 (RJN, Exh. W).

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5 The Court reiterates that the focus is on the number of suits that were frivolous or
6 harassing in nature rather than on the number of suits that were simply adversely decided. See
7 De Long, 912 F.2d at 1147-48. Even under California case law:

8 Any determination that a litigant is vexatious must comport with the intent and
9 spirit of the vexatious litigant statute. The purpose of which is to address the
10 problem created by the persistent and obsessive litigant who constantly has
11 pending a number of groundless actions and whose conduct causes serious
financial results to the unfortunate objects of his or her attacks and places an
unreasonable burden on the courts.

12 Morton v. Wagner, 156 Cal.App.4th 963, 970-71 (Cal. App. 6 Dist. 2007). In Plaintiff's cases
13 cited by Defendant above, two were dismissed for failure to exhaust administrative remedies.
14 Such cases do not demonstrate a malicious or vexatious intent of the Plaintiff. Nor does losing
15 an action at the summary judgment phase, voluntarily dismissing an action, or having a habeas
16 petition denied, demonstrate maliciousness or vexatiousness. Defendant has failed to meet his
17 burden in demonstrating that Plaintiff is a vexatious litigant. Since Defendant has failed to
18 make a threshold showing that Plaintiff has a pattern of engaging in harassing litigation
19 practices, the Court declines to address Defendant's argument that Plaintiff is not likely to
20 succeed on the merits. (Doc. 31-1 at 13).

21 **III. PLAINTIFF'S MOTION FOR STAY AND TO CONDUCT DISCOVERY**

22 In light of the Court's findings that Plaintiff is not a vexatious litigant, the Court
23 recommends that Plaintiff's motion for stay and to conduct discovery, or in the alternative, for
24 an extension of time, filed on May 21, 2014, be denied as moot.

25 **IV. CONCLUSION AND RECOMMENDATION**

26 Based on the foregoing, **IT IS HEREBY RECOMMENDED** that:

- 27 1. Defendant's motion to declare Plaintiff a vexatious litigant and require payment
28 of security, filed on April 17, 2014, be DENIED; and

1 2. Plaintiff’s motion for stay and to conduct discovery, or in the alternative, for
2 extension of time, filed on May 21, 2014, be DENIED as moot.

3 These Findings and Recommendations will be submitted to the United States District
4 Court Judge assigned to this action pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
5 **thirty (30) days** after being served with a copy of these Findings and Recommendations, any
6 party may file written objections with the Court and serve a copy on all parties. Such a
7 document should be captioned “Objections to Magistrate Judge’s Findings and
8 Recommendations.” Any reply to the objections shall be served and filed within ten (10) days
9 after service of the objections. The parties are advised that failure to file objections within the
10 specified time may waive the right to appeal the order of the District Court. Martinez v. Ylst,
11 951 F.2d 1153 (9th Cir. 1991).

12 IT IS SO ORDERED.

13
14 Dated: May 29, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE