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, 8	UNITED STATES DISTRICT COURT	
9	EASTERN DISTRICT OF CALIFORNIA	
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11	MARY LEE GAINES,	1:16-cv-01689-LJO-JLT (PC)
12	Plaintiff,	ORDER ADOPTING FINDINGS AND
13	V.	RECOMMENDATIONS AND DENYING DEFENDANT'S MOTION FOR ORDER
14	OFFICER BEAVER,	REQUIRING PLAINTIFF TO POST SECURITY
15	Defendant.	(Docs. 42, 45)
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17	Plaintiff Mary Lee Gaines is a state prisoner proceeding pro se and in forma pauperis in	
18	this civil rights action under 42 U.S.C. § 1983. This matter was referred to a United States	
19	magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.	
20	Defendant Beavers moves for an order requiring Plaintiff to post security pursuant to	
21	Local Rule 151(b). (Doc. 42.) On December 10, 2019, the assigned magistrate judge issued	
22	findings and recommendations to deny Defendant's motion. (Doc. 45.) The magistrate judge	
23	found that, under federal law, Plaintiff's prior litigation activity does not rise to the level of	
24	"vexatious," thus Plaintiff should not be required to post security pursuant to Local Rule 151(b).	
25	(<i>Id.</i> at 4-5.) Local Rule 151(b) adopts as a "procedural [r]ule" of the Court "Title 3A, part 2, of	
26	the California Code of Civil Procedure, relating to vexatious litigants, on the basis of which	
27	the Court may order the giving of a security, bond, or undertaking." The magistrate judge found	
28	that, in the Eastern District, "the Court looks to state law for the procedures to use to order a	

plaintiff to furnish" a security, but it "looks to federal substantive law to determine whether a
 litigant is 'vexatious." (*Id.* at 2 (emphasis removed).) Under federal law, the magistrate judge
 found that Plaintiff is not vexatious and, therefore, recommended denial of Defendant's motion.
 (*Id.* at 4-5.)

5 Defendant filed objections to the findings and recommendations on December 23, 2019. 6 (Doc. 50.) In her objections, Defendant argues that "requiring a party to post security is not a 7 sanction by the Court" but instead "a procedural requirement." (Id. at 2.) On this point, the Court 8 notes that, for a plaintiff proceeding *in forma pauperis*, an order requiring her to post security in 9 the amount of \$7,700, (see Doc. 42 at 1), will likely dispose of this action. Thus, such an order 10 serves as a sanction in practical terms, if not in technical ones. See Simulnet E. Assocs. v. Ramada 11 Hotel Operating Co., 37 F.3d 573, 575-76 (9th Cir. 1994) (imposition of bond requirement on 12 plaintiffs who could not post bond, based on belief that defendants would prevail at trial, "[i]n 13 practical effect, ... amounted to a judgment as a matter of law.")

14 Defendant also argues that "Plaintiff's 'vexatiousness' is not at issue," and that her motion 15 "does not require a showing of 'vexatiousness'..." (Doc. 50 at 2, 5.) However, this ignores the 16 plain language of California Code of Civil procedure section 391.1, upon which Defendant's 17 motion is based, (see Doc. 42-1 at 3.) The statute provides, "[t]he motion for an order requiring 18 the plaintiff to furnish security shall be based upon the ground, and supported by a showing, that 19 the plaintiff is a vexatious litigant." Cal. Civ. Proc. Code § 391.1. The magistrate judge simply 20 based whether such a showing is made on federal law, instead of the definition provided by 21 California statute. (See Doc. 45 at 2, 4.)

Defendants point to cases in the Eastern District where courts use the state definition of
"vexatious litigant" in imposing a security requirement. (Doc. 50 at 3-4). The Court
acknowledges that the case history regarding whether to apply the state or federal definition of
vexatiousness is unhelpfully mixed. *Compare, e.g., Benyamini v. Vance*, No. 2:13-cv-00910TLN-AC, 2016 WL 1253898, at *4 (E.D. Cal. 2016) (utilizing California law), *with Smith v. Officer Sergent*, No. 2:15-cv-0979-GEB-DBP, 2016 WL 6875892, at *2 (E.D. Cal. 2016)
(utilizing federal law).

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1	The crux of the matter, though, is that the decision to require a plaintiff to post security is	
2	a discretionary one. See Local Rule 151(b) (the Court may order the giving of a security, bond, or	
3	undertaking, although the power of the Court shall not be limited thereby) (emphasis added); see	
4	also Bradford v. Brooks, 659 F. App'x 935, 936 (9th Cir. 2016) ("district court did not abuse its	
5	discretion by requiring [plaintiff] to post a security after declaring him a vexatious litigant").	
6	Here, the magistrate judge relied on federal law to recommend that Plaintiff not be declared a	
7	vexatious litigant, and thereby required to post security pursuant to Local Rules, based on the	
8	only five cases to which Defendant points—two of which involved the same matter at the trial	
9	and appellate levels, and none of which were deemed frivolous or patently without merit. (See	
10	Doc. 45 at 4-5.) The Court agrees that the present case does not warrant the imposition of a	
11	security requirement that will likely dispose of this matter. Simulnet E. Assocs., 37 F.3d at 575-76	
12	("In requiring a security bond for defendants' costs, care must be taken not to deprive a plaintiff	
13	of access to the federal courts. To do so has serious constitutional implications."). It is in the	
14	Court's discretion to decline to impose such requirement.	
15	Accordingly, the Court HEREBY ORDERS:	
16	1. The findings and recommendations issued on December 10, 2019, (Doc. 45), are	
17	ADOPTED;	
18	2. Defendant's motion for an order requiring Plaintiff to post security, (Doc. 42), is	
19	DENIED.	
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21	IT IS SO ORDERED.	
22	Dated: January 4, 2020 /s/ Lawrence J. O'Neill UNITED STATES CHIEF DISTRICT JUDGE	
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