

1 immediate recommendations. Specifically, they take issue with the Magistrate Judge’s reliance
2 on Ninth Circuit precedent – *DeLong v. Hennessey*, 912 F.2d 1144 (9th Cir. 1990) – in weighing
3 their motion, rather than deciding it based on the California Code of Civil Procedure which this
4 district has incorporated into its local rules. E.D. Cal. L.R. 151(b). Additionally, defendants
5 contend that the cases cited by the Magistrate Judge are inapposite insofar they deal with the
6 imposition of a pre-filing injunction, rather than a requirement to post security like the one sought
7 here. The court has reviewed the recommendations and finds that the Magistrate Judge did not
8 err. In a similar case before this district, Judge Burrell wrote:

9 Defendant argues at least plaintiff should have ‘declared’ a
10 vexatious litigant under section 391(b)(3) because plaintiff’s
11 litigation history evinces that defendant has satisfied the threshold
12 to require plaintiff to post security under section 391(b)(1). Section
13 391(b) of the California Code of Civil Procedure contains four
14 subsections that define a ‘vexatious litigant.’ Therefore, whether a
15 finding is made under subsection (b)(3) or (b)(1), the result, under
16 California law, still concerns determination of whether the litigant
17 is ‘vexatious.’ **Both this court's local rule and Ninth Circuit
18 decisions demonstrate that the court looks to federal law, not
19 state law, to define a vexatious litigant.** “The All Writs Act, 28
20 U.S.C. § 1651(a), provides district courts with the inherent power to
21 enter pre-filing orders against vexatious litigants. However, such
22 pre-filing orders are an extreme remedy that should rarely be used.”
23 *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir.
24 2007).

18 *Smith v. Officer Sergeant*, 2016 WL 6875892, 2016 U.S. Dist. LEXIS 161285, at *4 (E.D. Cal.,
19 Nov. 21, 2016) (emphasis added). *See also Cranford v. Crawford*, 2016 U.S. Dist. LEXIS
20 117714, 2016 WL 4536199, at *3 (E.D. Cal., Aug. 31, 2016) (“As stated, the state statutory
21 definition of vexatiousness is not enough to find a litigant vexatious in federal court.”); *Goolsby*
22 *v. Gonzales*, 2014 U.S. Dist. LEXIS 73819, 2014 WL 2330108, at *1-2 (E.D. Cal., May 29, 2014)
23 report and recommendation adopted 2014 U.S. Dist. LEXIS 101096, 2014 WL 3529998 (E.D.
24 Cal., July 15, 2014) (“Under federal law, however, the criteria under which a litigant may be
25 found vexatious is much narrower. While Local Rule 151(b) directs the Court to look to state law
26 for the procedure in which a litigant may be ordered to furnish security, this Court looks to
27 federal law for the definition of vexatiousness, and under federal law, the standard for declaring a
28 litigant vexatious is more stringent. . . . [T]he mere fact that a plaintiff has had numerous suits

1 dismissed against him is an insufficient ground upon which to make a finding of vexatiousness.”).

2 Having found the foregoing, the court agrees with the Magistrate Judge’s analysis.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. The findings and recommendations filed March 13, 2018, are adopted in full; and
5 2. Defendants’ motion to require plaintiff to post security (ECF No. 25) is DENIED.

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7 DATED: April 26, 2018

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/s/ John A. Mendez

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UNITED STATES DISTRICT COURT JUDGE

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