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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KAMLESH BANGA,  
  
  Plaintiffs,  
  
  v.  
  
AMERIPRISE AUTO & HOME  
INSURANCE AGENCY AND DOES  
1 through 10 inclusive,  
  
  Defendants.

No. 2:18-cv-1072 MCE AC

ORDER

This matter is before the court on defendants Ameriprise Auto & Home Insurance Agency, Inc. and IDS Property Casualty Insurance Company (collectively, “Defendants”) motion for an order requiring the pro se plaintiff, Kamlesh Banga, to post security for \$25,000 as a vexatious litigant pursuant to Local Rule 151(b). ECF No. 79. For the reasons set forth below, the motion is DENIED.

**I. Relevant Background**

This action stems from a dispute over insurance coverage for alleged water damage to plaintiff’s home as a result of a windstorm on January 18, 2016. Revised Third Amended Complaint (“RTAC”), ECF No. 67-3 at 1. Plaintiff alleges that defendant insurers failed to properly pay her claim. She brings several causes of action, including breach of contract and bad faith. RTAC at 3, 10-21. This case was removed from state court on April 30, 2018. ECF No. 1.

1 On November 15, 2018, the case was sent to this court’s Voluntary Dispute Resolution Program  
2 (“VDRP”). ECF No. 20. The action remained in VDRP until March 12, 2020, when it failed to  
3 settle and was removed from the program. Most recently, the court extended the discovery  
4 deadline in this case to March 3, 2012, and the dispositive motions deadline to April 7, 2021.

## 5 **II. Motion to Declare Plaintiff a Vexatious Litigant**

6 Defendants ask the court to declare plaintiff a vexatious litigant because “it appears Banga  
7 has filed at least 26 cases in State court, litigated at least 17 cases in Federal trial courts (some of  
8 these were removed state court actions), pursued at least 12 State court appeals, another 4 appeals  
9 in the Ninth Circuit, and filed 2 petitions for review in the United States Supreme Court.” ECF  
10 No. 79-1 at 7.

### 11 **A. Legal Standard**

12 The district courts have the power to issue pre-filing orders that restrict a litigant’s ability  
13 to initiate court proceedings, but “such pre-filing orders are an extreme remedy that should rarely  
14 be used.” Molski v. Evergreen Dynasty Corp., 500 F.3d 1047, 1057 (9th Cir. 2007) (citing De  
15 Long v. Hennessey, 912 F.2d 1144, 1147 (9th Cir. 1990). However, “[f]lagrant abuse of the  
16 judicial process cannot be tolerated because it enables one person to preempt the use of judicial  
17 time that properly could be used to consider the meritorious claims of other litigants.” De Long,  
18 912 F.2d at 1148.

19 [I]n De Long, [the Ninth Circuit] outlined four factors for district courts to examine  
20 before entering pre-filing orders. First, the litigant must be given notice and a  
21 chance to be heard before the order is entered. De Long, 912 F.2d at 1147. Second,  
22 the district court must compile “an adequate record for review.” Id. at 1148. Third,  
23 the district court must make substantive findings about the frivolous or harassing  
24 nature of the plaintiff’s litigation. Id. Finally, the vexatious litigant order “must be  
25 narrowly tailored to closely fit the specific vice encountered.” Id.

24 Molski, 500 F.3d at 4057. The first and second factors “are procedural considerations” while the  
25 third and fourth factors “are substantive considerations” which “help the district court define who  
26 is, in fact, a ‘vexatious litigant’ and construct a remedy that will stop the litigant’s abusive  
27 behavior while not unduly infringing the litigant’s right to access the courts.” Molski, 500 F.3d at  
28

1 1057-58.

2 “In ‘applying the two substantive factors,’ [the Ninth Circuit has] held that a separate set  
3 of considerations employed by the Second Circuit Court of Appeals ‘provides a helpful  
4 framework.’” Ringgold-Lockhart v. County of Los Angeles, 761 F.3d 1057, 1062 (9th Cir. 2014)  
5 (quoting Molski, 500 F.3d at 1058).

6 The Second Circuit. . . has instructed district courts, in determining whether to enter  
7 a pre-filing order, to look at five factors: “(1) the litigant’s history of litigation and  
8 in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the  
9 litigant’s motive in pursuing the litigation, e.g., does the litigant have an objective  
10 good faith expectation of prevailing?; (3) whether the litigant is represented by  
11 counsel; (4) whether the litigant has caused needless expense to other parties or has  
12 posed an unnecessary burden on the courts and their personnel; and (5) whether  
13 other sanctions would be adequate to protect the courts and other parties.”

14 Molski, 500 F.3d at 1052 (quoting Safir v. U.S. Lines, Inc., 792 F.2d 19, 24 (2d Cir. 1986)).

#### 15 B. Analysis

16 A vexatious litigant order is not appropriate in this case. “A pre-filing injunction is  
17 appropriate where a plaintiff’s complaints are not only numerous, but also patently without  
18 merit.” Favor v. Harper, No. CV 17-0165-JGB (JEM), 2017 WL 132830, at \*5 (C.D. Cal. Jan.  
19 13, 2017). Without reaching the question whether plaintiff’s previous actions had merit, the  
20 undersigned identifies only six cases, including this one, in the Eastern District of California since  
21 2006<sup>1</sup> – by the undersigned’s judgment, this is not sufficiently “numerous” to warrant a pre-filing  
22 injunction. Cases in which courts have considered vexatious litigant pre-filing orders have  
23 involved much more flagrant examples of abuse of the legal system. See, e.g., Favor, 2017 WL  
24 132830, at \*2 (“Favor has filed at least 50 actions in this district since 2014, and he continues to  
25 file new habeas petitions and civil rights complaints on a regular basis.”), Molski, 500 F.3d  
26 at 1050 (“[plaintiff] has filed about 400 lawsuits in the federal courts within the districts in

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26 <sup>1</sup> Plaintiff’s other cases include: Banga v. American Express Cards, 2:06-cv-0880-GEB-GGH  
27 (E.D.CA. 2006), Banga v. Allstate Insurance Company, 2:08-cv-1518-MCE-EFB (E.D.CA.  
28 2008); Banga v. Midas International Corporations, et al., 2:08-cv-1379-FCD-JFM (E.D.CA  
2008); Banga v. First USA, N.A. et al., 2:09-cv-2268-FCD-GGH (E.D.CA 2009), and Banga v.  
Gundumolgula et al., 13-cv-0667-MCE-CKD (E.D.CA. 2013).

1 California.”) Defendants reliance on plaintiff’s filings in other courts is unavailing; any pre-filing  
2 order issued by the Eastern District of California would only apply to the filing of cases in this  
3 District, and plaintiff’s activities elsewhere are irrelevant, particularly where defendants do not  
4 allege they in particular are being harassed by multiple lawsuits from plaintiff.

5 “[P]re-filing orders are an extreme remedy that should rarely be used.” Molski, 500 F.3d  
6 at 1057. The fact that plaintiffs filed five previous cases against various defendants that were  
7 litigated in this court, all several years ago, does not qualify plaintiff as a vexatious litigant in  
8 need of a pre-filing order in this district.

9 **III. Conclusion**

10 Defendants motion for the court to declare plaintiff a vexatious litigant (ECF No. 79) is  
11 DENIED.

12 IT IS SO ORDERED.

13 DATED: February 11, 2021

14   
15 ALLISON CLAIRE  
16 UNITED STATES MAGISTRATE JUDGE  
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