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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM J. WHITSITT,

Plaintiff,

No. CIV S-10-0528 JAM DAD PS

v.

ORDER

CITY OF TRACY, et al.,

Defendants.

_____ /

Plaintiff, William Whitsitt, is proceeding in this action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. The case was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

On August 9, 2011, plaintiff was ordered to submit to the United States Marshal within thirty days a properly completed USM-285 form, a properly completed summons form, and the number of copies of the endorsed complaint and of the August 9, 2011 order required by the United States Marshal. (Order August 9, 2011 (Doc. No. 9.) Plaintiff was also ordered to file with this court a declaration stating the date on which he submitted the required documents to the United States Marshal within ten days after submitting the required documents.

After the forty-day period for plaintiff's action expired without a response from plaintiff, the undersigned issued findings and recommendations on October 11, 2011,

1 recommending that this action be dismissed without prejudice. On October 18, 2011, plaintiff
2 filed objections to those findings and recommendations, in which plaintiff stated that he had
3 attempted to comply with the court's August 9, 2011 order, but that the United States Marshal
4 returned plaintiff's submission for failure to include a copy of the court's August 9, 2011 order.
5 Plaintiff explained that he was away from home and did not receive the correspondence from the
6 Marshal's Office until October 7, 2011. Plaintiff re-submitted the necessary documents to the
7 Marshal's Office on October 11, 2011. Plaintiff's objections are signed by plaintiff "under the
8 penalty of law."¹ (Doc. No. 11 at 4.)

9 Good cause appearing, the undersigned will vacate the October 11, 2011 findings
10 and recommendations. Plaintiff is cautioned however that this is the second time that he has
11 filed documents with the court containing clearly inaccurate factual assertions. On July 22, 2011
12 plaintiff filed a document asking the Clerk of the Court to send documents to the Marshal's
13 Office for plaintiff because he had not been given the address of the Marshal's Office. (Doc. No.
14 8.) On August 9, 2011, the court notified plaintiff that he had in fact been provided with the
15 address and phone number of the United States Marshal on two prior occasions. (Doc. No. 9.)

16 Now, in his October 18, 2011 objections, plaintiff states:

17 I was not sent any type of instructions of what needed to be sent to
18 the U.S. Marshal's Office with summons and complaint, except
19 that I must serve them a copy of the summons and complaint. That
is all my instructions stated to me.

20 (October 18, 2011 Objection (Doc. No. 11) at 2.) Plaintiff was, however, ordered on three prior
21 occasions to submit to the United States Marshal a properly completed USM-285 form, a
22 properly completed summons form, and the number of copies of the endorsed complaint and of
23 the court's order required by the United States Marshal. (See May 17, 2011 Order (Doc. No. 3);
24 June 20, 2011 Order (Doc. No. 7); August 9, 2011 (Doc. No. 9)). Plaintiff cannot continue to

25 ¹ Plaintiff does not address why he failed to file his declaration with this court stating the
26 date on which he submitted the required documents to the United States Marshal.

1 submit to this court documents with factually inaccurate assertions. In this regard, plaintiff is
2 advised that his failure to comply with the court's rules or with any order of the court may be
3 grounds for imposition by the court of any and all sanctions authorized by statute or rule or
4 within the inherent power of the court. See Local Rule 110.

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. The findings and recommendations filed October 11, 2011 (Doc. No. 10) are
7 vacated; and

8 2. Within twenty-one (21) days of this order, plaintiff shall file with this court a
9 declaration stating the date on which he submitted the required documents for service of process
10 to the United States Marshal. Failure to file the declaration in a timely manner may result in an
11 order imposing appropriate sanctions.

12 DATED: November 1, 2011.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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