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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

HORACE BELL,

Plaintiff,

v.

A. Romero, et al.,

Defendants.

CASE NO: 1:09-cv-02014-OWW-GBC (PC)

ORDER TO SHOW CAUSE REGARDING  
RULE 11(b)(3) VIOLATION

(Docs. 1, 6, 21)

**I. Rule 11(b)**

Horace Bell (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. On November 17, 2009, Plaintiff filed his original complaint. On page one of the form complaint, Plaintiff leaves blank the information regarding prior lawsuits. On December 4, 2009, Plaintiff filed an amended complaint in which Plaintiff states that he has only one previous or pending lawsuit. Plaintiff was allowed to file a third amended complaint and on February 10, 2010 files a third amended complaint and in it Plaintiff asserts that he has only one pending or prior lawsuit. On April 22, 2010, Plaintiff filed a motion requesting leave to submit a fourth amended complaint and without being granted leave to amend, on May 5, 2010, Plaintiff sought to submit a fourth amended complaint in which he left blank information about his previous lawsuits.

In violation of Rule 11(b)(3) of the Federal Rules of Civil Procedure, Plaintiff files this action

1 under an alias name “Horace Bell” when, in fact, his true name is “Horace Thomas”<sup>1</sup> and Plaintiff  
2 falsely states in his complaint that he has only one previous or pending lawsuit in addition to this  
3 case. Rule 11(b) (3) states:

4 By presenting to the court a pleading, written motion, or other paper--whether by  
5 signing, filing, submitting, or later advocating it--an . . . unrepresented party certifies  
6 that to the best of the person's knowledge, information, and belief, formed after an  
7 inquiry reasonable under the circumstances:

(3) the factual contentions have evidentiary support or, if specifically so  
identified, will likely have evidentiary support after a reasonable opportunity for  
further investigation or discovery . . . .

8 Fed.R.Civ.P. 11(b)(3).

9 Plaintiff has filed over twenty-five other civil suits under his real name and alias names and  
10 currently has four other section 1983 cases open in this district and has recently been declared a  
11 vexatious litigant in the Central District Court in *Bell v. Harrington et al.*, 2:10-cv-03599 on May  
12 20, 2010. Plaintiff’s failure to provide information about previous lawsuits interferes with the court’s  
13 efforts to conserve judicial resources by preventing the proliferation of vexatious litigation.  
14 *Anheuser-Busch, Inc. v. Natural Beverage Distributors*, 69 F.3d 337, 348 (9th Cir. 1995) (dismissal  
15 sanction warranted when deliberate deception undermines integrity of judicial proceedings); *Warren*  
16 *v. Guelker*, 29 F.3d 1386, 1389 (9th Cir.1994) (per curiam) (pro se, in forma pauperis prisoner’s  
17 misrepresentation about previous lawsuits may violate Rule 11). It is apparent from Plaintiff’s  
18 history of litigation and use of a false name even in this case that his misrepresentation and  
19 omissions regarding the number of previous and pending lawsuits in the complaint is willful and in  
20 bad faith. *See Anheuser-Busch, Inc. v. Natural Beverage Distributors*, 69 F.3d 337, 348 (9th Cir.  
21 1995). As Plaintiff is proceeding in forma pauperis, the Court finds that monetary sanctions would  
22 be inappropriate and finds that the appropriate sanction for violating Rule 11(b)(3) is to dismiss the  
23 case without prejudice. *See Anheuser-Busch, Inc. v. Natural Beverage Distributors*, 69 F.3d 337,  
24 348 (9th Cir. 1995); *Warren v. Guelker*, 29 F.3d 1386, 1389 (9th Cir.1994).

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27 <sup>1</sup> The Court takes judicial notice of *Bell v. Harrington et al.*, 2:10-cv-03599 (C.D. May 20, 2010) where the  
28 court notes the alias names of Horace Bell, Horace Andrew Bell and his true name Horace Thomas and on June 7,  
2010, Plaintiff was declared a vexatious litigant with regards to repeat filings of the same habeas case.

1 **IV. Conclusion**

2 Because it appears to the Court that Plaintiff has violated Rule 11(b)(3) of the Federal Rules  
3 of Civil Procedure, the Court HEREBY ORDERS:

- 4 1. Plaintiff SHALL SHOW CAUSE within thirty (30) days of the date of service of  
5 this order why filing under a false name and the false statement of prior litigation  
6 in Plaintiff's complaint does not violate Rule 11(b)(3) of the Federal Rules of  
7 Civil Procedure and why this action should not be dismissed without prejudice as  
8 the appropriate sanction for violating Rule 11(b)(3).

9  
10 IT IS SO ORDERED.

11 Dated: December 30, 2010

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UNITED STATES MAGISTRATE JUDGE