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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
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10 GINA CARUSO,  
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12 Plaintiff,

13 v.

14 OFFICER G. SOLORIO, et al.,  
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16 Defendants.  
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Case No. 1:15-cv-00780-AWI-EPG (PC)

ORDER RE: PLAINTIFF'S REQUEST  
FOR COURT ORDER TO ATTEND  
LAW LIBRARY

(ECF NO. 68 & 74)

ORDER DIRECTING CLERK TO  
SEND A COPY OF THIS ORDER TO  
SENIOR ASSISTANT ATTORNEY  
GENERAL MONICA ANDERSON,  
THE WARDEN OF CALIFORNIA  
INSTITUTION FOR WOMEN, AND  
THE LITIGATION COORDINATOR  
AT CALIFORNIA INSTITUTION FOR  
WOMEN

20 **I. BACKGROUND**

21 Gina Caruso ("Plaintiff") is a state prisoner proceeding *pro se*<sup>1</sup> and *in forma pauperis* in  
22 this civil rights action filed pursuant to 42 U.S.C. § 1983.

23 On April 12, 2018, Plaintiff filed a request for a Court order allowing her to attend the  
24 law library in general population for up to two hours per week. (ECF No. 68). Plaintiff alleged  
25 that it is difficult for her to obtain photo copies and legal paper without access to the general  
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27 <sup>1</sup> Jenny Huang has been appointed as limited purpose counsel for a settlement conference, which is  
28 currently set for September 20, 2019. (ECF Nos. 80 & 100). In the interim, it appears that Jenny Huang intends to  
represent Plaintiff in this case. (See ECF Nos. 81 & 87).

1 population law library. Plaintiff alleged that she put in a request to get copies of motions and  
2 admissions so that she could send them to defense counsel, but did not receive a response to her  
3 request.

4 As Plaintiff appeared to be alleging that she was unable to meet a court deadline  
5 because California Institution for Women was not timely providing legal paper and access to a  
6 way to make copies, the Court requested a response from the Warden of California Institution  
7 for Women to ensure that Plaintiff could timely comply with Court orders in this case.

8 On April 30, 2018, the Warden filed a declaration in response. (ECF No. 74). The  
9 Warden “look[ed] into Plaintiff’s allegations.” (Id. at ¶ 3). “In consulting our Senior Librarian  
10 regarding the copies issue, [the Warden] was informed that Ms. Caruso has made no such  
11 request for copies from the library.” (Id.). The Warden’s declaration signed by Warden Hill  
12 under penalty of perjury. (Id. at p. 2).

13 On May 15, 2018, Plaintiff filed a reply to the Warden’s response. (ECF No. 78).  
14 Attached to the response were three CDCR Form 22s, all directed to the law library (or law  
15 library clerk). All three Form 22s appear to ask for legal copies, and all three were dated prior  
16 to the date of the Warden’s response.

17 Given the discrepancy between the Warden’s declaration and Plaintiff’s evidence, the  
18 Court directed the Warden of California Institution for Women to file a response explaining the  
19 discrepancy, if possible. (ECF No. 86). The Court noted that it would consider the Warden’s  
20 response when considering potential sanctions for submitting seemingly false information to  
21 the Court. (Id.). The Court also allowed the parties to submit briefing regarding the Court’s  
22 authority to sanction non-parties. (Id.).

23 The Warden filed her response on September 27, 2018. (ECF No. 92). The Warden  
24 acknowledges that Plaintiff in fact submitted three CDCR Form 22s requesting legal copies or  
25 access to services. (ECF No. 92, ¶ 4). All three were received by the California Institution for  
26 Women. (Id. at ¶¶ 4, 5, & 6). Two were not forward to library staff. (Id. at ¶¶ 4 & 6). One  
27 was received by library staff, who responded to Ms. Caruso. (Id. at ¶ 5). The Warden  
28 explained, “[b]ased on my staff’s representations, it was my understanding that Plaintiff had

1 not made any requests for legal supplies or copies that had gone unaccommodated. For this  
2 reason, my initial response indicated that Plaintiff had not made any requests.” (Id. at ¶ 7).

## 3 **II. SUPPLEMENTAL BRIEFING**

### 4 1. Defendants’ Supplemental Brief

5 Defendants argue that the Court can sanction a non-party, such as the Warden, but that  
6 sanctions are only appropriate if the Court makes an explicit finding of bad faith or conduct  
7 tantamount to bad faith. (ECF No. 93, pgs. 2-3). Here, the Warden “mistakenly represented to  
8 the Court that as of April 27, 2018, Plaintiff had not made any requests to staff regarding the  
9 provision of legal copies.” (Id. at 2). “[T]he Warden’s representations to the Court were not in  
10 bad faith, but instead were attributable to clerical error in retrieving documents responsive to an  
11 inquiry.” (Id. at 3). As the Warden did not act in bad faith, sanctions are not appropriate. (Id.).

### 12 2. Plaintiff’s Supplemental Brief

13 Plaintiff argues that the Court does not need to make a finding of bad faith in order to  
14 sanction the Warden. (ECF No. 95, p. 2). “Rule 11 sanctions may be imposed if the  
15 declaration signed by Warden Hill was ‘frivolous, legally unreasonable, or without factual  
16 foundation, even though the paper was not filed in subjective bad faith.’” (Id.) (citing Zaldivar  
17 v. City of Los Angeles, 780 F.2d 823, 831 (9th Cir. 1986)).

18 While Rule 11 only authorizes sanctions against an attorney, law firm, or party, the  
19 Court may impute the sanctionable conduct of the Warden to Defendants for the purpose of  
20 remedying the false declaration presented to the Court. (ECF No. 95, p. 3). The Warden’s  
21 conduct can be imputed to Defendants because as a high-ranking employee of the California  
22 Department of Corrections and Rehabilitation, the Warden is an interested party in the  
23 litigation. (Id.). Additionally, as warden of Plaintiff’s institution of confinement, the Warden  
24 has a lot of authority over Plaintiff’s ability to participate in her lawsuit, regardless of whether  
25 she now has an attorney. (Id.).

26 In addition to Rule 11, “[f]ederal courts have the inherent power to impose sanctions...  
27 for ‘willful disobedience’ of a court order or for conduct that is vexatious, wanton, or for  
28 oppressive reasons.” (Id. at 4).

1 Plaintiff argues that there were many actions the Warden could have taken in response  
2 to the Court's concern about Plaintiff's lack of access to the Court. (Id.). In addition to  
3 speaking to the law librarian, the Warden could have interviewed Plaintiff, or reviewed  
4 Plaintiff's inmate file. (Id.). The Warden's declaration does not explain why she limited her  
5 investigation in response to the Court's order entered on April 16, 2018, to consulting with the  
6 law librarian. (Id.).

7 "In light of the prior infringements on [Plaintiff's] right of access to the courts,"  
8 Plaintiff asks for sanctions in the form of contact visits with her attorney and ongoing  
9 confidential phone calls with her attorney. (Id. at 5-6).

### 10 **III. DISCUSSION**

11 As Plaintiff currently has counsel, it does not appear that Plaintiff needs access to the  
12 law library or a way to make copies in order to be able to prosecute this case. Accordingly,  
13 those requests are denied without prejudice as moot.

14 However, this does not resolve the Court's concern regarding Plaintiff's ability to  
15 access the Court, or the Warden's April 30, 2018 response to the Court's April 16, 2018 order.  
16 In her motion, Plaintiff was in essence asking for the tools necessary to be able to access the  
17 courts, and the Court is concerned about Plaintiff's ability to do so. As Plaintiff points out, the  
18 Warden has authority over Plaintiff's ability to participate in this lawsuit. And, the Court is  
19 troubled about how the Warden responded to the Court's April 16, 2018 order.

20 The Warden stated, under penalty of perjury, that she "looked into Plaintiff's  
21 allegations," and that "[i]n consulting our Senior Librarian regarding the copies issue, I am  
22 informed that Ms. Caruso has made no such request for copies from the library." (ECF No. 74,  
23 ¶ 3). However, as it turned out, Plaintiff had in fact submitted three requests for copies.  
24 Moreover, in her response, the Warden seems to suggest that her statement that "Ms. Caruso  
25 had made no request for copies from the library" was supported by the record because the  
26 library had responded to one request, and did not receive the other two requests, which were  
27 received by other units of the institution. But that explanation is wholly unsatisfying. The  
28 Warden's response was factually incorrect; saying there were no requests is not the same as

1 saying no requests received by the library that went without a response.

2 The Court has considered whether the Warden's incorrect response warrants sanctions  
3 at this time. "Rule 11 sanctions shall be assessed if the paper filed in district court and signed  
4 by an attorney or an unrepresented party is frivolous, legally unreasonable or without factual  
5 foundation, even though the paper was not filed in subjective bad faith." Golden Eagle  
6 Distrib. Corp. v. Burroughs Corp., 801 F.2d 1531, 1538 (9th Cir. 1986) (quoting Zaldivar, 780  
7 F.2d at 831). However, court-initiated Rule 11 sanctions should only be applied when the  
8 filing at issue is "akin to contempt." United Nat. Ins. Co. v. R&D Latex Corp., 242 F.3d 1102,  
9 1118 (9th Cir. 2001); Gonzales v. Texaco Inc., 344 F. App'x 304, 309 (9th Cir. 2009)

10 Additionally, "it is firmly established that [t]he power to punish for contempts is  
11 inherent in all courts. This power reaches both conduct before the court and that beyond the  
12 court's confines, for [t]he underlying concern that gave rise to the contempt power was not ...  
13 merely the disruption of court proceedings. Rather, it was disobedience to the orders of the  
14 Judiciary, regardless of whether such disobedience interfered with the conduct of trial.  
15 Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (alterations in original) (citations and  
16 internal quotation marks omitted). "Before awarding sanctions under its inherent powers,  
17 however, the court must make an explicit finding that [the] conduct 'constituted or was  
18 tantamount to bad faith.'" Primus Auto. Fin. Servs., Inc. v. Batarse, 115 F.3d 644, 648 (9th  
19 Cir. 1997) (quoting Roadway Express, Inc. v. Piper, 447 U.S. 752, 767 (1980); Knupfer v.  
20 Lindblade (In re Dyer), 322 F.3d 1178, 1196 (9th Cir. 2003). Additionally, "inherent powers  
21 must be exercised with restraint and discretion." Chambers, 501 U.S. at 44.

22 After consideration of the legal standards and circumstances in this case, the Court will  
23 not sanction the Warden at this time. As an initial matter, Plaintiff has not filed a formal  
24 request for sanctions under Rule 11 or given the Warden an opportunity to respond or withdraw  
25 her statement. Notwithstanding the attempt to characterize the first representation as described  
26 above, the Warden also stated under penalty of perjury that the incorrect statement was "due to  
27 clerical error." (ECF No. 92, ¶ 7). The Court is thus unable to determine that the Warden's  
28 conduct constituted or was tantamount to bad faith. In the end, although the inaccuracy is very

1 troubling, the Court declines to issue sanctions.

2           Nonetheless, the Court notes that the inaccuracy is troublesome because, in cases such  
3 as these, the Court relies on accurate responses from prison officials in making its rulings. If  
4 Plaintiff had not responded with evidence that she in fact requested copies, the Court may have  
5 denied Plaintiff's motion based on the Warden's representations, which turned out to be  
6 inaccurate. The Court needs to be able to trust that when a prison official files a declaration,  
7 that official has conducted a reasonable investigation regarding the facts in the declaration and  
8 that the facts are accurate.

9           While the Court is not sanctioning the Warden, given Plaintiff's request for access to  
10 the Court, as well as the difficulty Plaintiff had in making copies and the inaccuracy in the  
11 Warden's declaration regarding Plaintiff's requests for copies, the Court will grant Plaintiff's  
12 request for regular confidential telephone calls between Plaintiff and her counsel. The Court  
13 finds that this requirement will ensure adequate communication between Plaintiff and her  
14 counsel, and is necessary to ensure Plaintiff's access to her counsel and the Court in light of all  
15 circumstances described above.<sup>2</sup>

16 **IV. ORDER**

17           Accordingly, IT IS ORDERED THAT:

- 18           1. Until this case is closed, the Warden shall arrange for a monthly confidential  
19           telephone call between Plaintiff and her counsel at a time that is mutually  
20           agreeable; and

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28           <sup>2</sup> The Court already granted Plaintiff a contact visit with her counsel. (ECF No. 96). If another contact visit is required, Plaintiff may file a request for another contact visit with her counsel.

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2. The Clerk of Court is directed to serve a copy of this order on Supervising Deputy Attorney General Monica Anderson, the Warden of California Institution for Women, and the Litigation Coordinator at California Institution for Women.

IT IS SO ORDERED.

Dated: October 23, 2018

/s/ Eric P. Groj  
UNITED STATES MAGISTRATE JUDGE