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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL ALAN YOCOM,

 Plaintiff,

 v.

COUNTY OF TULARE, et al.,

 Defendants.

Case No. 1:17-cv-01643-AWI-SAB

ORDER SETTING EVIDENTIARY
HEARING ON PLAINTIFF’S
APPLICATION TO PROCEED IN FORMA
PAUPERIS FOR MAY 1, 2018 AND
REQUESTING COUNTY COUNSEL TO
MAKE A SPECIAL APPEARANCE

(ECF No. 7)

Plaintiff Michael Alan Yocom, a pretrial detainee proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed a complaint on December 7, 2017, along with an application to proceed in forma pauperis by a prisoner. Plaintiff did not include a certified copy of his trust account statement showing transactions for the past six months as required. So on December 11, 2017, an order was filed denying Plaintiff’s application to proceed without prepayment of fees without prejudice and directing Plaintiff to file an amended application which included a certified copy of his trust account statement showing transactions for the past six months or pay the filing fee within forty-five days.

On February 7, 2018, after Plaintiff did not pay the filing fee, file an amended application to proceed in forma pauperis, or otherwise respond to the December 11, 2017 order, the court issued findings and recommendations recommending this action be dismissed for Plaintiff’s

1 failure to pay the filing fee or demonstrate that he was entitled to proceed in this action without
2 prepayment of fees. On February 22, 2018, Plaintiff filed objections to the findings and
3 recommendations. In his objections, Plaintiff stated that he sent back the in forma pauperis form
4 signed by Deputy Gomez with a certified copy of his inmate account statement for the last six
5 months. However, the Court has no record of having received this document. The Court vacated
6 the findings and recommendations and Plaintiff was ordered to submit an amended application
7 within thirty days of February 23, 2018.

8 On March 27, 2018, Plaintiff filed a second application to proceed in forma pauperis as
9 well as a motion for injunctive relief. Plaintiff's application was not compliant with the February
10 23, 2018 order as he did not attach a copy of his trust account statement showing transactions for
11 the past six months. On March 29, 2018, an order issued providing Plaintiff with thirty days in
12 which to submit an application to proceed in forma pauperis that complied with the Court's prior
13 order. On April 11, 2018, Plaintiff filed a second motion for injunctive relief.

14 Pursuant to Rule 11 of the Federal Rules of Civil Procedure by signing his pleadings,
15 Plaintiff is certifying that the pleading is not being submitted for an improper purpose and the
16 factual contentions have evidentiary support or, if specifically so identified, will likely have
17 evidentiary support after a reasonable opportunity for further investigation or discovery. Fed. R.
18 Civ. P. 11(b)(3). If the Court determines that Rule 11 has been violated it may impose
19 appropriate sanctions which could include dismissal of the action.

20 Further, the Court has inherent power to sanction parties or their attorneys for improper
21 conduct. Chambers v. Nasco, Inc., 501 U.S. 32, 43-46 (1991); Roadway Express, Inc. v. Piper,
22 447 U.S. 752, 766 (1980); Fink v. Gomez, 239 F.3d 989, 991 (9th Cir. 2001). Local Rule 110
23 provides that “[f]ailure of counsel or of a party to comply with these Rules or with any order of
24 the Court may be grounds for imposition by the Court of any and all sanctions . . . within the
25 inherent power of the Court.”

26 Review of the application to proceed in forma pauperis that Plaintiff filed on March 27,
27 2018, raises several areas of concern. The Court had determined to wait to address this issue
28 until Plaintiff filed a complaint application to proceed without prepayment of fees, but given the

1 allegations in Plaintiff's requests for injunctive relief the Court shall address the issue prior to
2 receiving the application.¹

3 The certification section of the March 27, 2018 application does not appear to have been
4 completed by the institution, although there is a "signature" of an authorized officer included.
5 Specifically raising questions as to the authenticity of this certificate is the amounts that are
6 stated for Plaintiff's account. The statement certifies that Plaintiff has 14 cents. It also states
7 that the average balance over the past six months was 14 cents and that the average monthly
8 deposits have been 14 cents. These amounts, as well as the manner in which they are set forth,
9 do not appear to be what the Court regularly sees in reviewing such statements. Further, the
10 handwriting appears to be identical to that of Plaintiff.

11 Causing additional concern is the "signature" of the authorized officer. The signature is
12 spelled Woodfard" on the first page of the document. The second page has the name printed as
13 "Deputy Woodfard" and it is signed "Woodford." Again, this handwriting appears to be
14 identical to that of Plaintiff.

15 To address these issues the Court shall hold an evidentiary hearing regarding the
16 information on the application to proceed in forma pauperis filed March 27, 2018. To assist in
17 this hearing, the Court shall request that Tulare County Counsel make a special appearance and
18 arrange for the appearance of Deputy Woodfard or, in the alternative, a representative to testify
19 as to the employment of such deputy should he be unable to be located. The Court shall
20 separately issue a writ to transport Plaintiff to the evidentiary hearing.

21 Based on the foregoing, IT IS HEREBY ORDERED that:

- 22 1. An evidentiary hearing is set for **May 1, 2018, at 10:30 a.m.** before United States
23 Magistrate Judge Stanley A. Boone, at the **United States Courthouse, 2500**
24 **Tulare St., Fresno, California, Courtroom 9**, to address the application to
25 proceed in forma pauperis filed by Plaintiff on March 27, 2018;
- 26 2. County of Tulare is requested to make a special appearance at the May 1, 2018

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28 ¹ Given the concerns addressed herein with the application to proceed in forma pauperis, the Court also has concerns regarding the truthfulness of the allegations contained in the requests for injunctive relief.

1 hearing and to arrange for the appearance of Deputy Woodfard or a representative
2 of Tulare County to testify regarding the employment of such deputy; and

- 3 3. The Clerk of the Court is DIRECTED to serve a copy of this order and a copy of
4 the application to proceed in forma pauperis filed March 27, 2018 (ECF No. 7) on
5 Tulare County Counsel, Deanne H. Peterson, 2900 W. Burrel Avenue, Visalia,
6 CA 93291.

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8 IT IS SO ORDERED.

9 Dated: April 13, 2018


UNITED STATES MAGISTRATE JUDGE

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