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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RONALD F. MARTINEZ,
Plaintiff,
v.
D. BAUGHMAN, et al.,
Defendants.

Case No. 1:19-cv-01459-DAD-JLT (PC)
**FINDINGS AND RECOMMENDATIONS
TO GRANT DEFENDANTS’ MOTION TO
DISMISS**
(Doc. 63)
21-DAY DEADLINE
**ORDER DENYING PLAINTIFF’S MOTION
FOR MISCELLANEOUS RELIEF AS
MOOT**
(Doc. 75)

Before the Court is Defendants’ motion to dismiss this action with prejudice pursuant to 28 U.S.C. 1915(e)(2)(A). (Doc. 63.) For the reasons set forth below, the Court recommends that the motion be granted.

I. STATEMENT OF FACTS

Plaintiff filed an application to proceed *in forma pauperis* (IFP) in this matter on October 21, 2019. (Doc. 3.) In response to questions asking if Plaintiff had “received any money . . . over the last twelve months,” Plaintiff answered, “No.” (*Id.* at 1.) In response to a question asking if he had any cash on hand, including in a checking or savings account, Plaintiff answered, “No.” (*Id.* at 2.)

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1 Plaintiff attached to his application an inmate trust account statement from the California
2 Department of Corrections and Rehabilitation. (*Id.* at 3-5.) The statement indicates that on May
3 10, 2019, Plaintiff received two settlements checks totaling \$7,500. (*Id.* at 3.) It also indicates that
4 Plaintiff transferred \$6,725 from his account to one Guadalupe on June 3 and 13, 2019. (*Id.*)
5 Plaintiff had \$9.25 in his account when he filed his application on October 21, 2019. (*See* Doc. 6.)

6 In the instant motion, Defendants argue that “[b]ecause Plaintiff materially misrepresented
7 his income” in his IFP application, the “Court must dismiss his case as required by 28 U.S.C.
8 1915(e)(2)(A).” (Doc. 63-1 at 1.)

9 II. DISCUSSION

10 The *in forma pauperis* statute provides that a person may proceed in a case “without
11 prepayment of fees” if he “submits an affidavit that includes a statement of all assets such
12 [person] possesses that the person is unable to pay such fees.” 28 U.S.C. § 1915(a)(1). The court,
13 however, “shall dismiss the case at any time if the court determines that . . . the allegation of
14 poverty is untrue.” *Id.* § 1915(e)(2)(A) (emphasis added). “Thus, if the Court were to find that
15 Plaintiff’s allegation of poverty [were] false, it would have ‘no choice’ but to dismiss his” case.
16 *Ruffin v. Baldwin*, No. 18-cv-1774-NJR, 2018 WL 6266652, at *2 (S.D. Ill. 2018) (citation
17 omitted). Mere “misrepresentation[s] of . . . financial assets might not necessarily rise to the level
18 of an untrue allegation of poverty requiring dismissal in all cases;” but “dismissal . . . is certainly
19 appropriate where a plaintiff conceals or misrepresents his or her financial assets or history in bad
20 faith.” *Vann v. Comm’r of N.Y. City Dep’s of Correction*, 496 F. App’x 113, 115 (2d Cir. 2012)
21 (citation omitted); *see also Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015) (to
22 dismiss case “pursuant to § 1915(e)(2), a showing of bad faith is required, not merely
23 inaccuracy”). “Bad faith in this context includes deliberate concealment of income in order to
24 gain access to a court without prepayment of filing fees.” *Vann*, 496 F. App’x at 115 (citation
25 omitted).

26 It is clear that Plaintiff misrepresented his income by answering “No” to questions asking
27 if he had received any money within the twelve months prior to submitting his IFP application.
28 Plaintiff does not dispute this. (*See generally* Doc. 71.) Plaintiff states that he answered “No”

1 because he was “taught” to answer the application questions in this manner by “other jail-house
2 lawyers.” (*Id.* at 5.) He states that he did not intend to mislead the Court, though, because he
3 provided his trust account statement with his application, which showed that he had received the
4 \$7,500 in settlement funds. (*See id.* at 5-6.)

5 The Court finds Plaintiff’s arguments unavailing. As Defendants note, Plaintiff is an
6 experienced litigator, having filed and obtained IFP status in at least 10 civil rights cases.¹ (Doc.
7 63-1 at 5.) *See Vann*, 496 F. App’x at 116 (noting that the plaintiff was “an experienced litigator
8 with extensive knowledge and familiarity with the *in forma pauperis* system”). “That experience,
9 plus the timeline of relevant events in this action, shows plaintiff’s deceptive conduct.” *Witkin v.*
10 *Lee*, No. 2:17-cv-0232-JAM-EFB, 2020 WL 2512383, at *6 (E.D. Cal. 2020). Plaintiff filed an
11 administrative grievance regarding the claims in this case on October 21, 2018, for which he
12 received a disposition at the third level of review on April 30, 2019. (Doc. 1 at 36-41, 47-48.) As
13 an experienced litigant, Plaintiff knew in April, at the latest, that he might file suit regarding his
14 claims. Yet, when he received \$7,500 in May, he transferred most of it to his mother in June and
15 spent the rest, instead of retaining the necessary \$400 to pay the filing fee. This case is akin to
16 *Witkin*, where the plaintiff, also an experienced litigator, transferred nearly all of his money to his
17 mother before applying for IFP status, even though the circumstances showed he “had an idea”
18 beforehand “that he may file suit.” *See* 2020 WL 2512383, at *6.

19 Under penalty of perjury, Plaintiff then knowingly misstated in October that he had
20 received no income in the previous twelve months. It is no excuse that he was “taught” to do this
21 by other inmates, or that his inmate trust account statement clearly revealed his falsehood. “An
22 applicant has to tell the truth, then argue to the judge why seemingly adverse facts . . . are not
23 dispositive. A litigant can’t say, ‘I know how the judge *should* rule, so I’m entitled to conceal
24 material information from [the court].” *Kennedy v. Huibregtse*, 831 F.3d 441, 443 (7th Cir.
25 2016).

26 Under these circumstances, the Court finds that Plaintiff misrepresented his financial
27 situation in bad faith to obtain IFP status. Accordingly, this case should be dismissed with

28 ¹ The Court may take judicial notice of court records. *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

1 prejudice. *See Witkin*, 2020 WL 2512383, at *6; *David v. Wal-Mart Stores, Inc.*, 669 F. App'x
2 793, 795 (7th Cir. 2016) (“[a]busing th[e IFP] privilege warrants dismissal with prejudice as a
3 sanction”); *Thompson v. Carlson*, 705 F.2d 868, 869 (6th Cir. 1983); *Vann*, 496 F. App'x at 116;
4 *Cuoco v. U.S. Bureau of Prisons*, 328 F. Supp. 2d 463, 469 (S.D.N.Y. 2004).

5 **III. RECOMMENDATION AND ORDER**

6 For the reasons set forth above, the Court RECOMMENDS that Defendants’ motion to
7 dismiss this case with prejudice (Doc. 63) be GRANTED. The Court DENIES Plaintiff’s “motion
8 requesting the determination of submitted matters” (Doc. 75) as moot.

9 These Findings and Recommendations will be submitted to the United States District
10 Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 21 days** of the date of
11 service of these Findings and Recommendations, Plaintiff may file written objections with the
12 Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and
13 Recommendations.” Plaintiff’s failure to file objections within the specified time may result in
14 waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing
15 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

16 IT IS SO ORDERED.

17
18 Dated: **December 14, 2021**

_____/s/ **Jennifer L. Thurston**
CHIEF UNITED STATES MAGISTRATE JUDGE