

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

CION PERALTA,

Petitioner,

No. CIV S-09-3228 FCD GGH P

vs.

MICHAEL MARTEL, et al.,

Respondents.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. Plaintiff filed the instant action on November 19, 2009, and a motion to proceed in forma pauperis on December 14, 2009. The motion to proceed in forma pauperis indicated that plaintiff had no money and no sources of income from anybody. Plaintiff signed the motion under the penalties of perjury and was granted in forma pauperis status on January 14, 2010.

The court granted defendants motions to dismiss pursuant to 28 U.S.C. § 1915(g), and plaintiff's in forma pauperis status was revoked as it was found that plaintiff is three strikes barred. On March 31, 2011, plaintiff paid the \$350 filing fee in order to proceed with this action. However, it is not clear where the money originated from to pay the filing fee as plaintiff indicated under the penalties of perjury that he had no money and no sources of income from anyone else. Defendants and the court expended time and resources on the motions to dismiss

1 based on plaintiff's assertions that he did not have the money to pay the filing fee, when in fact, it
2 appears that plaintiff could have paid the filing fee. It appears that plaintiff may have been less
3 than candid with the court in his application to proceed in forma pauperis, which could lead to
4 dismissal. Plaintiff will be given an opportunity to explain the discrepancies.¹

5 Within twenty-one days of service of this order plaintiff shall explain the
6 inconsistencies with the statements in his motion to proceed in forma pauperis and his ability to
7 now pay the filing fee.

8 Accordingly, IT IS HEREBY ORDERED that within twenty-one days of service
9 of this order plaintiff shall explain the inconsistencies with the statements in his motion to
10 proceed in forma pauperis and his ability to now pay the filing fee.

11 DATED: April 20, 2011

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

13 GGH: AB
14 pera3228.ord

15
16
17
18
19
20
21
22
23
24
25
26

¹ The court notes that plaintiff's application to proceed in forma pauperis also states that he owes \$786.57 in restitution fines. Perhaps plaintiff now has the means to pay his restitution.