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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 R. Prasad Industries,

No. CV-12-08261-PCT-JAT

10 Plaintiff,

ORDER

11 v.

12 Flat Irons Environmental Solutions
13 Corporation, et al.,

14 Defendants.

15
16 Pending before the Court is Defendants' Motion for Leave to Proceed In Forma
17 Paurperis. (Doc. 138). The Court now rules on the Motion.

18 The Motion requests leave to appeal, in forma pauperis, this Court's September
19 23, 2014 order granting Plaintiffs' Motion for Entry of Judgment under Rule 54(b) and
20 granting a sanction of attorney's fees against defense counsel pursuant to 28 U.S.C.
21 § 1927. Defense counsel attached to the Motion his own affidavit showing why he is
22 unable to pay or give security for fees and costs.

23 Federal Rule of Appellate Procedure 24(a)(1) provides that a party's motion to
24 appeal in forma pauperis is filed with the district court and must be accompanied by an
25 affidavit that: "(A) shows in the detail prescribed by Form 4 of the Appendix of Forms
26 the party's inability to pay or to give security for fees and costs; (B) claims an entitlement
27 to redress; and (C) states the issues that the party intends to present on appeal."

28 In his affidavit, defense counsel estimates that his and his spouse's average

1 incomes total approximately \$5,265 per month, and that he and his spouse will earn
2 approximately \$4,810 next month. He further declares that he and his spouse average
3 approximately \$4,601 in expenses per month. Defense counsel also declares that his
4 home equity loan payment is scheduled to increase from \$300 per month to \$600 per
5 month in December, 2014, and that he is behind on his mortgage and home equity loan
6 payments. Given these financial hardships, the Court finds that defense counsel has
7 shown that he is unable to pay or give security for the fees and costs associated with the
8 appeal, despite that defense counsel technically earns more than he spends. Defense
9 counsel's affidavit also clearly states the issues he intends to present on appeal and that
10 he believes he is entitled to redress. (Doc. 138-1 at 1). Accordingly, insofar as defense
11 counsel intends to appeal the sanction against him as a non-party, *Rachel v. Banana*
12 *Republic, Inc.*, 831 F.2d 1503, 1508 n.5 (9th Cir.1987), that request will be granted.

13 It appears, however, that Defendants also intend to appeal the dismissal of their
14 counterclaim. No party to this suit has filed an affidavit, however, as required by Federal
15 Rule of Appellate Procedure 24(a)(1). Accordingly, the Court will not permit Defendants
16 to proceed on appeal in forma pauperis.

17 Accordingly,

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IT IS ORDERED that Defendants’ Motion for Leave to Proceed In Forma Pauperis (Doc. 138) is GRANTED IN PART; Defense Counsel, Mr. Frederic M. Douglas, is permitted to proceed in forma pauperis on appeal of his sanctions.

IT IS FURTHER ORDERED that Defendants’ Motion for Leave to Proceed In Forma Pauperis (Doc. 138) is DENIED IN PART; Defendants are not permitted to proceed in forma pauperis on appeal of the Rule 54(b) judgment against their counterclaims.

Dated this 10th day of November, 2014.


James A. Teilborg
Senior United States District Judge