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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

BARRY LOUIS LAMON,

CASE NO. 1:07-cv-01390-LJO-GBC (PC)

Plaintiff,

v.

ORDER FINDING THAT PLAINTIFF IS  
ENTITLED TO PROCEED IN FORMA  
PAUPERIS ON APPEAL FILED NOVEMBER  
17, 2011 (Docs. 93, 94)

DERRAL G. ADAMS, et al.,

Defendants.

ORDER DIRECTING CLERK’S OFFICE TO  
SERVE COPY OF ORDER ON NINTH  
CIRCUIT

\_\_\_\_\_/

Barry Louis Lamon (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On July 6, 2011, the District Court adopted the Magistrate Judge’s Findings and Recommendation to dismiss Plaintiff’s action as barred by res judicata. Doc. 85. On November 2, 2011, the District Court denied Plaintiff’s motions for reconsideration. Doc. 90. On November 17, 2011, Plaintiff filed a notice of appeal and on December 1, 2011, the Ninth Circuit remanded for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith. Doc. 93; Doc. 96.

Pursuant to the Federal Rules of Appellate Procedure,

A party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization, unless: (A) the district court - before or after the notice of appeal is filed - certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding;  
or

1 (B) a statute provides otherwise.

2 Fed. R. App. P. 24(a)(3).

3 The district clerk must immediately notify the parties and the court of appeals when  
4 the district court does any of the following:

5 (A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

6 Fed. R. App. P. 24(a)(4).

7 Because Plaintiff is proceeding in forma pauperis in this action, Plaintiff is entitled to proceed  
8 in forma pauperis on appeal unless the Court finds his appeal is not taken in good faith or finds that  
9 he is not otherwise entitled to proceed in forma pauperis. As set forth below, by this order the Court  
10 is making a finding that Plaintiff is entitled to proceed in forma pauperis on appeal.

11 As Plaintiff's appeal concerns a dismissal based on a finding of res judicata and the legal  
12 implication of adding an event to a duplicative claim, Plaintiff's appeal is not frivolous and is taken  
13 in good faith.

14 Based on the foregoing, it is HEREBY ORDERED that:

15 Plaintiff's appeal is taken in good faith. 28 U.S.C. § 1915(a). The Clerk's Office shall serve  
16 a copy of this order on the Ninth Circuit.

17  
18 IT IS SO ORDERED.

19 **Dated: December 2, 2011**

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE