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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FRED PRICE,

Plaintiff,

v.

S. R. CUNNINGHAM, et al.,

Defendants.

CASE NO. 1:08-cv-00425-AWI-SMS PC

ORDER DENYING PLAINTIFF’S MOTIONS TO
PROCEED IN FORMA PAUPERIS

(ECF Nos. 36, 44)

Plaintiff Fred Price (“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 May 25, 2011, the Court issued an order revoking Plaintiff’s in forma pauperis status and requiring him to pay the full filing fee within forty five days. On June 3, 2011, Plaintiff filed a notice of appeal, a motion to proceed in forma pauperis,¹ and a motion for a sixty day extension of time. (ECF Nos. 36, 37, 38.) On June 14, 2011, Plaintiff filed a motion for reconsideration. (ECF No. 43.) On June 21, 2011, Plaintiff filed a second motion to proceed in forma pauperis. (ECF No. 44.)

The Court found that Price v. Parks, case no. 2:02-cv-05955-UA-SH (C.D. Cal. August 21, 2002); Price v. Rianda, case no. 2:02-cv-07526-UA-SH (C.D. Cal. October 3, 2002); and Price v. Parks, case no. 2:02-cv-07724-UA-SH (C.D. Cal. October 16,2002) count as strikes pursuant to 28 U.S.C. § 1915(g). According Plaintiff is not entitled to proceed in forma pauperis in this action. To the extent that Plaintiff is requesting reconsideration of the prior order of the Court, upon the filing

¹To the extent that Plaintiff is attempting to request in forma pauperis status upon appeal he will need to file his application with the appellate court.

1 of a notice of appeal, jurisdiction is transferred from the district court to the court of appeals. City
2 of Los Angeles, Harbor Div. V. Santa Monica Baykeeper, 254 F.3d 882, 886 (9th Cir. 2001).
3 Therefore, filing a notice of appeal divests the district court of jurisdiction over the issues involved
4 in the appeal. Id. Since Plaintiff filed a timely notice of appeal this Court lacks jurisdiction to
5 entertain Plaintiff's motion for an extension of time and motion for reconsideration. The motions
6 will be addressed after a decision is issued in Plaintiff's appeal.. Accordingly, Plaintiff's motions
7 to proceed in forma pauperis are HEREBY DENIED.

8 IT IS SO ORDERED.

9 **Dated:** June 23, 2011

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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