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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

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11 SUSAN MAE POLK,

12 Plaintiff,

13 v.

14 LATTIMORE, *et al.*,

15 Defendants.

Case No. 1:12-cv-01156-ADA-BAM (PC)

Appeal No. 22-16706

ORDER DENYING MOTION FOR
TRANSCRIPTS AT GOVERNMENT
EXPENSE AS MOOT
(ECF No. 180)

ORDER DENYING REQUEST TO PROCEED
IN FORMA PAUPERIS ON APPEAL AS
MOOT
(ECF No. 181)

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19 Plaintiff Susan Mae Polk (“Plaintiff”) is a state prisoner who proceeded *pro se* and *in*
20 *forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

21 On October 12, 2022, the Court granted Defendant’s motion for summary judgment and
22 dismissed this action, without prejudice, for the failure to exhaust available administrative
23 remedies. (ECF No. 174.) Judgment was entered accordingly the same date. (ECF No. 175.)

24 Plaintiff filed a notice of appeal on October 31, 2022, (ECF No. 176), which was
25 processed to the Ninth Circuit Court of Appeals, (ECF No. 177). Plaintiff filed an amended
26 notice of appeal on November 4, 2022. (ECF No. 179.)

27 Currently before the Court are Plaintiff’s motion for transcripts, (ECF No. 180), and
28 request to proceed *in forma pauperis* on appeal, (ECF No. 181), filed November 10, 2022.

1 In her motion for transcripts at government expense, Plaintiff requests that, pursuant to 28
2 U.S.C. § 753(f), copies of certain documents be sent to her as well as to the Court of Appeals.
3 (ECF No. 180.) Specifically, Plaintiff requests copies of:

- 4 • First through and including Fifth Amended Complaint
- 5 • Original Complaint
- 6 • Magistrate Judge's Findings and Recommendations dismissing the Fifth Amended
7 Complaint (Doc. 161)
- 8 • Plaintiff's objections (Doc. 170)
- 9 • Defendants' Motion for Summary Judgment (Doc. 147)
- 10 • Plaintiff's Opposition (Doc. 159)
- 11 • Plaintiff's Response to Defendants' Motion for Summary Judgment (Doc. 172)
- 12 • Defendants' Reply (Doc. 160)
- 13 • District Judge's Order Adopting Findings and Recommendations (Doc. 174)

14 (ECF No. 180, pp. 2–3.)

15 Plaintiff's request is denied as moot. Plaintiff cites 28 U.S.C. § 753(f) in support of her
16 request, but this section allows persons proceeding *in forma pauperis* on appeal to be provided
17 transcripts of recorded sessions or proceedings held before the District Court, not for copies of
18 documents filed. None of the requested documents constitute transcripts as intended by this
19 section, and all proceedings in this action were conducted by written briefing submitted by the
20 parties. As such, no transcripts are available for this action.

21 To the extent Plaintiff seeks transmittal of the record to the Ninth Circuit Court of
22 Appeals, Plaintiff, as a *pro se* litigant, is not required to file an excerpt of record. Circuit Rule 30-
23 1.3.

24 With respect to Plaintiff's request to proceed *in forma pauperis* on appeal, Plaintiff was
25 proceeding *in forma pauperis* in this Court and therefore, the motion is denied as moot. Plaintiff
26 may proceed *in forma pauperis* on appeal without further authorization. Fed. R. App. P. 24(a)(3).

27 Accordingly, IT IS HEREBY ORDERED as follows:

- 28 1. Plaintiff's motion for transcripts at government expense, (ECF No. 180), is DENIED as
moot;
2. Plaintiff's request to proceed *in forma pauperis* on appeal, (ECF No. 181), is DENIED as
moot; and

3. The Clerk of the Court is directed to send a copy of this order to the Ninth Circuit Court of Appeals.

IT IS SO ORDERED.

Dated: **November 18, 2022**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE