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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 ANTWOINE BEALER,

11 Plaintiff,

12 v.

13 CORRECTIONAL OFFICER S. RIOS

14 and SERGEANT R. BRANNUM,

15 Defendants.
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1:12-cv-01516-DAD-EPG-PC

ORDER DENYING PLAINTIFF'S MOTION
FOR PREPARATION OF TRANSCRIPT AT
GOVERNMENT'S EXPENSE
(ECF NO. 219)

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19 **I. RELEVANT PROCEDURAL HISTORY**

20 Antwoine Bealer ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*
21 *pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983. District Judge Dale A.
22 Drozd presided over a jury trial in this case. On August 11, 2016, the jury returned a
23 unanimous verdict, finding that defendants R. Brannum and S. Rios did not use excessive force
24 against Plaintiff on November 1, 2010, in violation of the Eighth Amendment. (ECF No. 206).
25 R. Brannum and S. Rios ("Defendants") were the only remaining defendants in the case, and
26 the excessive force claim was the only remaining claim in the case. (ECF No. 33).

27 On September 6, 2016, Plaintiff filed a Notice of Appeal. (ECF No. 215). On
28 September 19, 2016, Plaintiff filed a motion for preparation of transcript at government's

1 expense (the “Motion”). (ECF No. 219). On September 26, 2016, Defendants filed opposition
2 to the Motion. (ECF No. 222).

3 **II. LEGAL STANDARD FOR PREPARATION OF A TRANSCRIPT AT**
4 **THE GOVERNMENT’S EXPENSE**

5 28 U.S.C. § 1915(c) states, in relevant part, “Upon the filing of an affidavit in
6 accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be
7 required under subsection (b), the court may direct payment by the United States of the
8 expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is
9 required by the appellate court....” Section 1915(a) states:

10 (1) Subject to subsection (b), any court of the United States may authorize the
11 commencement, prosecution or defense of any suit, action or proceeding, civil or
12 criminal, or appeal therein, without prepayment of fees or security therefor, by a
13 person who submits an affidavit that includes a statement of all assets such
14 prisoner possesses that the person is unable to pay such fees or give security
therefor. Such affidavit shall state the nature of the action, defense or appeal and
affiant's belief that the person is entitled to redress.

15 (2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action
16 or proceeding without prepayment of fees or security therefor, in addition to filing
17 the affidavit filed under paragraph (1), shall submit a certified copy of the trust
18 fund account statement (or institutional equivalent) for the prisoner for the 6-
19 month period immediately preceding the filing of the complaint or notice of
appeal, obtained from the appropriate official of each prison at which the prisoner
is or was confined.

20 28 U.S.C. § 753(f) states, in relevant part, “[f]ees for transcripts furnished in
21 [civil] proceedings to persons permitted to appeal in forma pauperis shall also be paid by
22 the United States if the trial judge or a circuit judge certifies that the appeal is not
23 frivolous (but presents a substantial question).” See also Maloney v. E. I. DuPont de
24 Nemours & Co., 396 F.2d 939, 940 (D.C. Cir. 1967); Henderson v. United States, 734
25 F.2d 483, 484 (9th Cir. 1984).

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1 **III. ANALYSIS OF PLAINTIFF’S MOTION FOR PREPARATION OF**
2 **TRANSCRIPT AT GOVERNMENT’S EXPENSE**

3 Plaintiff asks the Court to order transcripts of the trial and the verdict proceedings at the
4 government’s expense. (ECF No. 219) The transcripts will be used to support an appeal.
5 According to Plaintiff he is incarcerated, and so is without a significant source of income.
6 Additionally, while Plaintiff’s mother was willing to pay for some of Plaintiff’s litigation
7 expenses, Plaintiff does not believe her ability to contribute should be taken into account when
8 determining Plaintiff’s indigent status.¹

9 Defendants oppose the Motion. They point out that Plaintiff’s motion contains no
10 affidavit showing that he lacks the assets to pay for the transcripts himself. They also argue
11 that Plaintiff’s mother’s willingness to pay for Plaintiff’s litigation expenses should be taken
12 into account. Finally, they argue that Plaintiff has not shown that the appeal presents a
13 substantial issue.

14 Plaintiff does not raise any issue for appeal, nor argue that his appeal presents a
15 substantial issue. The Motion simply states that Plaintiff will use the transcripts to support an
16 appeal, and explains why he cannot afford to pay for the transcripts himself. Without identified
17 issue for appeal, Plaintiff does not meet the standard of presenting a substantial, non-frivolous,
18 question for appeal. Accordingly, the Court will deny Plaintiff’s request.

19 **V. CONCLUSION**

20 Based on the facts the Court has before it, it is unable to find that Plaintiff’s appeal
21 presents a substantial question.

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27 ¹ Plaintiff has not asked the Court to direct the United States to pay for printing the
28 record on appeal, and has not alleged that the 9th Circuit requires such a record to be printed.
So, the Court will analyze the Motion under § 753(f).

