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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERNEST MILLER,

Plaintiff,

No. CIV S- 08-3101 GGH P

vs.

T. PEREZ, et al.,

Defendants.

ORDER

Plaintiff, a state prisoner proceeding in forma pauperis, sought relief pursuant to 42 U.S.C. § 1983. Plaintiff consented to the jurisdiction of the undersigned. Judgment was entered in this action on February 22, 2010. On May 4, 2010, plaintiff filed an untimely notice of appeal. See Fed. R. App. P. 4(a) (appeal must be filed within 30 days of entry of judgment appealed from). Pending before the court is plaintiff’s May 24, 2010, motion to proceed in forma pauperis on appeal.

The Federal Rules of Appellate Procedure provide as follows:

A party who has been 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. . . .

1 Fed. R. App. P. 24(a)(3). The record herein demonstrates, in addition to the untimeliness of the
2 notice of appeal, that plaintiff's in forma pauperis status was revoked under the three strikes
3 provision of 28 U.S.C. § 1915(g). Thus, plaintiff does not even meet the threshold for
4 proceeding on appeal in forma pauperis. Moreover, the complaint was dismissed with prejudice
5 for plaintiff's repeated failure to state a claim upon which relief may be granted. Thus, the court
6 finds that plaintiff's appeal is not taken in good faith. Accordingly, plaintiff's motion for leave
7 to proceed in forma pauperis on appeal is denied.

8 In accordance with the above, IT IS HEREBY ORDERED that plaintiff's May 24,
9 2010 (docket # 27), motion to proceed in forma pauperis on appeal is denied. See Fed. R. App.
10 P. 24(a)(3).

11 DATED: June 2, 2010

12 /s/ Gregory G. Hollows

13 UNITED STATES MAGISTRATE JUDGE

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