

1 recommended dismissal for failure to prosecute. ECF No. 8. This court adopted this
2 recommendation on April 1, 2014, and ordered the Clerk to close the case. ECF No. 9.

3 On July 21, 2014, petitioner filed a motion to reopen the time for filing an appeal.
4 ECF No. 11. He explained he had been in a facility in Seattle for a mental health evaluation and
5 did not receive the findings and recommendation or judgment. *Id.* at 1-2.

6 The court granted the request and allowed petitioner to appeal. ECF No. 13.
7 Petitioner filed his notice of appeal on August 28, 2014, and filed a request to proceed in forma
8 pauperis on September 22, 2014. ECF Nos. 14, 17.

9 Under Rule 24(a) of the Federal Rules of Appellate Procedure, a party who wishes
10 to appeal in forma pauperis must file a motion in the district court, supported by an affidavit
11 showing his inability to pay the fees and costs, claiming an entitlement to redress, and stating the
12 issues to be pursued on appeal. Petitioner has filed an affidavit showing his inability to pay, but
13 has not listed the issues he will raise on appeal. ECF No. 17. Accordingly the court denies the
14 motion without prejudice.

15 In light of petitioner's explanation that he did not receive the court's earlier orders,
16 the court would be inclined to vacate the judgment and consider the affidavit filed in connection
17 with the current motion as his request to proceed in forma pauperis with this action. It cannot do
18 so, however, because the notice of appeal has removed this court's jurisdiction over the subject of
19 the appeal. *Davis v. United States*, 667 F.2d 822, 824 (9th Cir. 1982). Should petitioner dismiss
20 the appeal, this case could move forward.

21 IT IS THEREFORE ORDERED that petitioner's motion to proceed in forma
22 pauperis on appeal is denied without prejudice.

23 DATED: December 17, 2014.

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26 UNITED STATES DISTRICT JUDGE