UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

TERRENCE LAMAR WILBURN,

Plaintiff,

v.

GARREN BRACHER, et al.,

Respondent.

No. 2:15-cv-00699 MCE GGH

ORDER

PROCEDURAL BACKGROUND

Plaintiff filed his complaint in Sacramento Superior Court on February 20, 2015, ECF No. 1-1, and Defendant City of Sacramento and others removed it to this court on March 27, 2015. ECF No. 1. The complaint alleges claims under 42 U.S.C. §§ 1981, 1983, and 1986, and under various state law provisions. ECF 1-1 at 7. On October 13, 2016, the District Court dismissed plaintiff's federal claims with prejudice and his state claims without prejudice to refile them in State court and closed the file. ECF No. 82.[1] Plaintiff filed an Application to Proceed In Forma Pauperis on Appeal pursuant to 28 U.S.C. § 1915(a) on November 16, 2016. ECF No. 87.

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[1] Plaintiff was given the opportunity to file a second amended complaint on one Eighth Amendment theory, but he has evidently chosen not to do so.

DISCUSSION

The district court did not address in forma pauperis in this matter insofar as the filing fees were discharged by the defendants upon removal. The court has reviewed the plaintiff's Application for IFP on appeal under 28 U.S.C. § 1915(a).

Plaintiff's Affidavit in Support of his Application reflects that he has no dependents and that the only income he receives is $194 per month as CalFresh benefits and that he has no other resources with which to meet the fee and costs requirements of his appeal. Thus, at this point plaintiff has made an adequate showing of indigency. See Olivares v. Marshall, 59 F.3d 109, 112 (9th Cir. 1995); Alexander v. Carson Adult High Sch., 9 F.3d 1448, 1449 (9th Cir. 1993).

However, 28 U.S.C. section 1915(a)(3) requires that before one may proceed on appeal IFP, the court must find that the appeal is taken in good faith. Based on the final Findings and Recommendations in this case, the court cannot so find.

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's request to proceed in forma pauperis is DENIED;

2. The Clerk of the Court shall transmit this Order to the Ninth Circuit Court of Appeals.

Dated: November 22, 2016

/s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE