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7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN FRANCISCO DIVISION**

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11 TYRONE HURT,

12 Plaintiff,

13 v.

14 MITCHELL C. GOLDBERG, U.S. District  
15 Court Judge; UNITED STATES DISTRICT  
16 COURT FOR THE EASTERN DISTRICT  
17 OF PENNSYLVANIA,

18 Defendants.

Case No. 12-cv-06522 NC

**ORDER DISMISSING CASE WITH  
PREJUDICE**

19 On February 4, 2013, the Court dismissed Tyrone Hurt's complaint under 28 U.S.C. §  
20 1915(e)(2)(B), finding that the complaint was frivolous and failed to state a claim upon  
21 which relief can be granted. Dkt. No. 6. The Court granted leave to amend and stated that  
22 if plaintiff fails to do so within 30 days, the Court will dismiss this case. *Id.* at 3. The  
23 deadline to amend has now passed. Hurt failed to amend the complaint, and, instead, filed a  
24 notice seeking leave to appeal *in forma pauperis* from the February 4 Order, to amend the  
25 complaint, and for appointment of counsel. Dkt. No. 7 at 1-2. This filing does nothing to  
26 correct the fundamental deficiencies of the complaint identified by the Court in its prior  
27 order of dismissal.

28 The Court also notes that Hurt was recently declared a vexatious litigant. In *Hurt v.*

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1 *All Sweepstakes Contests*, No. 12-cv-04187 EMC, 2013 WL 144047, at \*1-3 (N.D. Cal. Jan.  
2 11, 2013), the Court found that in the past year, Hurt has filed twenty-one lawsuits in this  
3 district. “Of these, fifteen have been dismissed for failure to state a claim; ten have been  
4 dismissed with prejudice,” and five, including this case, have not yet been dismissed, but  
5 “appear to suffer from many of the same defects” as the other cases. *Id.* at \*1-4. Based on  
6 the large number of frivolous lawsuits filed by Hurt in this district in the past year, the  
7 Court declared Hurt a “vexatious litigant,” and ordered all future lawsuits initiated by  
8 plaintiff in this district to be subject to pre-filing review. *Id.* at \*8.

9 Accordingly, this case is DISMISSED WITH PREJUDICE under 28 U.S.C. §  
10 1915(e)(2)(B). *See WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997)  
11 (“[A] plaintiff, who has been given leave to amend, may not file a notice of appeal simply  
12 because he does not choose to file an amended complaint. A further district court  
13 determination must be obtained.”); *Estate of Conners by Meredith v. O’Connor*, 6 F.3d 656,  
14 658 (9th Cir. 1993) (an ineffective notice of appeal, such as a notice from an unappealable  
15 order, does not divest the district court of jurisdiction).

16 To the extent Hurt’s filing seeks leave to appeal *in forma pauperis* under Rule  
17 24(a)(1) of the Federal Rules of Appellate Procedure, the Court denies that request as moot.  
18 The Court’s February 4 Order, Dkt. No. 6 at 2, permitted Hurt to proceed *in forma pauperis*  
19 and no further authorization is required under Rule 24(a)(3).

20 IT IS SO ORDERED.

21 Date: March 19, 2013

22   
23 Nathanael M. Cousins  
24 United States Magistrate Judge  
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