

United States District Court
For the Northern District of California

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

JEROME L. GRIMES,
Plaintiff,
v.
OFFICER BARBER, et al.,
Defendants.

No. 10-01086 CW
ORDER GRANTING
MOTION TO PROCEED
IN FORMA PAUPERIS
AND DISMISSING
COMPLAINT

Plaintiff Jerome L. Grimes applies for leave to proceed in forma pauperis (IFP). The matter was decided on the papers. Having considered all of the papers filed by Plaintiff, the Court GRANTS the application to proceed IFP and dismisses the complaint.

DISCUSSION

A court may authorize a plaintiff to prosecute an action in federal court without prepayment of fees or security if the plaintiff submits an affidavit showing that he or she is unable to pay such fees or provide such security. See 28 U.S.C. § 1915(a). Plaintiff has submitted the required documentation, and it is evident from his application that his assets and income are insufficient to enable him to prosecute the action. Accordingly, his application to proceed without the payment of the filing fee is

1 GRANTED.

2 The Court's grant of Plaintiff's application to proceed IFP,
3 however, does not mean that he may continue to prosecute his
4 complaint. A court is under a continuing duty to dismiss a case
5 filed without the payment of the filing fee whenever it determines
6 that the action "(i) is frivolous or malicious; (ii) fails to state
7 a claim on which relief may be granted; or (iii) seeks monetary
8 relief against a defendant who is immune from such relief." 28
9 U.S.C. § 1915(e)(2)(B)(i)-(iii). Because a dismissal pursuant to
10 § 1915(e)(2)(B) is not a dismissal on the merits, but rather an
11 exercise of the court's discretion under the IFP statute, the
12 dismissal does not prejudice the filing of a paid complaint making
13 the same allegations. Denton v. Hernandez, 504 U.S. 25, 32 (1992).

14 This case arises from events that were the subject of one of
15 Plaintiff's previous cases, Grimes v. Barber, et al., C 09-0411 CW.
16 In C 09-0411 CW, Plaintiff alleged that he was injured in
17 connection with a jay-walking incident on the San Francisco State
18 University campus by the same Defendants that are named in the
19 instant complaint. On September 16, 2009, a settlement conference
20 was held in C 09-0411 CW before Magistrate Judge Elizabeth Laporte
21 and the parties agreed to a settlement. (C 09-0411 CW, Docket No.
22 48). On September 17, 2009, the Court issued a conditional order
23 of dismissal which indicated that if, within ninety days, any party
24 certified to the Court that the agreed amount of consideration had
25 not been delivered, the order would be vacated and the case would
26 be set for trial. (C 09-0411 CW, Docket No. 49). On September 21,
27 2009, Plaintiff filed a motion for relief from settlement, which

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1 was heard by Magistrate Judge Laporte. On December 23, 2009, the
2 Court adopted Magistrate Judge Laporte's report and recommendation
3 and denied Plaintiff's motion for relief from settlement. (C 09-
4 0411 CW, Docket Nos. 58, 60). On January 4, 2010, Plaintiff filed
5 a declaration stating that he had not received from Defendants,
6 within ninety days from the date of the Conditional Order of
7 Dismissal, the agreed consideration for the settlement of his case.
8 (C 09-0411 CW, Docket # 62). On February 11, 2010, the Court
9 issued an Order Regarding Plaintiff's Declaration. The Court noted
10 that Defendants' counsel had submitted a declaration stating that,
11 until she received the Court's December 23, 2009 order denying
12 Plaintiff's motion for relief from settlement, she did not know
13 whether the settlement would be vacated by court order. She had
14 sent Plaintiff the settlement check immediately after the Court
15 denied Plaintiff's motion. The Court found that defense counsel
16 reasonably waited until the Court ruled on Plaintiff's motion
17 before sending him the settlement check. The Court further found
18 that, by filing his January 4, 2010 declaration, Plaintiff was
19 attempting once again to obtain relief from settlement. The Court
20 indicated that it had ruled on that issue, that it would not
21 revisit it and that any further papers submitted by Plaintiff
22 attempting to vacate his settlement would be returned to him by the
23 clerk. (C 09-0411 CW, Docket No. 66).

24 In the instant complaint, Plaintiff alleges that, in C 09-0411
25 CW, the Court improperly denied his motion to set aside the
26 settlement because Defendants failed to pay him or to expunge his
27 record of false charges within ninety days of the Conditional
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1 Dismissal Order. Therefore, Plaintiff is suing for police
2 brutality and defamation of character arising from the jay-walking
3 incident.

4 In this lawsuit, Plaintiff is again attempting to re-litigate
5 the issues that he asserted and settled in C 09-0411 CW. As stated
6 in the 2009 Order, Plaintiff may not keep litigating these same
7 issues. Therefore, his complaint is dismissed.

8 CONCLUSION

9 For the foregoing reasons, Plaintiff's motion to proceed in
10 forma pauperis is granted and his complaint is dismissed.
11 Plaintiff's motion to set a case management conference is denied.
12 (Docket # 16). The Clerk of the Court shall close this case.

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14 IT IS SO ORDERED.

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16 Dated: August 6, 2010

Claudia Wilken

CLAUDIA WILKEN
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 JEROME GRIMES,

5 Plaintiff,

6 v.

7 BARBER et al,

8 Defendant.

Case Number: CV10-01086 CW

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
10 Northern District of California.

11 That on August 6, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Jerome L. Grimes
16 263 Vernon Street
17 San Francisco, CA 94132

Dated: August 6, 2010

Richard W. Wieking, Clerk
By: Ronnie Hersler, Adm. Law Clerk