

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

4 JEROME L. GRIMES,

No. 11-03120 CW

5 Plaintiff,

ORDER GRANTING
APPLICATION TO
PROCEED IFP AND
DISMISSING
COMPLAINT

6 v.

7 OFFICER BARBER, et al.,

8 Defendants.
9 _____/

10
11 Plaintiff Jerome L. Grimes applies for leave to proceed in
12 forma pauperis (IFP). The matter was decided on the papers.
13 Having considered all of the papers filed by Plaintiff, the Court
14 GRANTS the application to proceed IFP and dismisses the complaint.

15 DISCUSSION

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

25 The Court's grant of Plaintiff's application to proceed IFP,
26 however, does not mean that he may continue to prosecute his
27 complaint. A court is under a continuing duty to dismiss a case
28 filed without the payment of the filing fee whenever it determines

1 that the action "(i) is frivolous or malicious; (ii) fails to state
2 a claim on which relief may be granted; or (iii) seeks monetary
3 relief against a defendant who is immune from such relief." 28
4 U.S.C. § 1915(e)(2)(B)(i)-(iii). Because a dismissal pursuant to
5 § 1915(e)(2)(B) is not a dismissal on the merits, but rather an
6 exercise of the court's discretion under the IFP statute, the
7 dismissal does not prejudice the filing of a paid complaint making
8 the same allegations. Denton v. Hernandez, 504 U.S. 25, 32 (1992).

9 This case arises from events that were the subject of one of
10 Plaintiff's previous cases, Grimes v. Barber, et al., C 09-0411 CW.
11 In C 09-0411 CW, Plaintiff alleged that he was injured in
12 connection with a jay-walking incident on the San Francisco State
13 University campus by the same Defendants that are named in the
14 instant complaint. On September 16, 2009, a settlement conference
15 was held in C 09-0411 CW before Magistrate Judge Elizabeth Laporte
16 and the parties agreed to a settlement. (C 09-0411 CW, Docket No.
17 48). On September 17, 2009, the Court issued a conditional order
18 of dismissal which indicated that if, within ninety days, any party
19 certified to the Court that the agreed amount of consideration had
20 not been delivered, the order would be vacated and the case would
21 be set for trial. (C 09-0411 CW, Docket No. 49). On September 21,
22 2009, Plaintiff filed a motion for relief from settlement, which
23 was heard by Magistrate Judge Laporte. On December 23, 2009, the
24 Court adopted Magistrate Judge Laporte's report and recommendation
25 and denied Plaintiff's motion for relief from settlement. (C 09-
26 0411 CW, Docket Nos. 58, 60). On January 4, 2010, Plaintiff filed
27 a declaration stating that he had not received from Defendants,
28

1 within ninety days from the date of the Conditional Order of
2 Dismissal, the agreed consideration for the settlement of his case.
3 (C 09-0411 CW, Docket # 62). On February 11, 2010, the Court
4 issued an Order explaining that it had ruled on the issue of the
5 settlement, that it would not revisit it and that any further
6 papers submitted by Plaintiff attempting to vacate his settlement
7 would be returned to him by the clerk. (C 09-0411 CW, Docket No.
8 66).

9 On March 12, 2010, Plaintiff filed case number C 10-01086 CW
10 alleging that, in C 09-0411 CW, the Court improperly denied his
11 motion to set aside the settlement because Defendants failed to pay
12 him or to expunge his record of false charges within ninety days of
13 the Conditional Dismissal Order. On August 6, 2010, the Court
14 dismissed the complaint as an attempt to re-litigate the issues
15 adjudicated in C 09-0411 CW. Plaintiff appealed to the Ninth
16 Circuit, which affirmed this Court's judgment on November 4, 2010.

17 In this lawsuit, Plaintiff is again attempting to re-litigate
18 the issues that he asserted and settled in C 09-0411 CW. As stated
19 in the 2009 and the 2010 Orders, Plaintiff may not keep litigating
20 these same issues. Therefore, his complaint is dismissed.

21
22 IT IS SO ORDERED.

23
24 Dated: 11/29/2011


CLAUDIA WILKEN
United States District Judge

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

4 GRIMES et al,
5 Plaintiff,

Case Number: CV11-03120 CW

6 v.

CERTIFICATE OF SERVICE

7 BARBER et al,
8 Defendant.

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 November 29, 2011, 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: November 29, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk