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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

VIRGIL POPESCU	)	Civil No.06-CV-1577 WMc
	)	
Plaintiff,	)	
v.	)	<b>ORDER: (1) DENYING <i>IN FORMA</i></b>
	)	<b><i>PAUPERIS</i> STATUS ON APPEAL; AND</b>
CITY OF SAN DIEGO, PARKING	)	<b>(2) DENYING FEES FOR TRANSCRIPT</b>
MANAGEMENT DIVISION and ROBERT	)	<b>ON APPEAL</b>
PAGAN #8073,	)	
	)	[ECF No. 119].
Defendants.	)	
_____	)	

**I. INTRODUCTION**

On January 3, 2011, Plaintiff filed a motion for waiver of costs on appeal. [ECF No. 119.] In Plaintiff’s motion, he states he is indigent and asks the Court to waive the payment of costs and fees as well as transcripts on appeal. *Id. at 2-3.* Plaintiff’s motion is **DENIED**. The Court finds Plaintiff’s appeal is not taken in good faith and does not present a substantial question.

**II. STANDARD OF REVIEW**

**A. In Forma Pauperis Status On Appeal**

In accordance with 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” The decision to allow an appeal to proceed *in forma pauperis* remains within the jurisdiction of the trial court after the filing of an appeal.. *In re Rains*, 428 F.2d 893, 904 (9<sup>th</sup> Cir.2005).

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1           **B. Fees for Transcript On Appeal**

2           As required by 28 U.S.C § 753(f), the judge must determine that an appeal by a person  
3 “permitted to appeal *in forma pauperis*” is not frivolous, but presents a substantial question . *Henderson*  
4 *v. U.S.*, 734 F.2d 483, 484 (9<sup>th</sup> Cir. 1984).

5           **III. DISCUSSION AND ORDER THEREON**

6           In this case, the Court finds Plaintiff is not taking this appeal in good faith following the issuance  
7 of the Court’s Findings of Fact and Conclusions of law filed on December 7, 2011, in which the Court  
8 found after considering live testimony, documentary evidence, law and argument presented in a three-  
9 day bench trial before the Honorable William McCurine, Jr. that Plaintiff’s argument in support of his  
10 discrimination claim was “absurd on its face, reprehensible, shameless and utterly foolish.” ECF No.  
11 114 at 3:12-4:6. The Court also found one of Plaintiff’s arguments in support of his claim “so devoid of  
12 credibility as to border on perjury.” *Id.* at 4:13-15. Accordingly, section 1915(a)(3) prevents the grant  
13 of *in forma pauperis* status to Plaintiff on appeal.

14           As to Plaintiff’s request for the payment of transcript fees on appeal, the Court finds section 753  
15 similarly does not permit public payment of transcript fees because Plaintiff’s appeal is frivolous and  
16 fails to present a substantial question. Plaintiff attempted to establish at trial that Defendant, a parking  
17 enforcement officer with the last name of “Pagan” discriminated against him by issuing parking tickets  
18 to Plaintiff’s car, which had religious and political bumper stickers attached to it. Plaintiff’s proof in  
19 support of this claim was the very existence of Defendant’s last name - Pagan, which as the Court noted  
20 in its Findings of Fact and Conclusions of Law meant “in Plaintiff’s mind that Defendant is an atheist  
21 and hostile to Christians.” ECF No. 114 at 12-19. At the conclusion of the bench trial, the Court ruled  
22 Plaintiff failed to meet his burden of proving Officer Pagan violated his constitutional rights by issuing  
23 one or more parking violations in a discriminatory manner based on Plaintiff’s political or religious  
24 beliefs. ECF No. 114 at 7:4-7. This issue is not reasonably debatable. *See Washburn v. Fagan*, 2007  
25 WL 2043854, at\*2 (N.D. Cal. 2007) (explaining there is a substantial question when the issue before the  
26 appellate court is reasonably debatable.); *see also Gonzales v. Riddle*, 2008 WL 4723779, at \*1 (E.D.  
27 Cal. 2008) (stating that when considering whether an appeal presents a substantial question, the trial ///

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1 court may take into account the statement of issues and related material).

2 For the reasons set forth herein, Plaintiff's motion for in forma pauperis status on appeal and for  
3 payment of transcript fees on appeal is **DENIED**.

4 **IT IS SO ORDERED.**

5 DATED: January 6, 2012

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7 Hon. William McCurine, Jr.  
8 U.S. Magistrate Judge, U.S. District Court

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