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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PATRICK W. BARNES,

Plaintiff,

vs.

SCRIPPS MERCY HOSPITAL; MARK
HANDY, PhD; CARLOS CHARACHO,
PhD.; DOUGLAS BATES, PhD.;
LA JOLLA RADIOLOGY LABORATORY,

Defendants.

CASE NO. 08CV1054-LAB (WMc)

**ORDER CERTIFYING APPEAL
NOT TAKEN IN GOOD FAITH**

Plaintiff filed this action June 13, 2008, alleging that several doctors and private hospitals were liable for his physical injuries because he was subjected to harmful and unnecessary medical treatments. On June 23, the court denied his motion to proceed *in forma pauperis* (IFP) and dismissed his complaint, noting the Court lacked jurisdiction over any of Plaintiff's claims. The Court's order permitted Plaintiff to amend his complaint and pay the filing fee or submit an adequate IFP motion within 30 days.

Over sixty days later, Plaintiff submitted an amended complaint and a new IFP motion. Although they were late without excuse or explanation, the Court accepted them for filing. The Court this time granted his IFP motion and screened his complaint pursuant to 28 U.S.C. § 1915(e)(2). The Court again found no basis for exercising jurisdiction over Plaintiff's claims. Because Plaintiff had been given an opportunity to amend to plead

1 jurisdictional facts and had failed to do so, the amended complaint was dismissed without
2 prejudice but without leave to amend. Judgment was entered on October 2, **2008**. (See
3 Docket numbers 7, 8.)

4 Plaintiff then apparently attempted to litigate his claims in state court, where he was
5 unsuccessful. Then on March 8, 2010, nearly two and a half years after judgment was
6 entered, he began submitting a series of documents, two of which were rejected for filing.
7 On May 14, he submitted a document the Court construed as a motion for relief from
8 judgment pursuant to Fed. R. Civ. P. 60(b), accepted for filing, and denied in a reasoned
9 order on May 19. Then on May 27, Plaintiff filed a notice of appeal from the May 19 order,
10 which he represented as an order of dismissal.

11 A party who was permitted to proceed in forma pauperis in the district court may
12 proceed in forma pauperis on appeal without further authorization unless the district court
13 certifies the appeal is not taken in good faith. See 28 U.S.C. § 1915(a)(3); Fed. R. App. Pro.
14 24(a)(3). Here, Plaintiff was proceeding IFP so he would ordinarily be entitled to proceed
15 IFP on appeal, if his appeal were taken in good faith.

16 For several reasons, it is apparent Plaintiff's appeal is not taken in good faith. First,
17 it is clear federal courts lack jurisdiction over his claim. The parties are not diverse, and
18 Plaintiff set forth no claim arising under federal law even when given the opportunity to
19 amend to state such a claim. Second, Plaintiff himself stated he then litigated his claims in
20 state court, where they were dismissed. (Motion for Relief from Judgment, Docket number
21 12, at 3 ("State Court then Dismissed the Complaint on a Statute of Limitation Claim,
22 claiming the plaintiff sat on his Constitutional Rights to long." [sic]).

23 Third, the time within which Plaintiff was required to file a notice of appeal from
24 judgment expired over two years ago. Fed. R. Civ. P. 4(a)(1)(A) (providing, with exceptions
25 not applicable here, that a notice of appeal must be filed within 30 days after the judgment
26 or order appealed from is entered). Fourth, the order Plaintiff is appealing from is a denial
27 of a Rule 60 motion, not a dismissal as stated in his notice of appeal. A Rule 60 motion tolls
28 the time period for filing a notice of appeal only if it is filed within 28 days after judgment is

1 entered. Fed. R. App. Pro. 4(a)(4)(A)(vi). The time within which Plaintiff was required to file
2 a notice of appeal had long expired before he filed his Rule 60 motion. Finally, denial of the
3 Rule 60 motion was required by law, as explained in the Court's order of May 19, 2010.

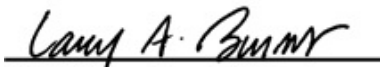
4 The Court therefore certifies this appeal is not taken in good faith.

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6 **IT IS SO ORDERED.**

7 DATED: May 28, 2010

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HONORABLE LARRY ALAN BURNS
United States District Judge

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