

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 19 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL R. SPENGLER,

No. 18-55213

Plaintiff-Appellant,

D.C. No. 2:18-cv-00097-RGK-JPR
Central District of California,
Los Angeles

v.

L.A. SUPERIOR COURT; et al.,

ORDER

Defendants-Appellees.

Before: LEAVY, HAWKINS, and TALLMAN, Circuit Judges.

The district court certified that this appeal is frivolous and has denied appellant leave to proceed in forma pauperis on appeal. *See* 28 U.S.C. § 1915(a). On February 21, 2018, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record, responses to the court's order to show cause, and opening briefs received on March 12, 2018, April 16, 2018, and May 7, 2018, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 7) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions and requests are denied as moot.

DISMISSED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INMATE # <u>3984203</u>	CASE NUMBER
Michael R. Spengler,	CV18-0097-RGK (JPRx)
PLAINTIFF(S) v. L.A. Superior Court et al.,	ORDER RE REQUEST TO PROCEED WITHOUT PREPAYMENT OF FILING FEES
DEFENDANT(S)	

IT IS ORDERED that the Request to Proceed Without Prepayment of Filing Fees is hereby GRANTED.

IT IS FURTHER ORDERED that, in accordance with 28 U.S.C. § 1915, the prisoner-plaintiff owes the Court the total filing fee of \$350.00. An initial partial filing fee of \$ _____ must be paid within thirty (30) days of the date this order is filed. Failure to remit the initial partial filing fee may result in dismissal of the case. Thereafter, monthly payments shall be forwarded to the Court in accordance with 28 U.S.C. § 1915(b)(2).

Date

United States Magistrate Judge

IT IS RECOMMENDED that the Request to Proceed Without Prepayment of Filing Fees be DENIED for the following reason(s):

- Inadequate showing of indigency.
- Failure to authorize disbursements from prison trust account to pay the filing fees.
- Failure to provide certified copy of trust fund statement for the last six (6) months.
- District Court lacks jurisdiction.
- Other _____
- Frivolous, malicious, or fails to state a claim upon which relief may be granted.
- Seeks monetary relief from a defendant immune from such relief.
- Leave to amend would be futile.
- This denial may constitute a strike under the "Three Strikes" provision governing the filing of prisoner suits. See *O'Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008).

Comments: Plaintiff has repeatedly been told that *Younger v. Harris*, 401 U.S. 37 (1971), bars him from bringing these claims while his state-court criminal proceedings are ongoing. See CV 17-6583, Doc. 17-0450-DOC, 17-3078-DOC, 17-4100-DOC, 17-6778-DOC. His continuing to raise nearly identical claims in a new lawsuit renders it frivolous and malicious. See, e.g., *Marks v. Torres*, 2009 WL 506678 (W.D. Wash. Feb. 27, 2009). *Plaintiff has repeatedly been told that Younger v. Harris*, 401 U.S. 37 (1971), bars him from bringing these claims while his state-court criminal proceedings are ongoing. See CV 17-6583, Doc. 17-0450-DOC, 17-3078-DOC, 17-4100-DOC, 17-6778-DOC. His continuing to raise nearly identical claims in a new lawsuit renders it frivolous and malicious. See, e.g., *Marks v. Torres*, 2009 WL 506678 (W.D. Wash. Feb. 27, 2009).

Date Jan. 9, 2018

United States Magistrate Judge Michael R. Spengler

IT IS ORDERED that the Request to Proceed Without Prepayment of Filing Fees is:

- GRANTED.** IT IS FURTHER ORDERED that, in accordance with 28 U.S.C. § 1915, the prisoner-plaintiff owes the Court the total filing fee of \$350.00. An initial partial filing fee of \$ _____ must be paid within thirty (30) days of the date this order is filed. Failure to remit the initial partial filing fee may result in dismissal of the case. Thereafter, monthly payments shall be forwarded to the Court in accordance with 28 U.S.C. § 1915(b)(2).
- DENIED.** Plaintiff SHALL PAY THE FILING FEES IN FULL within 30 days or this case will be dismissed.
- DENIED**, and this case is hereby DISMISSED immediately.
- DENIED**, with leave to amend within 30 days. Plaintiff may re-submit the IFP application and Complaint to this Court, if submitted with the Certified Trust Account Statement and Disbursement Authorization. Plaintiff shall utilize the same case number. If plaintiff fails to submit the required documents within 30 days, this case shall be DISMISSED.

January 11, 2018

Gay K. Klausner

Date

United States District Judge