

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Derrick Johnson,

10 Plaintiff,

11 v.

12 Robert Brady, et al.,

13 Defendants.
14

No. CV-14-01875-PHX-DGC

ORDER

15
16 Although this case is currently on appeal, the Court of Appeals referred this matter
17 to the Court for the limited purpose of determining whether Plaintiff's in forma pauperis
18 ("IFP") status should continue for the appeal, or whether the appeal is frivolous or taken
19 in bad faith. Doc. 95. For the following reasons, the Court will revoke Plaintiff's IFP
20 status for the appeal.

21 On January 28, 2015, the Court dismissed Plaintiff's state law claims against
22 Defendants Rogers, Puchek, Brady, Newton, and the Town of Quartzsite for failure to
23 comply with the state's notice of claim statute. Doc. 37 at 4-5. The Court dismissed
24 claims against Defendant Vederman based on absolute immunity and Plaintiff's failure to
25 allege facts to support claims for actions that are not protected by immunity. *Id.* at 5-6.
26 The Court dismissed Plaintiff's section 1983 claims against Defendants La Paz County,
27 La Paz County Board of Supervisors, and the Town of Quartzsite for failure to state the
28 legal theory under which the municipal defendants could be held liable, and for failure to

1 allege sufficient facts. *Id.* at 6-7. The Court dismissed Plaintiff's state law claims against
2 Defendants La Paz County and La Paz County Board of Supervisors based on the actions
3 of its employees because neither of the two agents was responsible for the alleged torts.
4 *Id.* at 8-10. The Court dismissed Plaintiff's section 1983 unreasonable search and seizure
5 claim against Defendants Brady and Newton because Plaintiff's allegations do not show
6 that the officers acted without reasonable suspicion. *Id.* at 10-11. The Court dismissed
7 Plaintiff's section 1983 malicious prosecution claim against Defendants Rogers, Puchek,
8 Brady, and Newton based on prosecutorial immunity (Rogers), for lack of state action
9 (Puchek), and for failure to state any allegations related to the prosecution beyond the
10 initial decision to arrest (Brady and Newton). *Id.* at 11-14. Finally, the Court dismissed
11 Plaintiff's equal protection claim against all Defendants for failure to allege any facts that
12 would support a "class of one" claim. *Id.* at 14. The Court granted Plaintiff leave to
13 amend his federal and state law claims against Defendants La Paz County, La Paz County
14 Board of Supervisors, the Town of Quartzsite, Brady, and Newton, and leave to amend
15 his state law claims against Defendant Puchek. *Id.* at 14-16. Plaintiff's only claim that
16 survived was his section 1983 unreasonable arrest claim against Defendants Brady and
17 Newton. *Id.* at 14.

18 On June 17, 2015, the Court again dismissed all of Plaintiff's claims except his
19 section 1983 false arrest claim and his civil conspiracy claim against Defendants Brady
20 and Newton. Doc. 65 at 5-6. This time, however, the Court dismissed Plaintiff's other
21 claims with prejudice because he "re-pled claims the Court dismissed with prejudice" and
22 "failed to cure the deficiencies identified in the Court's earlier order." *Id.* at 9. The
23 Court warned Plaintiff that a failure to prosecute the case would result in dismissal under
24 Rule 41(b) of the Federal Rules of Civil Procedure. *Id.*

25 On November 20, 2015, Defendants Brady and Newton filed a motion for
26 summary judgment. *See* Doc. 78. Plaintiff never responded. On February 16, 2016, the
27 Court dismissed Plaintiff's action under Rule 41(b) for failure to prosecute and for failure
28 to comply with the Court's previous orders. Doc. 89 at 2-3. The Court, however,

1 dismissed the action without prejudice. *Id.* at 3. The Clerk entered a judgment of
2 dismissal that same day. *See* Doc. 90. On March 11, 2016, Plaintiff filed a notice of
3 appeal. Doc. 91.

4 A district court may deny a party IFP status if all claims on appeal are frivolous.
5 *See* 28 U.S.C. § 1915(a)(3); *Ellis v. United States*, 356 U.S. 674, 674-75 (1958). As
6 discussed in the Court's previous orders, the majority of Plaintiff's claims were wholly
7 without merit. *See* Docs. 37; 65; 89. Appeal pertaining to any of these claims would be
8 frivolous or taken in bad faith. After two rounds of motion practice, Plaintiff was left
9 with only two non-frivolous claims – his false arrest claim and civil conspiracy claims
10 against Defendants Brady and Newton. Ordinarily this would be sufficient to permit
11 Plaintiff to proceed with IFP status on appeal, but Plaintiff failed to prosecute his action
12 in direct violation of the Court's June 17, 2015 order. Plaintiff also failed to respond to
13 Defendants' motion for summary judgment, even after being ordered to do so. Doc. 89.
14 As a result, the Court dismissed the claims without prejudice. *See* Fed. R. Civ. P. 41(b);
15 *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005)
16 (citations omitted) (recognizing that courts may *sua sponte* dismiss actions under Rule
17 41(b) for a plaintiff's failure to prosecute or comply with the court's orders). The Court
18 specifically considered the five factors required by the Ninth Circuit before making the
19 dismissal decision. Doc. 89 at 3 (citing *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir.
20 1995)).

21 Because the Court dismissed Plaintiff's claims without prejudice because of his
22 repeated failures to follow the rules and comply with Court orders, and his refusal to
23 respond to the motion for summary judgment even after being ordered to do so, the Court
24 concludes that any appeal of the dismissal would be frivolous.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS ORDERED:

1. Plaintiff's IFP status is **revoked** for this appeal.
2. The Clerk shall transmit this order to the Ninth Circuit Court of Appeals.

Dated this 25th day of March, 2016.



David G. Campbell
United States District Judge