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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Reginald Sanders,

10 Plaintiff,

11 v.

12 Fitness International LLC, et al.,

13 Defendants.
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No. CV-23-00481-PHX-MTL

ORDER

15 On January 29, 2024, the Court of Appeals referred this matter back to this Court
16 “for the limited purpose of determining whether in forma pauperis status should continue
17 for this appeal or whether the appeal is frivolous or taken in bad faith.” (Doc. 55 at 1.)
18 Also pending before the Court are Plaintiff’s Motion for Leave to Proceed In Forma
19 Pauperis on Appeal and Motion for Preparation of Reporter’s Transcript In Forma
20 Pauperis. (Doc. 57; Doc. 58.) This Order addresses all three issues. The Court finds that
21 Plaintiff’s appeal is frivolous and denies both motions.

22 Federal Rule of Appellate Procedure 24(a)(1) provides that “a party to a district-
23 court action who desires to appeal in forma pauperis must file a motion in the district
24 court.” The motion must be accompanied by an affidavit showing the party’s inability to
25 pay or to give security for fees and costs, claiming an entitlement to redress, and stating
26 the issues that the party intends to present on appeal. Fed. R. App. P. 24(a)(1)(A)–(C). A
27 court has no discretion to allow a litigant to appeal in forma pauperis if the litigant has
28 not met the statutory criteria for such status. *See Stanley v. Swope*, 99 F.2d 308, 308–09

1 (9th Cir. 1938). These procedural requirements have not been met because Plaintiff failed
2 to include an affidavit showing his inability to pay and the issues he plans to present on
3 appeal with his Motion for Leave to Proceed In Forma Pauperis on Appeal. (Doc. 57.)

4 The request also may be denied on the merits. “An appeal may not be taken in
5 forma pauperis if the trial court certifies in writing that it is not taken in good faith.”
6 28 U.S.C. § 1915(a)(3). An appeal is taken in good faith if it seeks review of any issue
7 that is non-frivolous. *Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). A
8 “good faith” appeal must seek review of at least one “non-frivolous” issue or claim. *Id.*
9 An issue is “frivolous” where it “lacks an arguable basis either in law or in fact.” *Neitze*
10 *v. Williams*, 490 U.S. 319, 325 (1989). Legally frivolous claims are those “based on an
11 indisputably meritless legal theory,” such as claims against defendants who are immune
12 from suit or for infringement of a legal interest that clearly does not exist. *Id.* at 327.
13 Factually frivolous claims are those premised on “clearly baseless” factual contentions,
14 such as claims “describing fantastic or delusional scenarios.” *Id.* at 327-28.

15 Plaintiff does not explain which issues he plans to present on appeal; rather, he
16 vaguely asserts that the “dismissal order contains manifest errors of law warranting
17 reversal by the Ninth Circuit.” (Doc. 48.)

18 Briefly, and by way of background, Plaintiff brought his now-dismissed complaint
19 against his gym, Fitness International, LLC d/b/a Esporta Fitness alleging that he was
20 “denied the full and equal enjoyment of [his gym’s] public accommodation due to [his]
21 sex.” (Doc. 1 at 1.) He further alleges that the “general manager and office manager (both
22 female) discriminated against [him] when [he] requested their assistance” with an
23 altercation involving his ex-girlfriend. (*Id.*) He further complains that the “facility did
24 minimal to provide film of incident to Mesa Police Department.” (*Id.*) Defendants filed a
25 motion to dismiss asserting that Plaintiff’s public accommodation, negligence and
26 retaliation claims all fail as a matter of law. The Court agreed and found that nothing in
27 Plaintiff’s response brief, or the arguments he raised at Oral Argument could save
28 Plaintiff’s claims from being dismissed without leave to amend.

1 With respect to his public accommodation and retaliation claims, Plaintiff
2 conceded at Oral Argument that he could “either not work out, drive five, ten miles away
3 to a different facility or come later on at night when I know that they weren’t there.”
4 (Doc. 38 at 93:3-6.) That concession undoubtedly demonstrates that Plaintiff was not
5 denied the full benefits or enjoyment of a public accommodation in violation of 42
6 U.S.C. § 2000a(a) and no amendment can save his claim. With respect to his negligence
7 claim, Plaintiff failed to establish what duty of care the gym owed to him and supposedly
8 breached. At Oral Argument, Plaintiff explained the duty he believed that was owed was
9 “as a member[,], paying member, to basically protect the members in the gym and not
10 allow people from the outside to just enter the gym and approach their members.” (Doc.
11 38 at 80:6-9.) But there is no such duty recognized under Arizona law. Plaintiff, while
12 upset about an alleged altercation with his ex-girlfriend and the way his gym allegedly
13 handled the altercation, are not enough for him to claim viable causes of action, and his
14 claims are legally frivolous because no legal interest exists. *Neitze*, 490 U.S. at 327.

15 Because the Court has not found that “at least one issue or claim” Plaintiff
16 presents for appeal is “non-frivolous,” *Hooker*, 302 F.3d at 1092, the Court certifies that
17 the proposed appeal is not taken in good faith under 28 U.S.C. § 1915(a)(3). For similar
18 reasons, the appeal also does not present a substantial question within the meaning of 28
19 U.S.C. § 753(f) and Plaintiff’s Motion for Preparation of Reporter’s Transcript In Forma
20 Pauperis (Doc. 58) will also be denied.

21 Pursuant to Rule 24(a)(4), Fed. R. App. P., the Court directs the Clerk to
22 immediately notify Plaintiff and the Ninth Circuit Court of Appeals of this Order. The
23 Court advises Plaintiff that he may seek leave to proceed in forma pauperis on appeal by
24 filing such a motion in the Ninth Circuit Court of Appeals within 30 days of service of
25 this Order. Fed. R. App. P. 24(a)(5). Any such motion “must include a copy of the
26 affidavit filed in the district court and the district court’s statement of reasons for its
27 action.” *Id.*

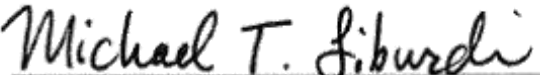
28 **IT IS ORDERED** denying Plaintiff’s Motion for Leave to Proceed In Forma

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Pauperis on Appeal (Doc. 57).

IT IS FURTHER ORDERED denying Plaintiff's Motion for Preparation of Reporter's Transcript In Forma Pauperis (Doc. 58).

Dated this 6th day of February, 2024.



Michael T. Liburdi
United States District Judge

CC: Ninth Circuit Court of Appeals