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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MANUEL REYNA CHAVEZ,
Plaintiff,
v.
COUNTY JAIL OF SAN
BERNARDINO, et al.,
Defendants.

Case No. EDCV 14-02378-MMM (KK)

MEMORANDUM AND ORDER
REVOKING IN FORMA PAUPERIS
STATUS

This is a closed *pro per* civil rights action filed by Plaintiff Manuel Reyna Chavez (“Plaintiff”). On October 1, 2015, Plaintiff filed a Notice of Appeal with the Ninth Circuit appealing this Court’s September 5, 2015 Judgment dismissing his action without prejudice for failure to prosecute and failure to comply with court orders. ECF Docket No. (“Dkt.”) 24. On October 5, 2015, the Ninth Circuit issued a Referral Notice referring the matter to this Court for the limited purpose of determining whether *in forma pauperis* status should continue on appeal or whether the appeal is frivolous or taken in bad faith. Dkt. 26. For the reasons set forth below, the Court finds the appeal to be frivolous or taken in bad faith, and thus, revokes Plaintiff’s *in forma pauperis* status. 28 U.S.C. §

1 1915(a)(3).

2 **I.**

3 **BACKGROUND**

4 On November 18, 2014, Plaintiff lodged a *pro se* civil rights complaint
5 (“Complaint”), pursuant to 42 U.S.C. § 1983. Dkt. 1-1. In the Complaint, Plaintiff
6 alleged defendants San Bernardino Sheriff Deputies Sanchez, Reynoso, and Ungureanu
7 violated his Eighth Amendment rights by using excessive force against him. *Id.* at 3-5.
8 The Complaint also named defendant San Bernardino Sheriff John McMahon who was
9 allegedly “the head sheriff of S.B.S.D. that’s accountable, liable, and responsible for
10 these ‘3 deputies’ actions and misconduct.” *Id.* at 3. The Complaint named all
11 defendants in their individual and official capacities. *Id.* at 3-5. Although unclear, the
12 Complaint appeared to also name the County Jail of San Bernardino as a defendant. *Id.*

13 On November 21, 2014, the Court issued an Order Dismissing the Complaint with
14 Leave to Amend, finding the Complaint failed to state any claim against: defendant
15 McMahon in his individual capacity; any entity defendant; and any defendant in his
16 official capacity. Dkt. 2 at 3-6.

17 On December 17, 2014, Plaintiff filed a First Amended Complaint asserting the
18 same Eighth Amendment claim as in the Complaint. Dkt. 8. The First Amended
19 Complaint named seven defendants in their individual and official capacities: (1) the
20 County of San Bernardino; (2) San Bernardino County Jail; (3) the Head Sheriff of West
21 Valley Detention Center; (4) Captain Jeff Rose of the San Bernardino County Jail; (5)
22 Deputy Sanchez; (6) Deputy Reynoso; and (7) Deputy Ungureanu. *Id.* at 3-4.

23 On January 8, 2015, the Court issued an Order Dismissing First Amended
24 Complaint with Leave to Amend, finding the First Amended Complaint failed to state:
25 any claims against defendants County of San Bernardino, San Bernardino County Jail,
26 Head Sheriff of West Valley Detention Center, Rose, and Reynoso; official capacity
27 claims against defendant Sanchez; and official capacity claims against defendant
28 Ungureanu. Dkt. 9 at 3-6.

1 On April 7, 2015, Plaintiff filed a Second Amended Complaint (“SAC”), again
2 asserting the same Eighth Amendment claim as in the Complaint. Dkt. 18. The SAC
3 named three defendants in their individual and official capacities: (1) Deputy Ungureanu;
4 (2) Deputy Reynoso; and (3) Deputy Sanchez. Id. at 3.

5 On April 8, 2015, the Court dismissed the SAC with leave to amend. Dkt. 19. The
6 Court found the SAC failed to state any official capacity claims against any defendant
7 and individual capacity claims against defendant Reynoso. Id. at 3. The Court granted
8 Plaintiff until April 22, 2015 to file a Third Amended Complaint remedying these
9 pleading deficiencies. Id. at 7. The Court expressly warned Plaintiff that failure to file a
10 Third Amended Complaint in accordance with the Court’s instructions would result in a
11 recommendation that the action be dismissed. Id. at 9. However, Plaintiff failed to
12 timely file a Third Amended Complaint and failed to request an extension of time in
13 which to do so.

14 Thus, on May 7, 2015, the Court issued a Report and Recommendation that
15 Plaintiff’s action be dismissed for failure to prosecute and failure to comply with Court
16 orders. Dkt. 21. The Court granted Plaintiff until June 8, 2015 to file objections to the
17 Court’s Report and Recommendation. Dkt. 20. Plaintiff failed to file objections to the
18 Report and Recommendation. Hence, on September 5, 2015, judgment was entered
19 dismissing the action without prejudice. Dkt. 23.

20 On October 1, 2015, Plaintiff filed a Notice of Appeal. Dkt. 24. On October 5,
21 2015, the Ninth Circuit issued an order referring Plaintiff’s appeal to this Court for the
22 limited purpose of determining whether *in forma pauperis* status should continue on
23 appeal or whether the appeal is frivolous or taken in bad faith. Dkt. 25.

24 II.

25 DISCUSSION

26 “While the right to appeal from a final order of the District Court is absolute,
27 permission to appeal *in forma pauperis* is a privilege founded upon statute and subject to
28 the provisions thereof.” Barkeij v. Ford Motor Co., 230 F.2d 729, 731 (9th Cir. 1956)

1 (per curiam) (footnote omitted). Under 28 U.S.C. § 1915(a), “[a]n appeal may not be
2 taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good
3 faith.” Hence, a district court may revoke *in forma pauperis* status if it finds an appeal to
4 be frivolous or taken in bad faith. 28 U.S.C. § 1915(a)(3); see also Hooker v. American
5 Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of *forma pauperis* status is
6 appropriate where district court finds the appeal to be frivolous or taken in bad faith). A
7 court may find an appeal is frivolous or taken in bad faith where the plaintiff makes “no
8 effort to comply” with court orders. Barkeijj, 230 F.2d at 731-32.

9 Here, Plaintiff’s appeal is frivolous or taken in bad faith. Id. Plaintiff filed three
10 complaints which failed to state a claim. Dkt. 4, 8, 18. Plaintiff received three dismissal
11 orders, offering him three opportunities to correct specific deficiencies the Court
12 identified in each of the prior dismissal orders. Dkt. 2, 9, 19. Despite these
13 opportunities, Plaintiff failed to file a Third Amended Complaint.

14 As a result of Plaintiff’s failure to respond to the Court’s order that he file a Third
15 Amended Complaint if he wished to pursue this action, the Court issued a Report and
16 Recommendation that Plaintiff’s action be dismissed without prejudice for failure to
17 prosecute and comply with court orders. Dkt. 21. Despite having the opportunity to
18 object to the Court’s recommendation, Plaintiff again failed respond. Dkt. 20-21.
19 Plaintiff, thus, made “no effort to comply” with the Court’s orders or otherwise litigate
20 his case. Barkeijj, 230 F.2d at 731-32. Accordingly, the Court finds Plaintiff’s appeal to
21 be frivolous or taken in bad faith and, thus, revokes Plaintiff’s *in forma pauperis* status.

22 Id.

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III.
ORDER

IT IS THEREFORE ORDERED that Plaintiff *in forma pauperis* status is revoked.

DATED: October 8, 2015



HONORABLE MARGARET M. MORROW
UNITED STATES DISTRICT JUDGE

Presented by:



HONORABLE KENLY KIYA KATO
UNITED STATES MAGISTRATE JUDGE