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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ALVARO QUEZADA,

Case No.: 1:06-cv-01088-OWW (PC)

Plaintiff,

ORDER FINDING THAT PLAINTIFF IS NOT ENTITLED TO PROCEED IN FORMA PAUPERIS ON APPEAL FILED JULY 22, 2011 (Doc. 75)

v.

B. GRICEWICH, et al.,

Defendants.

ORDER DIRECTING CLERK’S OFFICE TO SERVE COPY OF ORDER ON NINTH CIRCUIT

Alvaro Quezada (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. July 11, 2011, the Court adopted Findings and Recommendations which recommended granting Defendants’ 12(b) motion and dismissing Plaintiff’s action based on Plaintiff’s failure to exhaust administrative remedies. (Doc. 27). On July 22, 2011, Plaintiff filed a notice of appeal (Doc. 75) and on July 27, 2011, the Ninth Circuit referred the matter to the Court for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith. (Doc. 78).

Pursuant to the Federal Rules of Appellate Procedure,

A party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization, unless: (A) the district court - before or after the notice of appeal is filed - certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or (B) a statute provides otherwise.

Fed. R. App. P. 24(a)(3).

1 The district clerk must immediately notify the parties and the court of appeals when  
2 the district court does any of the following:

3 (A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

4 Fed. R. App. P. 24(a)(4).

5 Because Plaintiff is proceeding in forma pauperis in this action, Plaintiff is entitled to proceed  
6 in forma pauperis on appeal unless the Court finds his appeal is not taken in good faith or finds that  
7 he is not otherwise entitled to proceed in forma pauperis. Upon review of the Findings and  
8 Recommendations and the order adopting, it is apparent that Plaintiff failed to demonstrate that his  
9 lack of exhaustion was do to anything other than Plaintiff's own actions. As such, Plaintiff's appeal  
10 of the dismissal without prejudice is frivolous and is not taken in good faith.

11 Based on the foregoing, it is HEREBY ORDERED that:

12 Plaintiff's appeal is frivolous and not taken in good faith. 28 U.S.C. § 1915(a). The Clerk's  
13 Office shall serve a copy of this order on the Ninth Circuit.

14  
15 IT IS SO ORDERED.

16 **Dated:** August 2, 2011

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE