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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

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Thomas Braley,

No. CV 1-08-0758-MHM

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Plaintiff,

**ORDER**

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vs.

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California Department of Corrections and  
Rehabilitation, et al.,

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Defendants.

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Pending before the Court is Plaintiff's Motion for Certificate of Appealability (Doc. # 32). This action was dismissed on June 29, 2009, due to Plaintiff's repeated failure to submit an amended complaint. Specifically, Plaintiff originally sought and was granted leave to file an amended complaint (Doc. ## 12, 17), sought and was granted an extension of time to file that amended complaint (Doc. ## 18, 19), and was provided one final opportunity to file the amended complaint (Doc. # 28). Plaintiff failed to respond to the Court's Order to Show Cause and did not file an amended complaint during the four months before the Court dismissed this action for failure to prosecute.

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Based on the foregoing, while a Certificate of Appealability is unnecessary for § 1983 actions, Stein v. Quinn, 2007 WL 1725553 at \*1 (W.D. Wash. June 11, 2007), the Court does find that Plaintiff's appeal is frivolous and not taken in good faith and Plaintiff is not entitled to in forma pauperis status on appeal. See 28 U.S.C. § 1915(a)(3).

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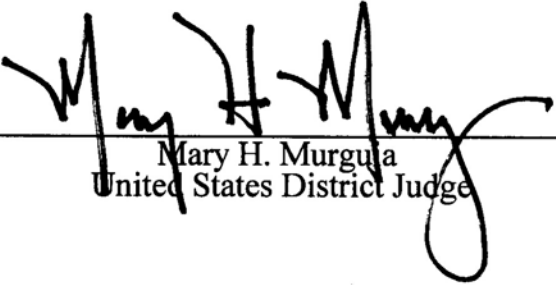
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**IT IS THEREFORE ORDERED** that Plaintiff's Motion for Certificate of Appealability (Doc. # 32) is **denied as moot**.

**IT IS FURTHER CERTIFIED** that Plaintiff's appeal is **not taken in good faith** and he is not entitled to in forma pauperis status on appeal. See 28 U.S.C. § 1915(a)(3).

**IT IS FURTHER ORDERED** that the Clerk of Court must send a copy of this Order to the Ninth Circuit Court of Appeals.

DATED this 3<sup>rd</sup> day of August, 2009.



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Mary H. Murgula  
United States District Judge