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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DUANE DIXON,

Plaintiff,

v.

DEPARTMENT OF CORRECTION AND
REHABILITATION, et al.,

Defendants.

CASE NO. 1:10-CV-01225-LJO-DLB PC

ORDER REVOKING PLAINTIFF’S IN
FORMA PAUPERIS STATUS ON APPEAL

Plaintiff Duane Dixon (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation. Plaintiff was proceeding pro se and in forma pauperis in this civil rights action. Plaintiff initiated this action by filing his complaint on July 8, 2010. Plaintiff filed an amended complaint on August 5, 2010. On March 3, 2011, the magistrate judge assigned to this action filed a Findings and Recommendations recommending dismissal of this action for failure to state a claim. The undersigned adopted the Findings and Recommendations on June 8, 2011. Plaintiff subsequently filed a notice of appeal on July 22, 2011. Doc. 23.

Pursuant to 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” The Court finds that Plaintiff’s appeal is not taken in good faith. Plaintiff’s allegations failed to state a claim. Plaintiff alleged at most negligence on the part of Defendants, which is not a cognizable Eighth Amendment claim. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006). Additionally, Plaintiff

1 did not exhaust administrative remedies in this action, as required by the Prison Litigation
2 Reform Act. *Woodford v. Ngo*, 548 U.S. 84, 89 (2006).

3 Accordingly, Plaintiff's appeal is not taken in good faith, and is frivolous. Plaintiff's in
4 forma pauperis status is HEREBY ORDERED revoked for purposes of his appeal.

5 IT IS SO ORDERED.

6 **Dated:** July 28, 2011

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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