

1 For purposes of 28 U.S.C. § 1915, an appeal is frivolous if it lacks any arguable basis in law or
2 fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

3 **II. Discussion and Analysis**

4 Plaintiff seeks to appeal the District Court’s decision to dismiss the amended complaint
5 “because he was denied due process of law and equal protection of the law by virtue of the fact that he
6 had only one opportunity to amend and his case was dismissed without oral argument.” (Doc. 12 at 2).
7 In addition, Plaintiff contends “the Court ruled incorrectly” in finding that Plaintiff could not take this
8 matter to a jury.

9 Significantly, Plaintiff was granted an opportunity to amend his complaint and was given
10 specific instruction explaining why his complaint was defective. (Doc. 4) He filed his First Amended
11 Complaint which the Court screened and found that Plaintiff failed to address the deficiencies noted by
12 the Court. (Doc. 8) He was given the opportunity to object to the Findings and Recommendations that
13 his amended complaint be dismissed for failure to state a cognizable claim, and did so. (Doc. 9)
14 Accordingly, though the Court did not hold a hearing, Plaintiff had an opportunity to be heard.

15 As Plaintiff notes, he was given the opportunity to amend his complaint prior to the Court’s
16 dismissal of the action. Where it is obvious the plaintiff cannot prevail on the facts alleged and further
17 amendments would be futile, dismissal for failure to state a claim is proper. *Lopez v. Smith*, 203 F.3d
18 1122, 1130 (9th Cir. 2000). Reviewing the factual allegations in Plaintiff’s amended complaint, the
19 Court found Plaintiff again failed to state facts supporting his claims of a conspiracy or that his
20 constitutional rights were violated which demonstrated his inability to do so.¹ (Doc. 8 at 5-8). In
21 addition, the Court determined it lacked jurisdiction under the *Rooker/Feldman* doctrine to review the
22 decision of the state court to suspend Plaintiff from the practice of law. (Doc. 8 at 8-10; Doc. 10 at 5).
23 Finally, the Court found Plaintiff was barred by *Heck v. Humprhey*, 512 U.S. 477, 486-87 (1994), from
24 challenging the lawfulness of his arrest given that he had been convicted of the offenses and had not
25 demonstrated that his convictions had been set aside. (Doc. 8 at 8-10; Doc. 10 at 5). Therefore, the
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27 ¹Plaintiff had been an attorney for many years. Thus, it is particularly noteworthy that, when given explicit instruction by
28 the Court as to what was needed to state a claim of a conspiracy or that his constitutional rights had been violated, Plaintiff
failed to plead facts that would support these claims.

1 Court found Plaintiff failed to state cognizable claims, and further amendment was futile. *Id.*

2 **III. Conclusion and Order**

3 As discussed above, Plaintiff failed to state cognizable claims upon which relief could be
4 granted by the Court. Plaintiff's appeal is frivolous because it "lacks any arguable basis in law or fact."
5 *See Neitzke*, 490 U.S. at 325. Thus, the Court certifies that Plaintiff's appeal is frivolous and not taken
6 in good faith.

7 Accordingly, **IT IS HEREBY ORDERED:**

- 8 1. Plaintiff's in forma pauperis status is **REVOKED**;
- 9 2. The Clerk of Court is **DIRECTED** to notify the Ninth Circuit Court of Appeals that the
10 Court certifies, pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate
11 Procedure, that Plaintiff's appeal is frivolous and not taken in good faith.

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13 IT IS SO ORDERED.

14 Dated: October 16, 2012

/s/ Jennifer L. Thurston
15 UNITED STATES MAGISTRATE JUDGE