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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SANTOS RENE FLORES,
Plaintiff,
v.
S. FLORES, et al.,
Defendants.

Case No. 1:14-cv-00577- MJS (PC)

**ORDER REVOKING PLAINTIFF'S IN
FORMA PAUPERIS STATUS AND
CERTIFYING PLAINTIFF'S APPEAL IS
FRIVOLOUS**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On January 20, 2015, Plaintiff's complaint was dismissed as untimely on statute of limitations grounds. (ECF No. 25.) Plaintiff's motion for reconsideration of the Court's dismissal order was denied on November 30, 2015. (ECF No. 34.) Plaintiff thereafter filed a notice of appeal. (ECF No. 35.)

Before the undersigned is a referral notice form the Ninth Circuit Court of Appeals for the limited purpose of determining whether Plaintiff's in forma pauperis status should continue for the appeal. (ECF No. 38.)

"An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). The test for allowing an appeal in forma pauperis is easily met; the good faith requirement is satisfied if the appellant

1 seeks review of any issue that is not frivolous. Gardner v. Pogue, 558 F.2d 548, 550-51
2 (9th Cir. 1977) (citing Coppedge v. United States, 369 U.S. 438, 445 (1962)) (quotation
3 marks omitted); see also Hooker v. American Airlines, 302 F.3d 1091, 1092 (9th Cir.
4 2002) (if at least one issue or claim is non-frivolous, the appeal must proceed in forma
5 pauperis as a whole). An action is frivolous “where it lacks an arguable basis either in
6 law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989). In other words, the term
7 “frivolous”, as used in § 1915 and when applied to a complaint, “embraces not only the
8 inarguable legal conclusion, but also the fanciful factual allegation.” Id.

9 For the reasons stated in the January 20, 2015, Order granting Defendants’
10 motion to dismiss, Plaintiff’s complaint is untimely since it was brought nearly four years
11 after the conclusion of the statute of limitations, and there are no grounds justifying
12 equitable tolling. Plaintiff’s motion for reconsideration was denied because it did present
13 any new facts or argument. Plaintiff’s appeal is therefore frivolous because it “lacks any
14 arguable basis in law or fact.” See Neitzke, 490 U.S. at 325. Thus, the Court certifies
15 that Plaintiff’s appeal is not taken in good faith.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff’s in forma pauperis status is REVOKED; and
- 18 2. The Clerk of Court is DIRECTED to notify the Ninth Circuit Court of Appeals
19 that the Court certifies, pursuant to Rule 24(a) (3)(A) of the Federal Rules of
20 Appellate Procedure, that Plaintiff’s appeal is frivolous and not taken in good
21 faith.

22
23 IT IS SO ORDERED.

24
25 Dated: January 19, 2016

26 /s/ Michael J. Seng
27 UNITED STATES MAGISTRATE JUDGE
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