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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRANDON LEE WOLCOTT,  
Plaintiff,

v.

BOARD OF RABBIS OF NO. & SO.  
CALIFORNIA, et al.,  
Defendants.

No. 1:14-cv-00936-DAD-JLT (PC)

ORDER FINDING APPEAL NOT TAKEN IN  
GOOD FAITH

(Doc. No. 38)

Plaintiff Brandon Lee Walcott is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. On August 17, 2017, the court adopted the assigned magistrate judge’s findings and recommendations and dismissed this action with prejudice, concluding that all of plaintiff’s claims were either time-barred or failed to state a plausible claim for relief. (Doc. Nos. 31, 33.) Plaintiff then filed a notice of appeal on August 30, 2017. (Doc. No. 35.) On September 11, 2017, the United States Court of Appeals for the Ninth Circuit referred the matter to this court for a determination of whether the appeal is frivolous or taken in bad faith under Federal Rule of Appellate Procedure 24(a)(3)(A). (Doc. No. 26.)

An appeal is taken in good faith if the appellant seeks review of any issue that is not frivolous. *Gardner v. Pogue*, 558 F.2d 548, 550–51 (9th Cir. 1977) (citing *Coppedge v. United*

1 *States*, 369 U.S. 438, 445 (1962)); *see also Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir.  
2 2002) (if at least one issue or claim is non-frivolous, the appeal must proceed *in forma pauperis*  
3 as a whole). A frivolous action is one “lacking [an] arguable basis in law or in fact.” *Franklin v.*  
4 *Murphy*, 745 F.2d 1221, 1225 (9th Cir. 1984). “[T]o determine that an appeal is in good faith, a  
5 court need only find that a reasonable person could suppose that the appeal has some merit.”  
6 *Walker v. O’Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

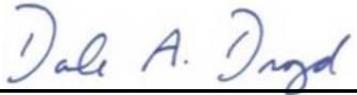
7 Here, the court dismissed a number of plaintiff’s claims on the ground that they are barred  
8 by the applicable statute of limitations, a conclusion that plaintiff does not contest. (Doc. No. 32.)  
9 Plaintiff focuses his appeal on whether his claim for violation of his rights to freely exercise his  
10 religion under the First Amendment and RLUIPA stated a plausible claim for relief. (Doc. No.  
11 35.) In his appeal, plaintiff does not identify any legitimate grounds for appeal, summarily  
12 concluding that the court “failed to protect the federal fundamental right under the United States  
13 Constitution.” (*Id.* at 2.) The court can discern no basis for plaintiff’s appeal other than his mere  
14 disagreement with the court’s ruling, which does not suffice to demonstrate good faith.

15 For these reasons:

- 16 1. Pursuant to Federal Rule of Appellate Procedure 24(a)(3)(A), the court finds that  
17 the appeal was not taken in good faith; and
- 18 2. Pursuant to Federal Rule of Appellate Procedure 24(a)(4)(B), the Clerk of the  
19 Court is directed to serve this order on plaintiff and the U.S. Court of Appeals for  
20 the Ninth Circuit.

21 IT IS SO ORDERED.

22 Dated: October 2, 2017

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25 UNITED STATES DISTRICT JUDGE  
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