

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

By notice entered April 28, 2015, the United States Court of Appeals for the Ninth Circuit referred this matter to the District Court for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith. *See* 28 U.S.C. § 1915(a)(3); *see also* *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of in forma pauperis status is appropriate where the District Court finds the appeal to be frivolous).

Permitting litigants to proceed in forma pauperis is a privilege, not a right. *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984); *Williams v. Field*, 394 F.2d 329, 332 (9th Cir., cert. denied, 393 U.S. 891 (1968); *Williams v. Marshall*, 795 F.Supp. 978, 978-79 (N.D. Cal. 1992). A federal court may dismiss a claim filed in forma pauperis prior to service if it is satisfied that the action is frivolous or malicious. 28 U.S.C. § 1915(e)(2); *see Sully v. Lungren*, 842 F.Supp. 1230, 1231 (N.D. Cal. 1994). If a plaintiff with in forma pauperis status brings a case without arguable substance in law and fact, the court may declare the case frivolous.

1 *Franklin*, 745 F.2d at 1227. Plaintiff is appealing the Court's dismissal of his complaint
2 following screening pursuant to 28 U.S.C. § 1915(e). Plaintiff's complaint was an apparent
3 appeal from a state court judgment. Upon screening, the Magistrate Judge found that the Court
4 lacked subject matter jurisdiction and recommended dismissal. Following consideration of
5 Plaintiff's objections, the Court adopted the Magistrate Judge's findings and recommendations
6 and dismissed the action. Because Plaintiff's complaint is without arguable substance in law and
7 fact, the case is frivolous and Plaintiff is not entitled to proceed *in forma pauperis* on appeal.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The appeal is declared frivolous and not taken in good faith;
- 10 2. Pursuant to 28 U.S.C. § 1915(a)(3), Plaintiff is not entitled to proceed *in forma*
11 *pauperis* in Appeal No. 15-15843, filed April 24, 2015;
- 12 3. Pursuant to Federal Rule of Appellate Procedure 24(a)(4), this Order serves as notice
13 to the parties and the United States Court of Appeals for the Ninth Circuit of the
14 finding that Plaintiff is not entitled to proceed *in forma pauperis* for this appeal; and
- 15 4. The Clerk of the Court is directed to serve a copy of this Order on Plaintiff and the
16 United States Court of Appeals for the Ninth Circuit.

17 IT IS SO ORDERED.

18 Dated: April 30, 2015

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