1 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 EASTERN DISTRICT OF CALIFORNIA 8 9 EDWARD RONJE. Case No. 1:14-cv-01589-LJO-JLT (PC) 10 Plaintiff, NOTICE AND ORDER FINDING THAT PLAINTIFF IS NOT ENTITLED TO PROCEED 11 IN FORMA PAUPERIS ON APPEAL v. 12 KING, et al., (Doc. 20) 13 Defendants. 14 15 Plaintiff, Edward Ronje, is a civil detainee who is currently proceeding pro se and in 16 forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action 17 on October 10, 2014. (Doc. 1.) The matter was referred to a United States Magistrate Judge 18 pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 19 Upon initial review, it was discovered that Plaintiff was challenging the assessment 20 protocol which resulted in his civil detention. Thus, on December 29, 2014, an order issued 21 giving Plaintiff thirty days to show cause why this action should not be dismissed as barred by 22 Heck v. Humphrey, 512 U.S. 477, 487-88 (1994). (Doc. 8.) On March 20, 2015, Plaintiff filed 23 his response. (Doc. 11.) Findings and Recommendations issued on April 14, 2015, screening the 24 Complaint and finding that it did not state a cognizable claim and is barred by *Heck*. (Doc. 12.) 25 The Findings and Recommendations was served on Plaintiff that same date and allowed thirty 26 days for filing of objections. (Doc. 12.) Plaintiff filed his objections on May 7, 2015 seeking 27 leave to amend. (Doc. 13.) 28

However, as accurately stated in the Findings and Recommendations, Plaintiff's claims either directly or indirectly challenge the validity of his confinement, which may only be pursued in a petition for a writ of habeas corpus. Plaintiff has failed to state any claims that are cognizable under section 1983. Plaintiff may not amend the Complaint to change the nature of claims he has raised in this suit to attempt to state a cognizable claim, *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) and the deficiencies in Plaintiff's pleadings are not capable of being cured through amendment, *Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012). Plaintiff filed timely objections on October 30, 2014 in which he persisted to complain of his confinement. (Doc. 13.) The order adopting the Findings and Recommendations which dismissed this action, found that this action was barred pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994) and that Plaintiff failed to state a cognizable claim for relief. (Doc. 14.)

On June 3, 2015, Plaintiff filed a notice of appeal. (Doc. 16.) On June 8, 2015, the Court of Appeals for the Ninth Circuit referred the matter to the district court for the limited purpose of determining whether *in forma pauperis* should continue for this appeal. 28 U.S.C. § 1915(a)(3); *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). For the reasons which follow, the Court finds that Plaintiff's *in forma pauperis* status on appeal should be revoked. *Id*.

"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 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 States, 369 U.S. 438, 445, 82 S.Ct. 917 (1962)); see also Hooker v. American Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002) (if at least one issue or claim is non-frivolous, the appeal must proceed *in forma pauperis* as a whole).

Despite repeated warnings of the parameters and application of *Heck v. Humphrey*, 512 U.S. 477, 487-88 (1994) to actions under section 1983, Plaintiff persisted to complain of the protocols under which he is being civilly detained. Further, despite repeatedly being given the legal standards that must be met to state a cognizable claim, Plaintiff failed to do so -- which makes all claims Plaintiff might hope to pursue on appeal frivolous. Plaintiff does not seek

review of any issue that is not frivolous. Accordingly, the Court HEREBY ORDERS as follows: Pursuant to 28 U.S.C. § 19156(a)(3), the Court finds that Plaintiff's appeal was not 1. taken in good faith and he should not be permitted to proceed in forma pauperis on appeal; and 2. Pursuant to Federal Rule of Appellate Procedure 24(a)(4), the Clerk of the Court shall serve this order on Plaintiff and the Court of Appeals for the Ninth Circuit. IT IS SO ORDERED. /s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE Dated: **June 9, 2015**