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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

THOMAS L. GOFF,  
Plaintiff,  
v.  
GAMEZ, et al.,  
Defendants.

Case No. 1:15-cv-00937-AWI-EPG (PC)  
ORDER RE: IFP STATUS ON APPEAL  
(ECF NO. 98)  
ORDER DIRECTING CLERK TO SERVE A  
COPY OF THIS ORDER ON THE UNITED  
STATES COURT OF APPEALS FOR THE  
NINTH CIRCUIT

By notice entered December 16, 2019, the United States Court of Appeals for the Ninth Circuit referred this matter to the District Court for the limited purpose of determining whether the *in forma pauperis* status of plaintiff Thomas Goff (“Plaintiff”) 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).

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. 1968), 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). “A claim is ‘frivolous’ when it is without ‘basis in law or fact,’ and ‘malicious’ when it is ‘filed with the intention or desire to harm another.’” *Knapp v.*

1 *Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013) (quoting *Andrews v. King*, 398 F.3d 1113, 1121 (9th  
2 Cir. 2005). A finding of frivolity in this context is equivalent to finding a lack of good faith. *Id.*  
3 at 1110. A lack of good faith can be inferred where “plaintiffs seek to exploit the court system  
4 solely for delay or to vex defendants.” *Vega v. JPMorgan Chase Bank, N.A.*, 654 F.Supp.2d  
5 1104, 1121 (E.D. Cal. 2009).

6 The Court does not find that Plaintiff takes the instant appeal in bad faith. This does not  
7 appear to be a situation where “plaintiff[] seek[s] to exploit the court system solely for delay or to  
8 vex defendants.” *Id.*

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff is entitled to proceed *in forma pauperis* in Appeal No. 19-17494;
- 11 2. This Order serves as notice to the parties and the United States Court of Appeals  
12 for the Ninth Circuit of the finding that Plaintiff is entitled to proceed *in forma*  
13 *pauperis* for this appeal; and
- 14 3. The Clerk of Court is directed to serve a copy of this Order on the United States  
15 Court of Appeals for the Ninth Circuit.

16 IT IS SO ORDERED.

17  
18 Dated: December 17, 2019

18 /s/ Eric P. Gray  
19 UNITED STATES MAGISTRATE JUDGE