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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JUAN H. VILLAREAL; LORENA
VILLAREAL,

 Plaintiffs,

 v.

SENECA MORTGAGE SERVICING,
LLC; U.S. BANK, N.A.; and DOES 1 –
20, inclusive,

 Defendants.

Case No. 1:15-cv-01400-EPG
Appeal No. 16-15447
ORDER RE: IFP STATUS ON APPEAL

(ECF No. 33)

By notice entered March 18, 2016, 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 Plaintiffs Juan and Lorena Villareal 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

1 or fact,’ and ‘malicious’ when it is ‘filed with the intention or desire to harm another.’” *Knapp v.*
2 *Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013). A finding of frivolity in this context is equivalent to
3 finding a lack of good faith. *Id.* at 1110. A lack of good faith can be inferred where “plaintiffs
4 seek to exploit the court system solely for delay or to vex defendants.” *Vega v. JPMorgan Chase*
5 *Bank, N.A.*, 654 F.Supp.2d 1104, 1121 (E.D. Cal. 2009).

6 In its order dismissing this action, the Court found that Plaintiffs’ claims lacked any basis
7 in statutory law. (ECF No. 27.) As part of that holding, the Court took judicial notice of the fact
8 that Plaintiffs had filed at least four separate bankruptcy petitions in the United States Bankruptcy
9 Court for the Eastern District of California within one year, each of which was dismissed for
10 failure to file the required documents. On at least two occasions, the bankruptcy petitions were
11 filed shortly before dates that Defendants had noticed for the sale of property that was occupied
12 by Plaintiffs and that Defendants were attempting to foreclose on.¹ At the hearing on Defendants’
13 Motion to Dismiss, Plaintiffs also noted that they had a pending unlawful detainer proceeding in
14 Tulare County Superior Court involving Defendant U.S. Bank and requested that the Court
15 intervene and place a stay on those proceedings.

16 Plaintiffs previously filed a similar suit against Defendant Seneca Mortgage alleging
17 fraudulent loan modification practices while initiating foreclosure proceedings. Plaintiffs’ claims
18 in that case were similarly dismissed without leave to amend on July 9, 2015. *See Villareal v.*
19 *Seneca Mortgage Services et al.*, Case No. 1:14-cv-02033-MCE-GSA. In both the current case
20 and in their previous case, Plaintiffs ignored multiple instructions to update their address for
21 service and delayed proceedings by filing multiple and/or untimely opposition briefs. Given
22 these facts, the Court finds that Plaintiffs’ claims are frivolous because they lack a basis in fact or
23 law and are not brought in good faith because they are brought to delay and vex defendants.

24 Accordingly, IT IS HEREBY ORDERED that:

- 25 1. This matter is declared frivolous;
26 2. Plaintiffs are not entitled to proceed *in forma pauperis* in Appeal No. 16-15447, filed

27 _____
28 ¹ In the present case, Plaintiffs contended that the filing of their bankruptcy petitions precluded any foreclosure proceedings from occurring.

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on March 16, 2016, under 28 U.S.C. § 1915(a)(3);

3. This Order serves as notice to the parties and the United States Court of Appeals for the Ninth Circuit of the finding that Plaintiffs are not entitled to proceed *in forma pauperis* for this appeal under Federal Rule of Appellate Procedure 24(a)(3); and,
4. The Clerk of the Court is DIRECTED to serve a copy of this Order on Plaintiffs and the United States Court of Appeals for the Ninth Circuit.

IT IS SO ORDERED.

Dated: March 25, 2016

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE