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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEBBY GENTHNER,
Plaintiff,
v.
ROBERT HEDRICK, et al.,
Defendants.

No. 1:16-cv-00350-DAD-BAM

ORDER REGARDING REFERRED
QUESTION AND DENYING MOTION AS
MOOT

(Doc. Nos. 8, 11)

Plaintiff Debby Genthner (“Plaintiff”), proceeding *pro se* and *in forma pauperis*, filed this civil action on March 14, 2016. On August 11, 2016, the court dismissed the action with prejudice because it is barred by claim preclusion. (Doc. 5.) Plaintiff appealed.

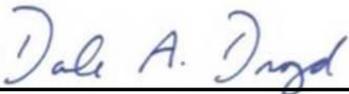
On September 8, 2016, plaintiff filed a motion to proceed *in forma pauperis* on appeal. (Doc. 8.) On September 14, 2016, the Ninth Circuit Court of Appeals referred the matter back to this court for the limited purpose of determining whether *in forma pauperis* status should continue for the appeal or whether the appeal is frivolous or taken in bad faith. 28 U.S.C. § 1915(a)(3). (Doc. 11.)

The court finds that this appeal is not taken in bad faith and is not frivolous. *See Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (discussing revocation of *in forma pauperis* status appropriate if the appeal is frivolous). Accordingly, *in forma pauperis* status should not be revoked and should continue on appeal. Further, as the court has determined that

1 plaintiff's *in forma pauperis* status should not be revoked, her pending motion to proceed *in*
2 *forma pauperis* on appeal is moot and is denied as unnecessary. Fed. R. App. P. 24(a)(3) (party
3 who was permitted to proceed *in forma pauperis* in the district court action may proceed on
4 appeal *in forma pauperis* without further authorization unless the district court certifies that the
5 appeal is not take in good faith or finds that the party is not otherwise entitled to proceed *in forma*
6 *pauperis*).

7 IT IS SO ORDERED.

8 Dated: September 17, 2016


UNITED STATES DISTRICT JUDGE

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