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| 10 | UNITED STATES DISTRICT COURT | | |
| 11 | EASTERN DISTRICT OF CALIFORNIA | | |
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| 13 | DEBRA BERRY, | Case No. 1:16-cv-00411-LJO-EPG | |
| 14 | Plaintiff, | ORDER RE: IFP STATUS ON APPEAL | |
| 15 | V. | (ECF NO. 92) | |
| 16 17 | YOSEMITE COMMUNITY COLLEGE DISTRICT, et al., | | |
| 17 | Dis TRICT, et al., Defendants. | | |
| 10 | | Junited States Court of Appeals for the Ninth | |
| | By notice entered October 7, 2019, the United States Court of Appeals for the Ninth | | |
| 20 | Circuit referred this matter to the District Court for the limited purpose of determining whether the <i>in forma pauperis</i> status of Plaintiff Debra Berry ("Plaintiff") should continue for this appeal | | |
| 21 | | | |
| 22 | or whether the appeal is frivolous or taken in bad faith. See 28 U.S.C. § 1915(a)(3); see also | | |
| 23 | Hooker v. American Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002). | | |
| 24 | Permitting litigants to proceed <i>in forma pauperis</i> is a privilege, not a right. <i>Franklin v</i> . | | |
| 25 26 | Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984); Williams v. Field, 394 F.2d 329, 332 (9th Cir. | | |
| 26 | 1968), cert. denied, 393 U.S. 891 (1968); <i>Williams v. Marshall</i> , 795 F.Supp. 978, 978-79 (N.D. | | |
| 27 | Cal. 1992). A federal court may dismiss a claim filed <i>in forma pauperis</i> prior to service if it is | | |
| 28 | satisfied that the action is frivolous or malicio | us. 28 U.S.C. § 1915(e)(2); see Sully v. Lungren, | |

| 1 | 842 F.Supp. 1230, 1231 (N.D. Cal. 1994). A claim is 'frivolous' when it is without 'basis in law | |
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| 2 | or fact,' and 'malicious' when it is 'filed with the intention or desire to harm another.'" <i>Knapp v</i> . | |
| 3 | Hogan, 738 F.3d 1106, 1109 (9th Cir. 2013). A finding of frivolity in this context is equivalent to | |
| 4 | finding a lack of good faith. Id. at 1110. A lack of good faith can be inferred where "plaintiffs | |
| 5 | seek to exploit the court system solely for delay or to vex defendants." Vega v. JPMorgan Chase | |
| 6 | Bank, N.A., 654 F.Supp.2d 1104, 1121 (E.D. Cal. 2009). | |
| 7 | The Court does not find that Plaintiff takes the instant appeal in bad faith. This is not a | |
| 8 | situation where "plaintiffs seek to exploit the court system solely for delay or to vex defendants." | |
| 9 | Id. | |
| 10 | Accordingly, IT IS HEREBY ORDERED that: | |
| 11 | 1. Plaintiff is entitled to proceed <i>in forma pauperis</i> in Appeal No. 19-16932, filed on | |
| 12 | September 30, 2019; | |
| 13 | 2. This Order serves as notice to the parties and the United States Court of Appeals | |
| 14 | for the Ninth Circuit of the finding that Plaintiff is entitled to proceed in forma | |
| 15 | pauperis for this appeal; and | |
| 16 | 3. The Clerk of the Court is directed to serve a copy of this Order on Plaintiff and the | |
| 17 | United States Court of Appeals for the Ninth Circuit. | |
| 18 | IT IS SO ORDERED. | |
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| 20 | Dated: October 15, 2019 /s/ Enir P. Shing UNITED STATES MAGISTRATE JUDGE | |
| 21 | UNITED STATES MAGISTRATE JUDGE | |
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