

1 failed to state a cognizable claim for relief under federal law, and further declined to exercise
2 supplemental jurisdiction over any potential state law claims. The Court dismissed this action on
3 November 29, 2018, and judgment was entered the same date. (ECF Nos. 40, 41.)

4 By notice entered December 21, 2018, the United States Court of Appeals for the Ninth
5 Circuit referred this matter to the District Court for the limited purpose of determining whether in
6 forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken
7 in bad faith. See 28 U.S.C. § 1915(a)(3); see also Hooker v. American Airlines, 302 F.3d 1091,
8 1092 (9th Cir. 2002) (revocation of in forma pauperis status is appropriate where the district court
9 finds the appeal to be frivolous).

10 Permitting litigants to proceed in forma pauperis is a privilege, not a right. Franklin v.
11 Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984); Williams v. Field, 394 F.2d 329, 332 (9th Cir.
12 1968), cert. denied, 393 U.S. 891 (1968); Williams v. Marshall, 795 F.Supp. 978, 978–79 (N.D.
13 Cal. 1992). A federal court may dismiss a claim filed in forma pauperis before service if it is
14 satisfied that the action is frivolous or malicious. 28 U.S.C. § 1915(e)(2); see Sully v. Lungren,
15 842 F. Supp. 1230, 1231 (N.D. Cal. 1994). If a plaintiff with in forma pauperis status brings a
16 case without arguable substance in law and fact, the court may declare the case frivolous.
17 Franklin, 745 F.2d at 1227.

18 As noted above, Plaintiff was granted multiple opportunities to file an amended complaint
19 curing the deficiencies identified by the Court’s orders. Plaintiff was nevertheless unable to state
20 a cognizable claim for relief under federal law, and explicitly disclaimed Bivens as a
21 jurisdictional basis for his action. As such, the Court was left with no federal jurisdictional basis
22 for this action, and dismissal for failure to state a claim was entirely appropriate.

23 Based on the foregoing, IT IS HEREBY ORDERED that:

- 24 1. The appeal is declared frivolous and not taken in good faith;
- 25 2. Pursuant to 28 U.S.C. § 1915(a)(3), Plaintiff is not entitled to proceed *in forma pauperis*
26 in Appeal No. 18-17394, filed December 17, 2018;
- 27 3. Pursuant to Federal Rule of Appellate Procedure 24(a)(4), this order serves as notice to the
28 parties and the United States Court of Appeals for the Ninth Circuit of the finding that

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Plaintiff is not entitled to proceed *in forma pauperis* for this appeal; and

4. The Clerk of the Court is directed to serve a copy of this order on the parties and the United States Court of Appeals for the Ninth Circuit.

IT IS SO ORDERED.

Dated: January 11, 2019

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE