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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARVELLOUS AFRIKAN WARRIOR,
Plaintiff,
v.
LAUREL OLVERA, et al.,
Defendants.

CASE NO. 1:16-cv-01605-LJO-MJS (PC)
**ORDER CERTIFYING PLAINTIFF'S
APPEAL AS FRIVOLOUS**
(ECF No. 19)

Plaintiff is a civil detainee proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. On January 5, 2017, Plaintiff's first amended complaint was dismissed with leave to amend. (ECF No. 7.) After Plaintiff failed to file an amended complaint, he was ordered to show cause by his case should not be dismissed for failure to obey a Court order. (ECF No. 10.) When Plaintiff again failed to respond, his case was dismissed with prejudice for failure to state a claim, failure to obey a Court order, and failure to prosecute, and the matter was closed. (ECF Nos. 11, 12.)

On April 19, 2017, Plaintiff filed a notice of appeal to the Ninth Circuit. (ECF No. 15.) On April 28, 2017, the Ninth Circuit referred this matter back to this Court for the

1 limited purpose of determining whether in forma pauperis status should continue during
2 Plaintiff's appeal, or whether the appeal was frivolous or taken in bad faith.

3 After consideration, the Court concludes that the appeal is frivolous within the
4 meaning of 28 U.S.C. § 1915(a)(3). Plaintiff's first civil rights complaint was rambling,
5 conclusory, and unclear, involved separate and unrelated matters, and failed to contain
6 sufficient factual allegations to state any plausible claims. Plaintiff was informed of the
7 pleading standards for his claims, yet failed to file an amended complaint correcting the
8 identified deficiencies. Plaintiff's case was dismissed not on the merits of his claims, but
9 on the grounds that Plaintiff failed to comply with a Court order. To the extent Plaintiff
10 wishes to appeal the dismissal for failure to obey a Court order, there is no appellate
11 issue that has an arguable basis in law or fact that is apparent. See Neitzke v. Williams,
12 490 U.S. 319, 325 (1989); O'Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir. 1990); see
13 also In re Hawaii Corp., 796 F.2d 1139, 1144 (9th Cir. 1986). Therefore, the Court
14 concludes that Plaintiff's appeal is frivolous and that Plaintiff's in forma pauperis status
15 should not continue during appeal. See 28 U.S.C. § 1915(a)(3).

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. In accordance with 28 U.S.C. § 1915(a)(3), Plaintiff is not entitled to proceed in
18 forma pauperis in the appeal of this case;
- 19 2. As required by Fed. R. App. P. 24(a)(4), this Order serves as notice to the
20 parties and Ninth Circuit Court of Appeals of the finding that Plaintiff is not
21 entitled to proceed in forma pauperis for his appeal of this case; and
- 22 3. The Clerk is directed to serve a copy of this order on Plaintiff and Ninth Circuit
23 Court of Appeals.

24
25 IT IS SO ORDERED.

26 Dated: May 1, 2017

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