

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TROY A. SCOTT.

No. 1:17-cv-00710-DAD-MJS

Plaintiff,

V.

JOHN SUTTON, et al.,

**ORDER FINDING APPEAL NOT TAKEN IN
GOOD FAITH**

(Doc. No. 17)

Plaintiff Troy A. Scott is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. On December 20, 2017, the court adopted the assigned magistrate judge's findings and recommendations and dismissed this action with prejudice, concluding that all of plaintiff's claims failed to state a plausible claim for relief. (Doc. Nos. 10, 12.) Plaintiff then filed a notice of appeal on January 19, 2018. (Doc. No. 14.) On February 1, 2018, the United States Court of Appeals for the Ninth Circuit referred the matter to this court for a determination of whether the appeal is frivolous or taken in bad faith under Federal Rule of Appellate Procedure 24(a)(3)(A). (Doc. No. 17.)

An appeal is taken in good faith if the appellant seeks review of any issue that is not frivolous. *Gardner v. Pogue*, 558 F.2d 548, 550–51 (9th Cir. 1977) (citing *Coppedge v. United States*, 369 U.S. 438, 445 (1962)); *see also Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (if at least one issue or claim is non-frivolous, the appeal must proceed *in forma pauperis*).

1 as a whole). A frivolous action is one “lacking [an] arguable basis in law or in fact.” *Franklin v.*
2 *Murphy*, 745 F.2d 1221, 1225 (9th Cir. 1984). “[T]o determine that an appeal is in good faith, a
3 court need only find that a reasonable person could suppose that the appeal has some merit.”
4 *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

5 Here, the court dismissed plaintiff’s claims finding that he had failed to allege sufficient
6 facts that would entitle him to relief. Although it appears likely that plaintiff’s appeal reflects a
7 mere disagreement with the court’s ruling, he has litigated this action in a responsible fashion and
8 the court is unwilling to conclude that his appeal is wholly frivolous.

9 For these reasons:

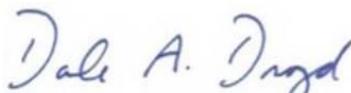
10 1. Pursuant to Federal Rule of Appellate Procedure 24(a)(3)(A), the court finds that
11 the appeal has been taken in good faith;

12 2. Pursuant to Federal Rule of Appellate Procedure 24(a)(4)(B), the Clerk of the
13 Court is directed to serve this order on plaintiff and the U.S. Court of Appeals for
14 the Ninth Circuit; and

15 3. Plaintiff’s motion/declaration in support to proceed in forma pauperis (Doc. No.
16 18) is denied as unnecessary.

17 IT IS SO ORDERED.

18 Dated: February 6, 2018


19 UNITED STATES DISTRICT JUDGE

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