

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**

8 EASTERN DISTRICT OF CALIFORNIA

9
10 DARRELL E. JOHNSON,) Case No.: 1:17-cv-01257-LJO-BAM (PC)
11 Plaintiff,) Appeal No. 18-17160
12 vs.) ORDER DECLINING TO REVOKE IN
13 DAVE DAVEY, et al.,) FORMA PAUPERIS STATUS ON APPEAL
14 Defendants.) (Doc. No. 21)
15)

16 Plaintiff Darrell E. Johnson is a state prisoner proceeding *pro se* and *in forma pauperis* in
17 this civil rights action pursuant to 42 U.S.C. § 1983.

18 On October 11, 2018, the Court dismissed this action, with prejudice, for the failure to
19 state a claim upon which relief may be granted. (Doc. No. 16.) Judgment was entered that same
20 date. (Doc. No. 17.) On November 1, 2018, Plaintiff filed a notice of appeal. (Doc. No. 18),
21 which was processed to the Ninth Circuit Court of Appeals, (Doc. No. 19).

22 On November 13, 2018, the Ninth Circuit Court of Appeals referred the matter back to
23 this Court for the limited purpose of determining whether *in forma pauperis* status should
24 continue for the appeal. 28 U.S.C. § 1915(a)(3). (Doc. No. 21.)

25 The Court has reviewed the record and Plaintiff's notice of appeal. However, the notice
26 of appeal does not provide the grounds upon which Plaintiff will appeal, or any information as to
27 the issue(s) he intends to raise. Based on the overall record, the Court is unable to determine
28 whether this appeal is frivolous or taken in bad faith. *See* 28 U.S.C. § 1915(a)(3); *see also*

1 *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of *in forma*
2 *pauperis* status is appropriate where district court finds the appeal to be frivolous).

3 Accordingly, the Court declines to revoke *in forma pauperis* status. The Clerk of the
4 Court is directed to serve a copy of this order on the parties and on the United States Court of
5 Appeals for the Ninth Circuit.

6
7 IT IS SO ORDERED.

8 Dated: November 16, 2018

9 /s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE