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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

TONYA D. ENGELBRECHT,  
Plaintiff,  
v.  
KELLY RIPA,  
Defendant.

Case No. 1:17-cv-01339-LJO-EPG  
Appeal No. 18-17290

**NOTICE AND ORDER FINDING THAT  
APPEAL WAS NOT TAKEN IN GOOD  
FAITH**

(ECF Nos. 19 and 21)

Plaintiff Tonya D. Engelbrecht (“Plaintiff”) is proceeding *pro se* and *in forma pauperis* in this action. Plaintiff’s original complaint, filed October 5, 2017, alleged claims of torture, defamation, breach of contract, and violations of the California Welfare and Institution Code against Kelly Ripa (“Defendant”), owner of Milojo Productions. ECF No. 1. After screening, Plaintiff filed an amended complaint on February 28, 2018 alleging similar causes of action. ECF No. 7. On August 17, 2018, this Court dismissed all but the breach of contract claim. ECF No. 10. On August 21, 2018, the assigned Magistrate Judge directed Plaintiff to complete the paperwork necessary to have the U.S. Marshals Service serve the FAC on Defendant. ECF No. 11. Plaintiff did not comply, instead filing a motion for reconsideration of the Court’s earlier rulings, *see* ECF No. 12, which was denied. ECF No. 13.

On October 10, 2018, the Magistrate Judge issued findings and recommendations (“F&Rs”)

1 recommending dismissal of this action without prejudice for Plaintiff's failure to prosecute this  
2 case and failure to comply with the Court's August 21, 2018 order. ECF No. 14. On October 17,  
3 2018, Plaintiff filed objections to the F&Rs. ECF No. 15. Those objections, however, addressed  
4 only previously dismissed claims. This Court adopted the F&Rs on October 23, 2018, ECF No. 16,  
5 and the Clerk entered Judgment. ECF No. 17.

6 Plaintiff filed a notice of appeal on November 21, 2018, ECF No. 18, and on December 4,  
7 2018, the United States Court of Appeals for the Ninth Circuit referred the matter to the district  
8 court for a determination whether the appeal is frivolous or taken in bad faith. Fed. R. App.  
9 24(a)(3)(A). ECF No. 21.

10 An appeal is taken in good faith if the appellant seeks review of any issue that is not frivolous.  
11 *Gardner v. Pogue*, 558 F.2d 548, 550-51 (9th Cir. 1977) (citing *Coppedge v. United States*, 369  
12 U.S. 438, 445 (1962); *see also Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002)  
13 (if at least one issue or claim is non-frivolous, the appeal must proceed in forma pauperis as a  
14 whole). The request of an indigent for leave to appeal *in forma pauperis* must be allowed unless  
15 "the issues raised are so frivolous that the appeal would be dismissed in the case of a non-indigent  
16 litigant." *Ellis v. United States*, 356 U.S. 674, 675 (1958).

17 The Court dismissed all but Plaintiffs' contract claim on the ground that those claims were  
18 meritless. Plaintiff failed to prosecute the remaining contract claim and has presented no valid  
19 reason for her failure to do so. The other issues raised in her notice of appeal are frivolous.

20 Accordingly, the Court HEREBY ORDERS as follows:

21 1. Pursuant to Fed. R. App. P. 24(a)(3)(A), the Court finds that the appeal was not  
22 taken in good faith; and

23 2. Pursuant to Fed. R. App. P. 24(a)(4)(B), the Clerk of the Court shall serve this order  
24 on Plaintiff and the Court of Appeals for the Ninth Circuit.

25  
26 IT IS SO ORDERED.

27 Dated: December 10, 2018

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

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