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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAWRENCE CHRISTOPHER SMITH,
Plaintiff,
v.
WEISS, *et al.*,
Defendants.

No. 1:18-cv-00852-DAD-BAM (PC)
Appeal No. 21-15516
ORDER REGARDING *IN FORMA PAUPERIS*
STATUS ON APPEAL
(Doc. No. 67)

Plaintiff Lawrence Christopher Smith is a state prisoner who proceeded *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On December 11, 2020, the assigned magistrate judge issued findings and recommendations recommending that defendants’ motion to dismiss/for terminating sanctions be granted and that this case be dismissed with prejudice. (Doc. No. 58.) The magistrate judge found that terminating sanctions were appropriate due to plaintiff’s bad faith conduct in refusing to comply with his discovery obligations and needlessly multiplying court proceedings by filing repetitious and voluminous filings. (*Id.*) The findings and recommendations were adopted in full on March 5, 2021. (Doc. No. 62.) Judgment was entered accordingly the same date. (Doc. No. 63.) On March 22, 2021, plaintiff filed a notice of appeal. (Doc. No. 64.)

By notice entered April 1, 2021, the United States Court of Appeals for the Ninth Circuit referred this matter to the District Court for the limited purpose of determining whether *in forma*

1 *pauperis* status should continue for this appeal or whether the appeal is frivolous or taken in bad
2 faith. *See* 28 U.S.C. § 1915(a)(3); *see also* *Hooker v. Amer. Airlines*, 302 F.3d 1091, 1092 (9th
3 Cir. 2002) (revocation of *in forma pauperis* status is appropriate where the district court finds the
4 appeal to be frivolous).

5 For the reasons discussed below, the court certifies plaintiff’s appeal is not taken in good
6 faith, and his *in forma pauperis* status is revoked.

7 The Federal Rules of Appellate Procedure provide as follows:

8 (3) **Prior Approval.** A party who was permitted to proceed in forma pauperis in
9 the district-court action . . . may proceed on appeal in forma pauperis without
10 further authorization, unless:

11 (A) the district court—before or after the notice of appeal is filed—certifies that
12 the appeal is not taken in good faith or finds that the party is not otherwise entitled
13 to proceed in forma pauperis and states in writing its reasons for the certification
14 or finding[.]

15 Fed. R. App. P. 24(a)(3)(A).

16 Pursuant to 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken in forma pauperis if the
17 trial court certifies in writing that it is not taken in good faith.” The good faith standard is an
18 objective one, and good faith is demonstrated by when an individual “seeks appellate review of
19 any issue not frivolous.” *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). For purposes
20 of 28 U.S.C. § 1915, an appeal is frivolous if it lacks any arguable basis in law or fact. *Neitzke v.*
21 *Williams*, 490 U.S. 319, 325 (1989).

22 A review of the record in this action and the declaration filed in support of the notice of
23 appeal reveals that plaintiff’s appeal is merely an effort to continue the same bad faith conduct
24 that resulted in this action being dismissed. Therefore, for the reasons stated in the magistrate
25 judge’s December 11, 2020 findings and recommendations, as adopted in full by this court on
26 March 5, 2021, the court certifies that plaintiff’s appeal is not taken in good faith.

27 Accordingly,

- 28 1. Pursuant to 28 U.S.C. § 1915(a)(3), plaintiff is not entitled to proceed *in forma pauperis*
in Appeal No. 21-15516;


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2. The Clerk of the Court is directed to notify the United States Court of Appeals for the Ninth Circuit that this court certifies, pursuant to Federal Rule of Appellate Procedure 24(a)(3)(A), that plaintiff's appeal is not taken in good faith, and he must therefore seek further authorization from the Court of Appeals pursuant to Rule 24(a)(5) to obtain leave to proceed *in forma pauperis* on appeal; and
3. 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: April 9, 2021



UNITED STATES DISTRICT JUDGE