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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES GRADY,

Plaintiff,

No. CIV-S-10-1206 GEB KJM P

vs.

GARY SWARTHOUT, et al.,

Defendants.

ORDER

On July 7, 2010, this court recommended that plaintiff's request to proceed in forma pauperis in his civil rights action be denied and the complaint be dismissed as frivolous. The district court adopted his recommendation in an order filed August 27, 2010.

On September 10, 2010, plaintiff filed a notice of appeal and a request for a certificate of appealability. Because this is a civil rights action, not a habeas proceeding, there is no need for such a certificate as a prerequisite for an appeal. 28 U.S.C. § 2253(c).

Plaintiff has also filed a request for leave to proceed in forma pauperis on appeal. However, if the trial court certifies that the appeal is not taken in good faith, it may not be pursued in forma pauperis. "Not taken in good faith" means frivolous. Gray v. Hamilton, 2010WL 4281812 at 2 (N.D. Cal. 2010). Plaintiff's appeal of the dismissal of his action would be frivolous for the reasons stated in the Findings and Recommendations of July 6, 2010.

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IT IS THEREFORE ORDERED that:

1. Plaintiff's request for the issuance of a certificate of appealability (docket not. 9) is denied; and
2. Plaintiff's request to proceed in forma pauperis on appeal (docket no. 11) is denied.

DATED: November 5, 2010.


U.S. MAGISTRATE JUDGE

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