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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY PENTON,

 Plaintiff,

 v.

S. NUNEZ, et al.,

 Defendants.

No. 2:11-cv-0518 GEB KJN P

ORDER

The Ninth Circuit Court of Appeals has referred to the undersigned the limited question whether plaintiff's in forma pauperis status should continue pursuant to the appeal of this court's dismissal of this action on July 28, 2015. See 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.").¹

The Federal Rules of Appellate Procedure provide as follows:

[A] party who was permitted to proceed in forma pauperis in the district court action . . . may proceed on appeal in forma pauperis without further authorization, unless

(A) the district court -- before or after the notice of appeal is filed -- certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis

¹ The Ninth Circuit referenced two case numbers: 14-15093 and 14-15088. This response addresses both referral notices.

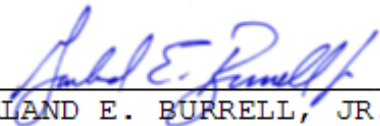
1 Fed. R. App. P. 24(a)(3).

2 This court finds no reason to revoke petitioner's in forma pauperis status. This court
3 dismissed this action without prejudice based on plaintiff's failure to serve defendant S. Nunez
4 pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. The court did not find that
5 plaintiff's allegations were frivolous.

6 Plaintiff's appeal appears to be neither frivolous, see Coppedge v. United States, 369 U.S.
7 438, 445 (1962) (an appeal of a nonfrivolous issue is assumed to be made in good faith), nor
8 unreasonable, see Walker v. O'Brien, 216 F.3d 626, 631 (7th Cir. 2000) ("to determine that an
9 appeal is in good faith, a court need only find that a reasonable person could suppose that the
10 appeal has some merit"). Therefore, there does not presently appear to be a basis for finding that
11 plaintiff's appeal is taken in bad faith. See Fed. R. App. P. 24(a)(3)(A); 28 U.S.C. § 1915(a)(3).

12 Accordingly, the undersigned finds that plaintiff should be entitled to continue proceeding
13 in forma pauperis pursuant to the appeal of this action.

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15 Dated: November 9, 2015

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19 GARIAND E. BURRELL, JR.
20 Senior United States District Judge
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