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

STEVEN HYPOLITE,

Plaintiff,

No. CIV S-11-0990 GGH P

vs.

BOARD OF PAROLE HEARINGS, et al.,

Defendants.

ORDER

_____ /

This case was dismissed for plaintiff’s failure to state a claim upon which relief can be granted by Order, filed on November 10, 2011, and judgment thereon entered.¹ After plaintiff, a state prisoner who proceeded pro se and in forma pauperis in the district court, filed a notice of appeal, the Ninth Circuit referred this matter “for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith.” Docket # 25.

The Court of Appeals cites 28 U.S.C. § 1915(a)(3) and Hooker v. American Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002). Id. Section 1915(a)(3) states: “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good

¹ Plaintiff consented to the jurisdiction of the undersigned. Docket # 4.

1 faith.” Hooker is referenced for the principle that “revocation of forma pauperis status is
2 appropriate where district court finds the appeal to be frivolous.”² Id. The Court of Appeals
3 requested notification of this court’s determination within 21 days whether in forma pauperis
4 status should be revoked on appeal, failing which plaintiff/appellant’s in forma pauperis status
5 would be continued automatically. Id., citing Fed. R. App. P. 24(a). After review of the record
6 herein, the court has determined that plaintiff’s appeal is not taken in good faith, this case, as
7 previously noted, having been dismissed for plaintiff’s failure to state a claim upon which relief
8 can be granted. As noted in the Order dismissing the case (docket # 19, pp. 2, 6), plaintiff in his
9 amended complaint failed to cure the defects of the original complaint and there did “not appear
10 to be any colorable basis on which plaintiff [could] proceed.” In sum, as noted, any further leave
11 to amend the complaint appeared to be futile. Docket # 19, p. 7.

12 Accordingly, IT IS ORDERED that the Clerk of the Court is to serve this response
13 to the Ninth Circuit’s January 9, 2012 (docket # 25), Referral Notice for Appellate Case No. 11-
14 17964, upon the Ninth Circuit.

15 DATED: January 19, 2012

16 /s/ Gregory G. Hollows
17 UNITED STATES MAGISTRATE JUDGE

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² In Hooker, the Ninth Circuit held that plaintiff/appellant was entitled to in forma
26 pauperis status for the entire appeal because the district court had found portions of the appeal
were taken in good faith. 302 F.3d at 1092.