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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES E. ARMSTEAD,
Plaintiff,
v.
TIM VIRGA, et al.,
Defendants.

No. 2: 11-cv-1054 TLN KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On February 19, 2014, this action was dismissed without prejudice.

Plaintiff appealed this decision to the Ninth Circuit Court of Appeals.

On March 21, 2014, the Ninth Circuit referred this action to this court to determine whether plaintiff's in forma pauperis status should continue for the appeal or whether the appeal was frivolous or taken in bad faith. See 28 U.S.C. § 1915(a)(3); see also Hooker v. American Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of forma pauperis status is appropriate where district court finds the appeal to be frivolous).

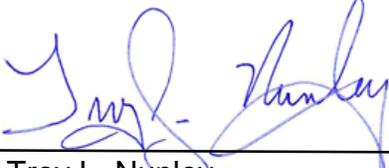
This action was dismissed without prejudice based on plaintiff's failure to file an opposition to defendants' motion for judgment on the pleadings despite having been granted several opportunities to do so. (See ECF No. 85.) For these reasons, the court finds that plaintiff's appeal is frivolous. However, the undersigned notes that plaintiff's underlying claims

1 were dismissed without prejudice. Therefore, this order should not be construed as any opinion
2 on the validity of Plaintiff's underlying claims.¹

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. Plaintiff's in forma status is revoked;
- 5 2. The Clerk of the Court is directed to serve a copy of this order on the Ninth Circuit
6 Court of Appeals.

7 Dated: March 31, 2014

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11 Troy L. Nunley
12 United States District Judge

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27 ¹ Indeed, Plaintiff's allegation that he has been subjected to race-based lockdowns in violation of
28 equal protection clause is at issue in the pending putative class action *Mitchell v. Cate*, No. 2:08-
cv-01196 (E.D. Cal.).