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

THOMAS L. GOFF,

Plaintiff,

No. 2:12-cv-0009 GEB AC P

vs.

M. SALINAS, et al.,

Defendants.

ORDER

_____ /

Plaintiff, a state prisoner proceeding pro se, filed this civil rights action seeking relief under 42 U.S.C. § 1983 on January 3, 2012. On July 26, 2012, this action was dismissed for plaintiff’s failure to file an amended complaint. Subsequently, plaintiff filed a Notice of Appeal. ECF No. 23. On January 25, 2013, the Ninth Circuit Court of Appeals referred this matter to this court for the limited purpose of determining whether in forma pauperis status should continue for the appeal or whether the appeal is frivolous or taken in bad faith. ECF No. 25.

28 U.S.C. § 1915(a)(3) provides that “an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” “The good faith requirement is satisfied if the petitioner seeks review of any issue that is ‘not frivolous.’” Gardner v. Pogue, 558 F.2d 548, 551 (9th Cir. 1977) (quoting Coppedge v. United States, 369 U.S. 438, 445 (1962)). For purposes of section 1915, an appeal is frivolous if it lacks any

1 arguable basis in law or fact. See Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v.
2 Murphy, 745 F.2d 1221, 1225 (9th Cir. 1984).

3 In the Notice of Appeal filed January 2, 2013, plaintiff seeks reconsideration of
4 order of dismissal for plaintiff's failure to file an amended complaint, despite the court's grant of
5 plaintiff's previous requests for extensions of time that provided plaintiff with an additional
6 ninety days to file an amended complaint. Plaintiff argues that dismissal was improper because
7 he is presently housed at a facility that limits his ability to research his claims and limits his
8 access to legal materials.

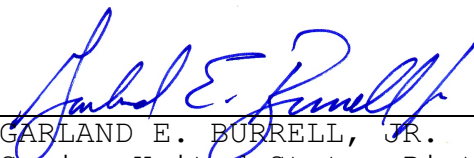
9 In the July 3, 2012 findings and recommendations recommending the dismissal of
10 this action, which the undersigned adopted in full on July 26, 2012, the court found plaintiff's
11 assertion that he needed additional time to obtain materials and perform research untenable
12 because an amended complaint only requires an amendment of plaintiff's factual allegations. On
13 review, the court concludes that an appeal from the order dismissing this action would be
14 frivolous because plaintiff has presented nothing to rebut the court's conclusion that additional
15 research is unnecessary for an amendment of plaintiff's factual allegations.

16 Accordingly, IT IS HEREBY ORDERED that:

17 1. Plaintiff's appeal is not taken in good faith and plaintiff is not entitled to in
18 forma pauperis status on appeal. See 28 U.S.C. § 1915(a)(3); Federal Rule of Appellate
19 Procedure 24(a)(3)(A); and

20 2. The Clerk of Court shall send a copy of this order to the Ninth Circuit Court of
21 Appeals referencing case number 13-15042.

22 Dated: February 20, 2013

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24 
25 GARLAND E. BURRELL, JR.
26 Senior United States District Judge