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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY C. BONTEMPS,
Plaintiff,
v.
RON BARNES, et al.,
Defendant.

No. 2:12-cv-2249 TLN DB P

ORDER

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. This matter was dismissed on September 23, 2016, for Plaintiff’s refusal to participate fully in discovery and prosecute this action following the undersigned’s adoption in full of the magistrate judge’s recommendation to grant Defendant’s motion to dismiss. (ECF Nos. 39, 47.) Plaintiff has since appealed the dismissal of this action. (ECF No. 49.) Following receipt of the notice of appeal, the Ninth Circuit referred this matter to the District Court for the limited purpose of determining whether in forma pauperis status should continue for the appeal. (ECF No. 51.)

“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). The test for allowing an appeal in forma pauperis is easily met; the good faith requirement is satisfied if the appellant seeks review of any issue that is not frivolous. *Gardner v. Pogue*, 558 F.2d 548, 550-51 (9th Cir. 1977) (citing

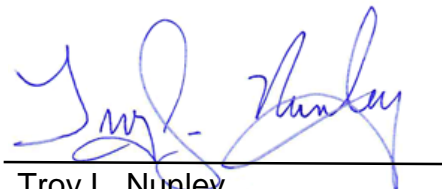
1 *Coppedge v. United States*, 369 U.S. 438, 445 (1962)) (quotation marks omitted); see also
2 *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (if at least one issue or claim is
3 non-frivolous, the appeal must proceed in forma pauperis as a whole). An action is frivolous
4 “where it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325
5 (1989). In other words, the term “frivolous”, as used in § 1915 and when applied to a complaint,
6 “embraces not only the inarguable legal conclusion, but also the fanciful factual allegation.” Id.

7 Plaintiff’s appeal lacks any arguable basis in law or fact. As set out by the previously-
8 assigned magistrate judge in the findings and recommendations issued in April, Plaintiff failed to
9 respond appropriately to discovery, failed to respond to motions to compel, and failed to comply
10 with court orders, despite being given opportunities to do so. (ECF No. 39.) Plaintiff was warned
11 that his continued failure to prosecute this action could result in a recommendation that his case
12 be dismissed. In his notice of appeal, Plaintiff does not specify the grounds upon which he is
13 appealing the Court’s dismissal of this case. Nonetheless, for the reasons set forth in the
14 magistrate judge’s findings and recommendations, the undersigned concludes that Plaintiff’s
15 appeal is frivolous.

16 Based on the foregoing, IT IS HEREBY ORDERED that:

- 17 1. The Court denies Plaintiff in forma pauperis status on appeal; and
- 18 2. The Clerk of Court shall serve a copy of this order on the Ninth Circuit Court of
19 Appeals.

20
21 Dated: January 4, 2017



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23
24 Troy L. Nunley
United States District Judge