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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF CA.,  
  
Plaintiff,  
  
v.  
  
KARL WICHELMAN,  
  
Defendant.

No. 2:13-cv-0091 TLN AC PS

ORDER

This action was removed on January 16, 2013 from the Sacramento County Superior Court by defendant pursuant to 28 U.S.C. §1331. On that day, defendant also filed an application to proceed in forma pauperis (“IFP”). By order dated March 20, 2013, the application to proceed IFP was granted, and it was recommended that this action be dismissed as improperly removed. This recommendation was based on the finding that, although the caption in both this case and that filed in state court identifies Karl Wichelman as the defendant, he was in fact the party that initiated the lawsuit. See ECF No. 1 at 7-14. The recommendation for dismissal was adopted by the Honorable Troy L. Nunley on March 6, 2014, and this action was dismissed. ECF Nos. 12-13. Defendant thereafter filed a timely appeal. ECF No. 14.

On April 11, 2014, the Ninth Circuit Court of Appeals referred this matter to the district court 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. See 28 U.S.C. § 1915(a)(3).

1 An appeal is taken in “good faith” where it seeks review of any issue that is “nonfrivolous.”  
2 Hooker v. American Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002). An issue is “frivolous” if it  
3 has “no arguable basis in fact or law.” See O’Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir.  
4 1990).

5 Here, defendant’s Notice of Appeal reveals his intent to argue that he has standing to  
6 challenge unidentified State statutes. Lack of standing was not a basis for the dismissal of this  
7 action, however. Defendant has not addressed the court’s conclusion that, notwithstanding the  
8 caption of this case, defendant was the filing party in state court and therefore may not remove  
9 this case to federal court. See 28 U.S.C. §1441(a). The undersigned, having fully considered the  
10 matter, finds that reasonable jurists could not disagree with the district court’s resolution of  
11 defendant’s claims, nor could reasonable jurists conclude the issues presented are adequate to  
12 deserve encouragement to proceed further. Accordingly, any appeal would be frivolous or taken  
13 in bad faith, and defendant’s IFP status should be revoked

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Defendant’s in forma pauperis status is revoked; and
- 16 2. The Clerk of the Court is directed to notify the United States Court of Appeals for the  
17 Ninth Circuit of this determination pursuant to the appellate court’s Referral Notice.

18 DATED: April 11, 2014

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20 ALLISON CLAIRE  
21 UNITED STATES MAGISTRATE JUDGE  
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