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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 JAMES T. MABBS,

12 Petitioner,

13 v.

14 CONNIE GIPSON,

15 Respondent.  
16

No. 2:13-cv-0550 JAM GGH P

ORDER

17 Petitioner, a state prisoner proceeding pro se, filed a petition for writ of habeas corpus  
18 pursuant to 28 U.S.C. § 2254. This court dismissed the petition as barred by the statute of  
19 limitations, and declined to issue a certificate of appealability. (ECF No. 49.) Petitioner has  
20 appealed and has filed a motion to proceed in forma pauperis.

21 A party who was permitted to proceed in forma pauperis in the district court may proceed  
22 in forma pauperis on appeal without further authorization unless the district court certifies that the  
23 appeal is not taken in good faith. Fed. R.App. P. 24(a)(3). In the instant case, petitioner paid the  
24 filing fee in the district court. Thus, petitioner is not automatically entitled to proceed in forma  
25 pauperis on appeal.

26 Regardless, Fed. R.App. P. 24(a)(3)(A) provides for the denial of an in forma pauperis  
27 application if “the district court--before or after the notice of appeal is filed--certifies that the  
28 appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in

1 forma pauperis and states in writing its reasons for the certification or finding.”

2 In the instant case, the court finds that this appeal is not taken in good faith, for the  
3 reasons stated in the magistrate judge’s findings and recommendations, (ECF No. 41), and in this  
4 court’s order adopting them in part. (ECF No. 49.) For these reasons, plaintiff’s motion to  
5 proceed in form pauperis on appeal is denied as the appeal is not in good faith.<sup>1</sup>

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Petitioner’s motion to proceed in forma pauperis on appeal (ECF No. 52) is denied;  
8 2. The Clerk of the Court shall notify the Ninth Circuit Court of Appeals of this order.

9 DATED: May 14, 2015

10 /s/ John A. Mendez

11 UNITED STATES DISTRICT COURT JUDGE  
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26 <sup>1</sup> Petitioner’s motion also fails to include a certificate by the institutional officer reflecting all  
27 receipts, expenditures, and balances in petitioner’s prison trust account statement for the last six  
28 months as set forth in Form 4 in the Appendix of Forms to the Federal Rules of Appellate  
Procedure.