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1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 DARREL L. ESPINOSA, No. 2:14-cv-2829-MCE-EFB (PS) 12 Plaintiff, 13 v. **ORDER** 14 WHITEPAGES, INC., a Delaware corporation doing business as 15 whitepages.com, 16 Defendant. 17 Plaintiff Darrel L. Espinosa ("Plaintiff) is proceeding without counsel and in forma 18 19 pauperis in this action, which he originally filed on December 4, 2014. ECF No. 1. On 20 November 13, 2015, this Court dismissed the case pursuant to 28 U.S.C. § 1915(e)(2) as frivolous 21 and for failure to state a claim. ECF No. 59. On November 20, 2015, Plaintiff filed a notice of 22 appeal. ECF No. 61. Thereafter, the United States Court of Appeals for the Ninth Circuit 23 requested that this Court determine whether Plaintiff's in forma pauperis status should continue 24 on appeal or whether the appeal is frivolous or taken in bad faith. ECF No. 63. Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken in forma pauperis if the 25 26 trial court certifies in writing that it is not taken in good faith." The good faith standard is an objective one. See Coppedge v. United States, 369 U.S. 438, 455 (1962). A plaintiff satisfies the 27

"good faith" requirement if he or she seeks review of any issue that is "not frivolous." Gardner v.

<u>Pogue</u>, 558 F.2d 548, 551 (9th Cir. 1977) (quoting <u>Coppedge</u>, 369 U.S. at 455). For purposes of § 1915, an appeal is frivolous if it lacks any arguable basis in law or fact. <u>Neitzke v. Williams</u>, 490 U.S. 319, 325, 327 (1989).

For the reasons stated in the magistrate judge's Findings and Recommendations (ECF No. 56), which the Court adopted in full on November 13, 2015 (ECF No. 59), the Court now finds that Plaintiff's complaint is frivolous. The Court thus certifies that Plaintiff's appeal is frivolous and that it is appropriate to revoke Plaintiff's in forma pauperis status for purposes of the appeal.

Accordingly, it is hereby ORDERED that the Clerk of Court is directed to notify the Ninth Circuit Court of Appeals that the Court certifies, pursuant to Federal Rule of Appellate Procedure 24(a)(3)(A), that Plaintiff's appeal is not taken in good faith, and he must therefore seek further authorization from the Court of Appeals pursuant to Rule 24(a)(5) to obtain leave to proceed in forma pauperis on appeal.

IT IS SO ORDERED.

Dated: January 14, 2016

MORRISON C. ENGLAND, JR., CHIEF JUDGE

UNITED STATES DISTRICT COURT