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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THOMAS JOHN HEILMAN,
Plaintiff,
v.
A. WHITTEN, et al.,
Defendants.

No. 2:15-cv-01585-MCE-CKD

ORDER

Plaintiff in this action is a prisoner who proceeded without counsel in the district court. The magistrate judge assigned to the case granted Plaintiff's motion to proceed in forma pauperis ("IFP") on September 25, 2015. ECF No. 6. On April 29, 2016, Defendants moved to revoke Plaintiff's IFP status, arguing that Plaintiff had violated the three strikes provision of the Prison Litigation Reform Act, 28 U.S.C. § 1915(g). ECF Nos. 21-22. The magistrate judge agreed that revocation was proper and granted that motion on July 7, 2016. ECF No. 26.

Subsequently, on September 28, 2017, the Court dismissed this action with prejudice. ECF No. 47. On October 13, 2017, Plaintiff filed a notice of appeal. ECF No. 49. Thereafter, on October 17, 2017, 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 the appeal, or whether the appeal is frivolous or

1 taken in bad faith. ECF No. 51.

2 “An appeal may not be taken in forma pauperis if the trial court certifies in writing
3 that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3); see also Hooker v. American
4 Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of in forma pauperis status
5 appropriate where district court finds the appeal to be frivolous). The good faith
6 standard under 28 U.S.C. § 1915 is an objective one. Coppedge v. United States, 369
7 U.S. 438, 445 (1962). A plaintiff satisfies the “good faith” requirement if he or she seeks
8 review of any issue that is “not frivolous.” Gardner v. Pogue, 558 F.2d 548, 551 (9th Cir.
9 1977) (quoting Coppedge, 369 U.S. at 445).

10 As an initial matter, the Court notes that the July 7, 2016 order from the
11 magistrate judge revoked Plaintiff’s IFP status. ECF No. 26. Therefore, and for the
12 reasons discussed in that order, the Court believes that IFP status is not appropriate on
13 appeal.

14 Moreover, for the reasons stated in the June 19, 2017 findings and
15 recommendations (see ECF No. 42), adopted by the Court on September 29, 2017 (ECF
16 No. 47), the Court finds that the instant appeal is frivolous. The Court thus certifies that
17 Plaintiff’s appeal is not taken in good faith, and—if Plaintiff might otherwise have a claim
18 for IFP status—concludes that any IFP status should not continue for purposes of the
19 appeal.

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. Plaintiff’s in forma pauperis status remains REVOKED.
22 2. The Clerk of Court is directed to serve a copy of this order on Plaintiff and on
23 the Ninth Circuit Court of Appeals.

24 IT IS SO ORDERED.

25 Dated: November 7, 2017

26 
27 MORRISON C. ENGLAND, JR.
28 UNITED STATES DISTRICT JUDGE