

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ETUATE SEKONA,

Plaintiff,

v.

F. CUSTINO,

Defendant.

No. 2:16-cv-00517-TLN-DMC

ORDER

On June 8, 2023, the Ninth Circuit referred the matter to this Court for the limited purpose of determining whether Plaintiff's *in forma pauperis* ("IFP") status should continue on appeal or whether the appeal is frivolous or taken in bad faith. (ECF No. 221 at 1 (citing 28 U.S.C. § 1915(a)(3); *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002)).)

"An appeal may not be taken [IFP] 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 [IFP] is easily met . . . [t]he 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) (quoting *Coppedge v. U.S.*, 369 U.S. 438 445 (1962)); *see also Hooker*, 302 F.3d at 1092 (noting that an appeal is taken in "good faith" if it seeks review of "non-frivolous" issues and holding that if at least one issue or claim is non-frivolous, the appeal must proceed IFP as a whole). An action is frivolous "where it lacks an arguable basis in either law or fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In

1 other words, the term “frivolous,” as used in § 1915 and when applied to a complaint, “embraces
2 not only the inarguable legal conclusion, but also the fanciful factual allegation.” *Id.*

3 On January 5, 2023, the magistrate judge issued findings and recommendations that the
4 action be dismissed for failure to prosecute and failure to comply with the Court’s rules and
5 orders. (ECF No. 209.) Plaintiff filed objections, Defendant filed a response, and Plaintiff filed a
6 reply. (ECF Nos. 210, 212, 213.) This Court reviewed the filings and adopted the findings and
7 recommendations in full and dismissed the action on May 11, 2023. (ECF No. 215.)

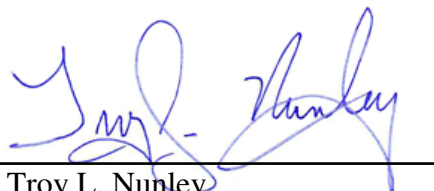
8 Based on the record before it, the Court cannot conceive of any valid grounds upon which
9 an appeal can be based. The Court therefore finds that Plaintiff’s appeal taken from its August
10 16, 2022 Order is frivolous and not taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App.
11 P. 24(a)(3)(A); *Hooker*, 302 F.3d at 1092; *Neitzke*, 490 U.S. at 325. Plaintiff’s IFP status on
12 appeal should therefore be revoked.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff’s *in forma pauperis* status on appeal is hereby REVOKED; and
15 2. The Clerk of the Court is directed to serve this Order on the Ninth Circuit Court of
16 Appeals in Case No. 23-15848.

17 IT IS SO ORDERED.

18 Date: June 16, 2023

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22 Troy L. Nunley
23 United States District Judge
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