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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROGER GIFFORD,  
  
                                Plaintiff,  
  
                                v.  
  
ROBERT PUCKETT, SR., et al.,  
  
                                Defendants.

No. 2:16-cv-00955-KJM-GGH

ORDER

On May 8, 2018 the Ninth Circuit Court of Appeals referred this matter, to which it has assigned case number 18-15779, to this court “for the purpose of determining whether in forma pauperis status granted in this court should continue for the plaintiff’s appeal” filed on April 27, 2018 (ECF No. 75).<sup>1</sup> See ECF No. 80. The standard to be applied by this court in rendering a decision on this issue is found in 28 U.S.C. section 1915(a)(3) which states that “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith,” or as the Court of Appeals stated: whether the appeal was taken in bad faith.

On August 17, 2017 this court issued Findings and Recommendations ECF No. 69, the substance of which was adopted by the district court in an Order signed on March 28, 2018. ECF No. 73. In the Findings and Recommendations the undersigned recommended that the plaintiff’s

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<sup>1</sup> Plaintiff filed two appeals in this case, but the undersigned will reference only the first appeal.

1 Second Amended Complaint be dismissed on res judicata grounds. He also recommended that  
2 the complaint be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b) or,  
3 in the alternative Federal Rule of Civil Procedure 12(b)(6). The court further pointed out that  
4 plaintiff’s pleadings, when compared with those found in Harrell v. Hornbrook Community  
5 Service District, 2:14-cv-01595-KJM-GGH, now also pending before the Circuit Court as case  
6 number 17-17209, left this court with “a deep conviction that these two plaintiffs are working  
7 together to destroy the [Hornbrook Community Services District] insofar as the two complaints  
8 show a remarkable, almost carbon copy, likeness between them including the format they use and  
9 the arguments they make. Both plaintiffs had consistently refused to follow rules laid out by the  
10 judges in the two cases. In sum, the feeling of collusion raised by those similarities could not be  
11 ignored. In addition, plaintiff Gifford herein was named as a defendant in the Harrell case, but he  
12 has appealed his dismissal in that case (an odd thing for a defendant to do) further demonstrating  
13 the collusive nature of the suits.<sup>2</sup>

14 This case seriously interfered with the court’s need to manage its docket and thereby  
15 burdened both the court and the defendants who were required to brief the case multiple times  
16 getting nothing for their efforts but another repetitive pleading and therefore another expenditure  
17 of resources. Neither could the contumaciousness of the plaintiff be ignored. In essence, the  
18 purpose for the complaints was suspect, the intent to ever bring the matter to a conclusion through  
19 trial was suspect, and the entire exercise to which the court and the defendants was the product of  
20 a frivolous action. Both cases demonstrate the abuse of in forma pauperis status where for no  
21 cost to plaintiffs, and in which plaintiffs litigate from afar, defendants have to obtain counsel and  
22 expend significant resources defending an action with multitudinous and voluminous claims—  
23 claims which take tens or even hundreds of pages to state.

24 Ultimately the district court dismissed elements of the Second Amended Complaint on res  
25 judicata grounds and the remainder under Federal Rules of Civil Procedure 41(b), 12(b)(6), with

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28 <sup>2</sup> Moreover, in the Harrell case, defendant Gifford and plaintiff Harrell purported to “settle” the case as to those two individuals.

1 prejudice, thereby supporting this court's earlier determination that the entire matter was frivolous  
2 from inception.

3 In light of the foregoing it is HEREBY ORDERED that:

4 1. The Clerk of the Court shall forward this Order to the Ninth Circuit Court of  
5 Appeals in response to its Referral Notice, ECF No. 80, for application in Case No. 18-15779;

6 2. The Clerk is advised that this Order also resolves ECF No. 79.<sup>3</sup>

7 Dated: May 10, 2018

8 /s/ Gregory G. Hollows  
9 UNITED STATES MAGISTRATE JUDGE

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27 <sup>3</sup> ECF No. 79 is a Motion to Proceed In Forma Pauperis filed by plaintiff in this court on May 2,  
28 2018. Because the same motion is pending in the Ninth Circuit, the undersigned simply makes  
the finding of bad faith at the district court level.