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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GINA DIANE CARMICHAEL,

Plaintiff,

v.

SACRAMENTO REGIONAL TRANSIT,
et al.,

Defendants.

No. 2:16-cv-2476-JAM-EFB

**ORDER REVOKING IN FORMA PAUPERIS
STATUS; DIRECTING CLERK'S OFFICE
TO SERVE ORDER ON NINTH CIRCUIT
COURT OF APPEALS**

This matter is before the Court on referral by the Ninth Circuit for the limited purpose of determining whether in forma pauperis status should continue for the appeal. ECF No. 25.

"An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "The good faith requirement is satisfied if the petitioner seeks review of any issue that is not frivolous." Gardner v. Pogue, 558 F.2d 548, 551 (9th Cir. 1977). A claim is frivolous "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).

The magistrate judge assigned to this case initially granted

1 Plaintiff's request to proceed in forma pauperis. Order, ECF
2 No. 8. In the same order, however, he dismissed Plaintiff's
3 complaint for failure to state a claim and lack of subject matter
4 jurisdiction. Id. Judge Brennan found that Plaintiff failed to
5 allege a federal cause of action under any of the federal
6 statutes cited in the Complaint: neither 18 U.S.C. § 1001 nor the
7 Consumer Financial Protection Act provide for a private right of
8 action, and none of Plaintiff's allegations were germane to the
9 Equal Credit Opportunity Act. Id. at 3-4. Diversity
10 jurisdiction could not apply because the parties were not
11 diverse. Id. at 4. Judge Brennan gave Plaintiff an opportunity
12 to amend her complaint.

13 Plaintiff filed a Seconded Amended Complaint and several
14 addenda that the magistrate judge construed collectively as the
15 operative complaint. ECF Nos. 10, 11, 12, 13; Findings and
16 Recommendations ("F&Rs"), ECF No. 17. The Operative Complaint
17 again alleged claims under 18 U.S.C. § 1001, 12 U.S.C. §§ 5531
18 and 5536 of the Consumer Financial Protection Act, and under the
19 Equal Credit Opportunity Act. These claims were found deficient
20 for the reasons set forth in the prior order of dismissal. F&Rs
21 at 4. Plaintiff also alleged a claim for violation of the
22 Administrative Procedure Act. This claim could not move forward
23 because Sacramento Regional Transit is not a federal agency. Id.
24 at 5. Additionally, Plaintiff's allegations were found to bear
25 no relevance to the Comprehensive Crime Control Act. Id. at 4-5.
26 And finally, the Court could not exercise jurisdiction over the
27 remaining state law claims because the parties are not diverse.
28 Id. at 5. After conducting a de novo review of the applicable


1 legal standards, this Court adopted the proposed findings and
2 recommendations and dismissed the Second Amended Complaint
3 without leave to amend. ECF No. 20.

4 As explained in the magistrate judge's orders and findings,
5 Plaintiff's federal claims lack any arguable basis in law and are
6 therefore frivolous. There is no federal jurisdiction over her
7 state claims irrespective of their merit.

8 For these reasons, the Court CERTIFIES that Plaintiff's
9 appeal is not taken in good faith. The clerk's office is
10 directed to serve a copy of this order on the Ninth Circuit.

11 IT IS SO ORDERED.

12 Dated: April 20, 2018

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15 JOHN A. MENDEZ,
16 UNITED STATES DISTRICT JUDGE
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