

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN CARLOS CALDERON,
Plaintiff - Appellant,
v.
P. COVELLO, Warden,
Defendant - Appellee.

No. 2:23-cv-01974-DJC-DB

ORDER

Plaintiff, a state prisoner proceeding in forma pauperis, filed a civil rights action pursuant to 42 U.S.C. § 1983 on September 13, 2023. (ECF No. 1.) Plaintiff's complaint was dismissed on October 31, 2023, for failure to state a claim, and Plaintiff was granted 30 days to file an amended complaint. (ECF No. 11.) Plaintiff complied, filing his amended complaint on November 13, 2023. (ECF No. 17.)

The Magistrate Judge filed filings and recommendations on November 21, 2023, recommending Plaintiff's amended complaint be dismissed without leave to amend for failing to state a claim. (ECF No. 18.) This Court adopted those findings and recommendations on April 1, 2024, dismissing the amended complaint and directing the Clerk of Court to close the case. (ECF No. 29.) Judgment was entered that same day. (ECF No. 30.)

1 On April 15, 2024, Plaintiff filed a notice of appeal. (ECF No. 32.) The Ninth
2 Circuit Court of Appeals referred this matter back to this Court on May 1, 2024, for the
3 limited purpose of determining whether in forma pauperis status should continue on
4 appeal or whether the appeal is frivolous or taken in bad faith. (ECF No. 35.)

5 The Federal Rules of Appellate Procedure provide as follows:

6 [A] party who has been permitted to proceed in an action in
7 the district court in forma pauperis . . . may proceed on
8 appeal in forma pauperis without further authorization
9 unless . . . the district court shall certify that the appeal is not
taken in good faith or shall find that the party is otherwise not
entitled so to proceed

10 Fed. R. App. P. 24(a)(3). After review of the record herein, the Court finds that
11 Plaintiff's appeal is frivolous and not taken in good faith.

12 Accordingly, IT IS HEREBY ORDERED that Plaintiff's in forma pauperis status is
13 revoked. See Fed. R. App. P. 24(a)(3); see also *Hooker v. American Airlines*, 302 F.3d
14 1091, 1092 (9th Cir. 2002) (revocation of forma pauperis status is appropriate where
15 district court finds the appeal to be frivolous).

16
17 IT IS SO ORDERED.

18 Dated: May 9, 2024


19 Hon. Daniel J. Calabretta
20 UNITED STATES DISTRICT JUDGE

21
22
23
24
25
26 DJC4-calderon23cv1974.IFPappeal
27
28