

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
NORTHERN DISTRICT OF CALIFORNIA

PATRICE LEAH TAMAYO,
Plaintiff,
v.
NANCY A. BERRYHILL,
Defendant.

Case No. [16-cv-01947-MEJ](#)

**ORDER RE: APPLICATION TO
PROCEED IN FORMA PAUPERIS**

Re: Dkt. No. 28

On July 13, 2017, Plaintiff Patrice Leah Tamayo filed a Notice of Appeal with the United States Court of Appeals for the Ninth Circuit.¹ Dkt. No. 30. Plaintiff filed an Application to Proceed in Forma Pauperis. Appl., Dkt. No. 28. For the reasons set forth below, the Court DENIES the Application.

LEGAL STANDARD

“[A] party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court.” Fed. R. App. P. 24(a)(1). An application to proceed in forma pauperis must include an affidavit that “(A) shows in the detail . . . the party’s inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal.” Fed. R. App. P. 24(a)(1)(A)-(C).

“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). For purposes of § 1915, an appeal is frivolous if it lacks any arguable basis in law

¹ Although the Notice of Appeal is dated July 3, 2017, it was not filed until July 13.

1 or fact. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221,
2 1225 (9th Cir. 1984).

3 **DISCUSSION**

4 Plaintiff was permitted to proceed in forma pauperis before this Court. *See* Dkt. No. 4. As
5 such, she “may proceed on appeal in forma pauperis without further authorization, unless . . . the
6 district court . . . certifies that the appeal is not taken in good faith or finds that the party is not
7 otherwise entitled to proceed in forma pauperis[.]” Fed. R. App. P. 24(a)(3)(A).

8 At this point, the Court cannot determine whether Plaintiff’s appeal is frivolous.
9 Nevertheless, the Court finds Plaintiff has the resources to pay the \$505 filing fee for to appeal.
10 Plaintiff lists a monthly net income of \$800 and a bank account balance of \$7,859.15. Appl. at 1,
11 3. Plaintiff does not make any mortgage or car payments. *Id.* at 3. Her total monthly expenses
12 amount to \$834, and she appears to have no other debts. *Id.* (listing monthly expenses for rent,
13 utilities, food, and clothing totaling \$550; listing under “other debts” expenses totaling \$234 for
14 phone, contact lenses, unspecified personal items, and pet food). While Plaintiff’s monthly
15 expenses exceed her net monthly income, Plaintiff’s bank account balance shows she has
16 sufficient funds to pay the filing fee without depriving her of the ability to pay for necessities. As
17 such, the Court DENIES her Application to Proceed In Forma Pauperis.

18 **IT IS SO ORDERED.**

19

20 Dated: July 26, 2017

21

22

23

24

25

26

27

28



MARIA-ELENA JAMES
United States Magistrate Judge