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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CARLOS H. ALMEIDA,
Plaintiff,
v.
CLARK E. DUCART, et al.,
Defendants.

Case No. [16-cv-02689-JD](#)

**ORDER REVOKING
PLAINTIFF’S IN FORMA
PAUPERIS STATUS**

Plaintiff, a state prisoner, filed a pro se civil rights complaint under 42 U.S.C. § 1983 that was dismissed. Plaintiff filed an appeal with the Ninth Circuit and the case has been referred back to this Court for the limited purpose of determining whether plaintiff’s in forma pauperis status should continue or whether the appeal is frivolous or taken in bad faith.

An indigent party who cannot afford the expense of pursuing an appeal may file a motion for leave to proceed in forma pauperis. Fed. R. App. P. 24(a); 28 U.S.C. § 1915(a)(1). Pursuant to Federal Rule of Appellate Procedure 24(a), “a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court.” The party must attach an affidavit that (1) shows in detail “the party’s inability to pay or give security for fees and costs,” (2) “claims an entitlement to redress,” and (3) “states the issues that the party intends to present on appeal.” Fed. R. App. P. 24(a)(1). However, even if a party provides proof of indigence, “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). An appeal is in “good faith” where it seeks review of any issue that is “non-frivolous.” *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). An issue is “frivolous” if it has “no arguable basis in fact or law.” *See O’Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990).

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The Court granted defendants’ motion to dismiss on the ground that plaintiff’s complaint was barred by California’s claim-preclusion doctrine. Plaintiff had previously litigated a state case regarding his validation as a gang member which was the subject of this action. This case was similar to *Furnace v. Giurbino*, 838 F.3d 1019, 1024-26 (9th Cir. 2016), where the Ninth Circuit held that a prisoner who has litigated a state case regarding the right to be free from unlawful gang validation is precluded from bringing the claim in a federal § 1983 action. Because the law is well settled this appeal is frivolous. Therefore, plaintiff’s in forma pauperis status is **REVOKED**. The Clerk shall forward this Order to the Ninth Circuit in case No. 17-16302.

IT IS SO ORDERED.

Dated: June 29, 2017



JAMES DONATO
United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 CARLOS H. ALMEIDA,
5 Plaintiff,

6 v.

7 CLARK E. DUCART, et al.,
8 Defendants.

Case No. [16-cv-02689-JD](#)

CERTIFICATE OF SERVICE

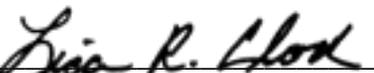
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on June 29, 2017, I SERVED a true and correct copy(ies) of the attached, by placing
13 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.

16
17 Carlos H. Almeida
18 G30247
19 P.O. Box 3030
20 Susanville, CA 96127

21 Dated: June 29, 2017

22
23 Susan Y. Soong
24 Clerk, United States District Court

25
26 By: 
27 LISA R. CLARK, Deputy Clerk to the
28 Honorable JAMES DONATO