

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

EUGENE F. DANTZLER,

Plaintiff,

v.

CITY AND COUNTY OF SAN
FRANCISCO,

Defendant.

Case No. [16-cv-03119-EMC](#)

**ORDER DENYING PLAINTIFF'S
MOTION FOR LEAVE TO APPEAL IN
FORMA PAUPERIS**

Docket No. 69

Plaintiff Eugene F. Dantzler has moved for permission to appeal in forma pauperis. Mr. Dantzler appears to meet the financial requirements for in forma pauperis status. Nevertheless, “[a]n appeal may not be taken in forma pauperis if . . . it is not taken in good faith,” 28 U.S.C. § 1915(a)(3), and courts have held that a frivolous appeal is not taken in good faith. *See, e.g., Morris v. Lewis*, No. C 10-5640 CRB (PR), 2012 U.S. Dist. LEXIS 60172, at *9 (N.D. Cal. Apr. 30, 2012); *cf. Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (noting that, “[i]f at least one issue or claim is found to be non-frivolous, leave to proceed in forma pauperis on appeal must be granted for the case as a whole”). The Court finds that Mr. Dantzler’s appeal is frivolous for the reasons stated in its summary judgment order. *Cf. In re Haw. Corp.*, 796 F.2d 1139, 1144 (9th Cir. 1986) (in addressing frivolous appeals in the context of assessing costs and attorney’s fees, stating that “[a]n appeal is frivolous when the result is obvious or where the arguments are ‘wholly without merit’”). Accordingly, Mr. Dantzler’s motion to proceed in forma pauperis on appeal is hereby **DENIED**. This ruling does not preclude Mr. Dantzler from asking the Ninth Circuit directly for leave to proceed in forma pauperis. *See* Fed. R. App. P. 24(a)(5) (providing that “[a] party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4) [*i.e.*, notice to the court of

1 appeals of the district court denial]”).

2 The Clerk of the Court is instructed to immediately provide a copy of this order to the
3 Ninth Circuit.

4 This order disposes of Docket No. 69.

5

6 **IT IS SO ORDERED.**

7

8 Dated: February 9, 2018

9


EDWARD M. CHEN
United States District Judge

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28