

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLARENCE A. BRANCH,
Plaintiff,
v.
UNITED STATES OF AMERICA,
Defendant.

Case No.16-cv-03811-JSC

**ORDER REVOKING IN FORMA
PAUPERIS STATUS ON APPEAL
UNDER SECTION 1915(g)**

Re: Dkt. No. 18

Plaintiff Clarence A. Branch, proceeding pro se, brings this action against the United States of America. The Court previously granted Plaintiff's application to proceed in forma pauperis and reserved to a later time evaluation of the Complaint under 28 U.S.C. § 1915. (Dkt. No. 3.) The Court thereafter issued an Order to Show Cause because mail sent to Plaintiff at his last known address had been returned as undeliverable. (Dkt. No. 8.) Plaintiff then responded to the Order to Show Cause, provided his new address, and consented to the jurisdiction of the undersigned magistrate judge. (Dkt. No. 10.) The Court then reviewed the complaint under Section 1915 and dismissed it for failure to state a claim because Plaintiff had failed to identify a cognizable legal theory. (Dkt. No. 11.) On the deadline to do so, Plaintiff filed a document captioned "Amendment." (Dkt. No. 14.) The Court construed this filing as First Amended Complaint and again dismissed the complaint for failure to state a claim under Section 1915. (Dkt. No. 15.) Plaintiff had until December 19, 2016 to file a Second Amended Complaint. Instead, on December 16, Plaintiff filed a notice of appeal. (Dkt. No. 16.) Plaintiff thereafter filed the now pending motion to proceed in forma pauperis on appeal. (Dkt. No. 18.)

The Court's dismissal order was not an appealable order as Plaintiff was granted leave to amend. *See Greensprings Baptist Christian Fellowship Trust v. Cilley*, 629 F.3d 1064, 1068 (9th Cir.

2010) (“An order dismissing a case with leave to amend may not be appealed as a final decision under § 1291.”); *see also Baldwin v. Sebelius*, 654 F.3d 877, 878 (9th Cir. 2011) (“a plaintiff who has been given leave to amend may not file a notice of appeal before entry of a final judgment even when he elects to stand on an unamended pleading”). The Court therefore certifies that Plaintiff’s appeal is not taken in good faith, DENIES his motion to proceed in forma pauperis on appeal, and REVOKES his in forma pauperis status for his appeal. *See* 28 U.S.C. § 1915(a)(3).

IT IS SO ORDERED.

Dated: January 17, 2017


JACQUELINE SCOTT CORLEY
United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLARENCE A. BRANCH,
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v.

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CERTIFICATE OF SERVICE


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

That on January 17, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Clarence A. Branch
391 Ellis Street
General Delivery
San Francisco, CA 94102

Dated: January 17, 2017

Susan Y. Soong
Clerk, United States District Court

By: 
Ada Means, Deputy Clerk to the
Honorable JACQUELINE SCOTT CORLEY