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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

LORENZO FOSSELMAN JR.,

Plaintiff,

v.

RANDOLPH GIBBS, M.D., et al.,

Defendants.

No. C 06-0375 PJH (PR)

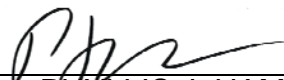
**ORDER DECLINING TO
CERTIFY APPEAL AS
TAKEN IN BAD FAITH**

This is a civil rights case filed pro se by a state prisoner. The court granted defendants' motion for summary judgment. Plaintiff's motion to alter or amend the judgment was denied, and plaintiff has appealed. The United States Court of Appeals for the Ninth Circuit has issued a limited remand to this court for a determination whether plaintiff's in forma pauperis status should be revoked.

Rule 24(a)(3) of the Federal Rules of Appellate Procedure provides that a party granted leave to proceed in forma pauperis in district court may continue in that status on appeal unless the district court certifies that the appeal is not taken in good faith. Section 1915(a)(3) of Title 28 of the United States Code similarly provides that an appeal may not be taken IFP if the trial court certifies it is not taken in good faith. "Not taken in good faith" means "frivolous." *Ellis v. United States*, 356 U.S. 674, 674-75 (1958); *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (order) (equating "not taken in good faith" with "frivolous"). Although plaintiff's claims were undeniably weak, the court cannot say that the appeal is frivolous. In forma pauperis status will not be revoked.

IT IS SO ORDERED.

Dated: April 11, 2011.



PHYLLIS J. HAMILTON
United States District Judge