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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JOSE LUIS MORALES,

Plaintiff,

vs.

K. CRUSE, et al.,

Defendants.

No. C 09-3312 PJH (PR)

**ORDER DECLINING TO
CERTIFY APPEAL AS NOT
TAKEN IN GOOD FAITH**

This is a civil rights case filed pro se by a state prisoner. The court granted defendants' motion to dismiss the case as moot, and subsequently denied plaintiff's motion to reconsider. Plaintiff appealed. The United States Court of Appeals for the Ninth Circuit has remanded the case for this court to consider whether the appeal is frivolous.

Rule 24(a)(3) of the Federal Rules of Appellate Procedure provides that a party granted leave to proceed in forma pauperis ("IFP") 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").

The appeal is not frivolous. The court declines to certify the appeal as not taken in good faith. The clerk shall forthwith notify plaintiff and the court of appeals of this order. See R.App.P. 24(a)(4).

IT IS SO ORDERED.

Dated: October 18, 2011.



PHYLLIS J. HAMILTON
United States District Judge