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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

BARNEY PERRY/PERRYAL MUSIC  
COMPANY,

Plaintiffs,

vs.

FANTASY RECORDS, SAUL ZAENTZ  
COMPANY and PAUL ZAENTZ,

Defendants.

Case No: C 13-1158 SBA

**ORDER**

On March 18, 2013, Magistrate Judge Nathanael Cousins granted Plaintiffs' application to proceed in forma pauperis. Dkt. 5. On May 23, 2013, this action was reassigned to the undersigned. On February 14, 2014, the Court issued an order dismissing this action with prejudice on the ground that Plaintiffs are barred from litigating the claims alleged in the complaint under the doctrine of res judicata. Dkt. 91. On April 25, 2014, the Court denied Plaintiff Barney Perry's motion to reopen the case, which the Court construed as a motion for reconsideration brought under Rule 59(e) and/or Rule 60(b) of the Federal Rules of Civil Procedure. Dkt. 110. On May 19, 2014, Plaintiffs filed a notice of appeal. Dkt. 111. On May 28, 2014, the Ninth Circuit issued a Referral Notice, referring the matter to this Court for the limited purpose of determining whether in forma pauperis status should continue on appeal or whether it should be revoked on the ground that the appeal is frivolous or taken in bad faith. Dkt. 113.


Under Rule 24 of the Federal Rules of Appellate Procedure, "[a] party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on

1 appeal in forma pauperis without further authorization, unless . . . the district court . . .  
2 certifies that the appeal is not taken in good faith . . . and states in writing its reasons for the  
3 certification. . . .” Fed.R.App.P 24(a)(3). The Ninth Circuit has construed “not taken in  
4 good faith” to mean frivolous. See Hooker v. American Airlines, 302 F.3d 1091, 1092 (9th  
5 Cir. 2002) (stating that “[i]f at least one issue or claim is found to be non-frivolous, leave to  
6 proceed in forma pauperis on appeal must be granted for the case as a whole”). An action  
7 is “frivolous” for purposes of § 1915 if it lacks any arguable basis in law or fact. Neitzke v.  
8 Williams, 490 U.S. 319, 325, 327 (1989); Franklin v. Murphy, 745 F.2d 1221, 1225 (9th  
9 Cir. 1984).

10 Here, the Court finds that Plaintiffs’ appeal is frivolous. Plaintiffs’ claims fail as a  
11 matter of law because they are barred by the doctrine of res judicata. Accordingly, the  
12 Court CERTIFIES that Plaintiffs’ appeal is not taken in good faith. Pursuant to Federal  
13 Rule of Appellate Procedure 24(a)(4), the Clerk of the Court is instructed to immediately  
14 notify the parties and the Ninth Circuit that this Court has certified in writing that the  
15 appeal is not taken in good faith. See Fed.R.App.P. 24(a)(4).

16 IT IS SO ORDERED.

17 Dated: 6/5/2014

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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