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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA

6 JEFFREY ANTHONY FRANKLIN,

7 Plaintiff,

8 v.

9 G. D. LEWIS, et al.,

10 Defendants.  
11

Case No. [13-cv-03777-YGR](#) (PR)

**ORDER DENYING PLAINTIFF'S  
MOTION TO PROCEED *IN FORMA*  
*PAUPERIS* ON APPEAL**

12 This is a closed action. Plaintiff, a state prisoner, originally filed this case as a civil action  
13 in the Del Norte County Superior Court, Case No. CVUJ13-1181, alleging constitutional  
14 violations that occurred during his previous incarceration at Pelican Bay State Prison. Defendants  
15 removed the action to federal court on the ground that certain of his claims arose under 42 U.S.C.  
16 § 1983. Summary judgment was granted in favor of Defendants on March 27, 2017. *See* Dkt. 64.  
17 Plaintiff has filed a notice of appeal (dkt. 67), and a motion for leave to proceed *in forma pauperis*  
18 (“IFP”) on appeal (dks. 71, 72).

19 Defendants paid the district court filing fee upon removing this action to federal court, so  
20 Plaintiff was not proceeding IFP in this Court. Plaintiff therefore does need permission to proceed  
21 IFP on appeal: Rule 24(a)(3) of the Federal Rules of Appellate Procedure, which provides that a  
22 party proceeding IFP in district court may continue in that status on appeal unless the district court  
23 certifies that the appeal is not taken in good faith, does not apply. 28 U.S.C. 1915(a)(3), which  
24 provides that an appeal may not be taken IFP if the trial court certifies that it is not taken in good  
25 faith, does not turn on whether IFP status was granted in district court, so it *does* apply.

26 Here, because its ruling granting summary judgment was correct, this Court finds that the  
27 appeal is not taken “in good faith” pursuant to 28 U.S.C. § 1915(a)(3) and is therefore frivolous.  
28 *See* Fed. R. App. P. (“FRAP”) 24(a)(3)(A); *Ellis v. United States*, 356 U.S. 674, 674-75 (1958);

1 *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002); *Gardner v. Pogue*, 558 F.2d  
2 548, 550 (9th Cir. 1977) (indigent appellant is permitted to proceed IFP on appeal only if appeal  
3 would not be frivolous). Accordingly, Plaintiff’s motion to proceed IFP on appeal is DENIED.  
4 Dkts. 71, 72.

5 The Clerk of the Court shall forthwith notify Plaintiff and the Ninth Circuit Court of  
6 Appeals of this Order. *See* FRAP 24(a)(4). Plaintiff may file a motion for leave to proceed IFP on  
7 appeal in the Ninth Circuit within **thirty (30) days** after service of notice of this Order. *See* FRAP  
8 24(a)(5). Any such motion “must include a copy of the affidavit filed in the district court and the  
9 district court’s statement of reasons for its action.” *Id.*

10 This Order terminates Docket Nos. 71 and 72.

11 IT IS SO ORDERED.

12 Dated: September 26, 2017



YVONNE GONZALEZ ROGERS  
United States District Judge