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4 UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6 OAKLAND DIVISION

7 TURELL L. BARNES SR.,

8 Plaintiff,

9 vs.

10 EUGENE SCHNEIDER, et.al.,

11 Defendants.
12

Case No: C 13-5333 SBA

**ORDER DENYING
APPLICATION TO
PROCEED IN FORMA
PAUPERIS ON APPEAL**

Docket 11


13 On November 18, 2013, Turell L. Barnes, Sr. (“Plaintiff”), proceeding pro se,
14 commenced the instant civil rights action under 42 U.S.C. § 1983 against Judge Cecilia P.
15 Castellanos (“Judge Castellanos”), Eugene Schneider (“Schneider”), and the State of
16 California (collectively, “Defendants”). Compl., Dkt. 1. Plaintiff’s claims arise out of the
17 alleged taking of his home without due process or just compensation. See id. On April 21,
18 2014, the Court issued an Order dismissing this action without leave to amend. Dkt. 7.
19 Specifically, the Court found that, to the extent Plaintiff seeks to disrupt or undo a prior
20 state-court judgment, his action is barred by the Rooker-Feldman doctrine. Id. As for the
21 merits, the Court found that Plaintiff’s claims against Judge Castellanos fail as a matter of
22 law because judges are absolutely immune for judicial acts. Id. Additionally, the Court
23 found that the claims alleged against Schneider fail as a matter of law because Schneider
24 was acting in a private capacity and not under color of state law. Id. Finally, the Court
25 found that Plaintiff’s claims against the State of California fails as a matter of law because
26 they are barred by the Eleventh Amendment. Id.

27 On May 21, 2014, Plaintiff filed a request to proceed in forma pauperis on appeal.
28 Dkt. 11. Title 28 U.S.C. § 1915(a)(3) states: “An appeal may not be taken in forma

1 pauperis if the trial court certifies in writing that it is not taken in good faith.” The good
2 faith requirement is satisfied if the petitioner seeks review of any issue that is “not
3 frivolous.” Gardner v. Pogue, 558 F.2d 548, 551 (9th Cir. 1977) (quoting Coppedge v.
4 United States, 369 U.S. 438, 445 (1962)). An action is “frivolous” for purposes of section
5 1915 if it lacks any arguable basis in law or fact. Neitzke v. Williams, 490 U.S. 319, 325,
6 327 (1989); Franklin v. Murphy, 745 F.2d 1221, 1225 (9th Cir. 1984). Here, because the
7 claims alleged in the complaint fail as a matter of law, Plaintiff’s appeal of the Court’s
8 April 21, 2014 Order is frivolous. Accordingly, the Court CERTIFIES that Plaintiff’s
9 appeal is not taken in good faith within the meaning of § 1915(a)(3). Therefore, Plaintiff’s
10 request to proceed in forma pauperis on appeal is DENIED. This Order terminates Docket
11 11.

12 IT IS SO ORDERED.

13 Dated: 5/28/2014

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15 SAUNDRA BROWN ARMSTRONG
16 United States District Judge
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