

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GREGORY M. TERRELL,	)	Case No.: 5:13-cv-04616-PSG
	)	
Plaintiff,	)	<b>ORDER DENYING PLAINTIFF'S</b>
v.	)	<b>MOTION TO APPEAL IN FORMA</b>
	)	<b>PAUPERIS</b>
NAVAL MEDICAL RESEARCH CENTER,	)	
et al.,	)	<b>(Re: Docket No. 16)</b>
	)	
Defendants.	)	

On November 12, 2013, Plaintiff Gregory M. Terrell (“Terrell”) filed an application to appeal *in forma pauperis* (“IFP application”). His application relates to his notice of appeal of the proposed order<sup>1</sup> filed by Defendants DARPA, Naval Medical Research Center, Navy Medicine West, Naval Medical Center San Diego, and Charles E. Schaff (collectively, Defendants) pursuant to the Civil L.R. 7-2(c).<sup>2</sup> The IFP application has not been opposed.

Under 28 U.S.C. § 1915(a)(3), an “appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” In other words, if the district court determines an appeal is not taken in good faith, the court may deny the IFP application. Courts

<sup>1</sup> See Docket No. 12.


<sup>2</sup> See Civil L.R. 7-2(c) (“Unless excused by the Judge who will hear the motion, each motion must be accompanied by a proposed order.”). Defendants filed their proposed order, *see* Docket No. 12, as required along with their motion to dismiss, *see* Docket No. 11.

1 have determined that the term “good faith” means “frivolous.”<sup>3</sup> If the appeal as a whole is  
2 frivolous, the IFP application should be denied.<sup>4</sup>

3 Here, Terrell has appealed a proposed order, not an order of this court. On that basis the  
4 court finds Terrell’s application premature and frivolous. The court therefore DENIES Terrell’s  
5 IFP application.

6 **IT IS SO ORDERED.**

7 Dated: December 10, 2013

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10 PAUL S. GREWAL  
11 United States Magistrate Judge

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25 <sup>3</sup> See *Morris v. Lewis*, Case No. 4:10-cv-5640-CRB-PR, 2012 WL 1549535, at \*3  
26 (N.D. Cal. Apr. 30, 2012) (quoting *Ellis v. United States*, 356 U.S. 674-75 (1958)) (finding an  
27 appeal to be frivolous where it had no valid grounds on which it was based and equating  
28 “frivolous” to mean not “taken in good faith”).

<sup>4</sup> See *Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (holding that  
28 U.S.C. § 1915(a) requires IFP status to be authorized for an appeal as a whole and not on a  
piecemeal basis).