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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

BRANDON MEEKS,

Plaintiff,

vs.

A. NUNEZ, et al.,

Defendant.

CASE NO. 13cv973-GPC(BGS)

**ORDER RE NOTICE OF  
REFERRAL**

On March 8, 2017, the Court granted Defendants' motion for terminating sanctions and denied Plaintiff's motion to suppress his deposition. (Dkt. No. 237.) On March 17, 2017, Plaintiff filed a notice of appeal. (Dkt. No. 239.) On March 22, 2017, the United States Court of Appeal for the Ninth Circuit referred the issue of whether in *forma pauperis* status should continue for the appeal or whether the appeal is frivolous or taken in bad faith. (Dkt. No. 245.)

"An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). Federal Rule of Appellate Procedure 24(a)(3) provides that


a party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, to proceed on appeal in forma pauperis without further authorization, unless: (A) the district court--before or after the notice of appeal is filed--certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or (B) a statute provides otherwise.

1 Fed. R. App. P. 24(a)(3). A good faith inquiry does not require a preliminary showing  
2 of any particular degree of merit. Ellis v. U.S., 356 U.S. 674, 674 (1958). In the  
3 absence of an improper motive, good faith is established by the presentation of any  
4 issue which is not plainly frivolous. Id. An appeal is frivolous if it lacks any arguable  
5 basis in law or fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989).

6 In the Court's order of dismissal, after consideration of the five factor test that  
7 a court must consider before dismissing an action as a sanction, it concluded that  
8 despite warnings and explanations to Plaintiff why his objections to the taking of his  
9 deposition had no merit, Plaintiff violated Federal Rule of Civil Procedure 37 for  
10 failing to appear and testify at his deposition and failure to comply with court orders.  
11 Thus, it concludes that the appeal lacks any arguable basis in law or fact and is  
12 frivolous. Accordingly, it is HEREBY ORDERED that: (1) Plaintiff's in forma  
13 pauperis status is REVOKED for purposes of the appeal; and (2) the Clerk of Court is  
14 DIRECTED to notify the Ninth Circuit Court of Appeals that the Court certifies that  
15 Plaintiff's appeal is frivolous.

16 IT IS SO ORDERED.

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18 DATED: April 6, 2017

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20 HON. GONZALO P. CURIEL  
21 United States District Judge  
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