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

ROBERT LEE GIVENS,

Plaintiff,

v.

A. MILLER, et al.,

Defendant.

CASE NO. 15cv2877-GPC(PCL)

**ORDER RE NOTICE OF
REFERRAL**

On March 3, 2017, the Court granted Defendants' motion to dismiss and denied Plaintiff's motion for leave to file a first amended complaint. (Dkt. No. 29.) On March 29, 2017, Plaintiff filed a notice of appeal. (Dkt. No. 31.) On April 6, 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. 34.)

"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

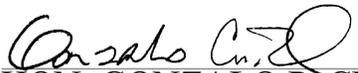
a party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless: (A) the district court--before or after 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 The Court granted Defendants' motion to dismiss with prejudice concluding that
7 Plaintiff's due process and Eighth Amendment claims are barred by Heck v. Humphrey,
8 512 U.S. 477 (1994). The Court concludes that the appeal is taken in good faith and
9 declines to revoke Plaintiff's in forma pauperis status on appeal.

10 IT IS SO ORDERED.

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12 DATED: April 7, 2017

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14 HON. GONZALO P. CURIEL
15 United States District Judge
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