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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 LUCIE WIGGINS,
11 Plaintiff-Appellant,
12 v.
13 UNITED STATES POSTAL SERVICE,
14 Defendant-Appellee.
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Case No.: 17-CV-2105 JLS (MDD)

**ORDER REVOKING PLAINTIFF'S
IN FORMA PAUPERIS STATUS**

(ECF No. 27)

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17 On May 14, 2018, the Court granted Defendant-Appellee's motion to dismiss
18 Plaintiff's Complaint and dismissed the case with prejudice, (ECF No. 19). Plaintiff-
19 appellant filed a timely notice of appeal from the Court's order, (ECF No. 22). The Ninth
20 Circuit referred the matter back to this Court "for the limited purpose of determining
21 whether in forma pauperis status should continue for this appeal or whether the appeal is
22 frivolous or taken in bad faith." (ECF No. 27.) After reconsideration, the Court
23 **CERTIFIES** that Plaintiff's appeal is not in good faith and **REVOKES** Plaintiff's *in forma*
24 *pauperis* status.

25 Motions to proceed *in forma pauperis* on appeal are governed by 28 U.S.C. § 1915
26 and Federal Rule of Appellate Procedure 24. *See Hooker v. Am. Airlines*, 302 F.3d 1091,
27 1092 (9th Cir. 2002) (quoting *Dixon v. Pitchford*, 843 F.2d 268, 270 (7th Cir. 1988)).
28 Section 1915 permits a court to authorize an appeal without the prepayment of fees if the

1 party submits an affidavit, including a statement of assets, showing that he is unable to pay
2 the required filing fee. 28 U.S.C. § 1915(a)(1).

3 Proceeding *in forma pauperis* on appeal is a privilege, however, not a right. Thus,
4 “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it
5 is not taken in good faith.” 28 U.S.C. § 1915(a)(3). In the absence of some evident
6 improper motive, the applicant’s good faith is established by the presentation of any issue
7 on appeal that is not plainly frivolous. *Farley v. United States*, 354 U.S. 521, 522–23
8 (1957). Thus, the request of an indigent for leave to appeal *in forma pauperis* may be
9 denied only if the issues raised are so frivolous that the appeal would be dismissed in the
10 case of a nonindigent litigant. *Ellis v. United States*, 356 U.S. 674, 675 (1958) (per curiam);
11 *Gardner v. Pogue*, 558 F.2d 548, 551 (9th Cir. 1977).

12 An action is frivolous for purposes of section 1915 if it lacks any arguable basis in
13 fact or law. *Neitzke v. Williams*, 490 U.S. 319, 328–30 (1989). A complaint or appeal
14 lacks an arguable basis in law only if controlling authority requires a finding that the facts
15 alleged fail to establish even an “arguable legal claim.” *Guti v. INS*, 908 F.2d 495, 496
16 (9th Cir. 1990) (citation omitted). While the facts alleged should generally be accepted as
17 true, clearly baseless, “fanciful,” “fantastic” or “delusional” factual contentions may be
18 dismissed as frivolous under section 1915. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992).

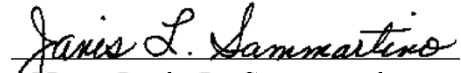
19 Here, this Court clearly lacks subject matter over Plaintiff’s Complaint. Therefore,
20 Plaintiff does not present an arguable legal claim. No reasonable person could suppose
21 that an appeal of the Court’s rulings would have merit.

22 Accordingly, the Court hereby **CERTIFIES** that Plaintiff’s appeal is not in good
23 faith pursuant to 28 U.S.C. § 1915(a)(3), and **REVOKES** Plaintiff’s *in forma pauperis*
24 status. *Coppedge v. United States*, 369 U.S. 438 (1962); *Gardner v. Pogue*, 558 F.2d 548,
25 550 (9th Cir. 1977) (indigent appellant is permitted to proceed *in forma pauperis* on appeal
26 only if appeal would not be frivolous). Further requests to proceed on appeal *in forma*
27 *pauperis* should be directed, on motion, to the Ninth Circuit, in accordance with Rule 24
28 of the Federal Rules of Appellate Procedure. *See* Fed. R. Civ. P. 24(a); *Javor v. Brown*,

1 295 F.2d 60, 61 (9th Cir. 1961) (appellate court can set aside district court certification of
2 bad faith).

3 **IT IS SO ORDERED.**

4 Dated: June 15, 2018


5 Hon. Janis L. Sammartino
6 United States District Judge

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