

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 VIRGINIA HOWARD,

Case No.: 18cv1183-MMA (JMA)

11
12 Plaintiff,

**ORDER RESPONDING TO
REFERRAL NOTICE**

13 v.

14 SAN DIEGO COUNTY COUNSEL, et
al.,

[Doc. No. 11]

15
16 Defendants.

17
18 On June 6, 2018, Plaintiff Virginia Howard (“Plaintiff”), proceeding *pro se*, filed
19 this action against Defendants San Diego County Counsel and San Diego County
20 Recorder/Assessor’s Office.¹ *See* Complaint. On June 21, 2018, the Court issued an
21 order granting Plaintiff’s motion to proceed in forma pauperis (“IFP”), dismissing the
22 Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B), and denying Plaintiff’s motion for
23 appointment of counsel. *See* Doc. No. 4. The Court construed Plaintiff’s Complaint as
24 asserting a *Monell* claim against the County, and granted Plaintiff leave to file an
25 amended complaint. *See id.* On July 13, 2018, Plaintiff filed a First Amended Complaint
26

27
28 ¹ The Court construed the Complaint as asserting a claim against the County of San Diego (“County”).

1 (“FAC”) pursuant to 42 U.S.C. § 1983 against the County. *See* Doc. No. 5. The Court
2 dismissed Plaintiff’s FAC with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B), and
3 denied Plaintiff’s request for counsel. *See* Doc. No. 6. Plaintiff filed a timely Notice of
4 Appeal. *See* Doc. No. 8.

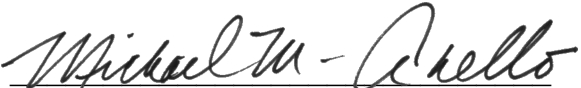
5 The Ninth Circuit Court of Appeals now refers this matter for the “limited purpose
6 of determining whether in forma pauperis status should continue for this appeal or
7 whether the appeal is frivolous or taken in bad faith.” Doc. No. 11 at 1. Rule 24(a)(3) of
8 the Federal Rules of Appellate Procedure provides that a party granted leave to proceed
9 IFP in the district court may continue that status on appeal unless the district court
10 certifies that the appeal is not taken in good faith, which in this context means that it is
11 frivolous. *See Ellis v. United States*, 356 U.S. 674, 674-75 (1958). Title 28 of the United
12 States Code, section 1915(a)(3) similarly provides that an appeal may not be taken IFP if
13 the trial court certifies it is not taken in good faith. For purposes of § 1915, an appeal is
14 frivolous if it lacks any arguable basis in law or fact. *See Neitzke v. Williams*, 490 U.S.
15 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1225 (9th Cir. 1984).

16 Here, upon review of the record, the Court concludes that Plaintiff’s appeal lacks
17 any arguable basis in law or fact, and thus is considered as not being taken “in good
18 faith” pursuant to 28 U.S.C. § 1915(a)(3). Accordingly, the Court hereby **REVOKES**
19 Plaintiff’s IFP status. *See Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (noting
20 an indigent appellant is permitted to proceed in forma pauperis on appeal only if appeal
21 would not be frivolous).

22 The Clerk of Court is directed to notify the Ninth Circuit Court of Appeals of this
23 Order. *See* Fed. R. App. P. 24(a)(4).

24 **IT IS SO ORDERED.**

25 Dated: August 29, 2018

26 

27 HON. MICHAEL M. ANELLO
28 United States District Judge