

1 instance, I ordered Schaefer to show cause why this case should not be dismissed under the
2 doctrine of res judicata, and I authorized the defendant to file a reply.⁴

3 After reviewing the record in the prior action and considering the parties' arguments, I
4 found that Schaefer's claim in this action was barred under the doctrine of claim preclusion.⁵ I
5 therefore dismissed Schaefer's claim with prejudice and instructed the clerk to enter judgment
6 against him and in favor of the Nevada Secretary of State.⁶

7 Discussion

8 Section 1915(a)(3) of title 28 of the United States Code provides that "[a]n appeal may
9 not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good
10 faith."⁷ An appeal is taken in "good faith" when it seeks review of any issue that is "non-
11 frivolous."⁸ An issue "is frivolous where it lacks an arguable basis either in law or in fact."⁹ I
12 assume that Schaefer will raise the same issues on appeal that he raised in response to my show-
13 cause order.

14 Schaefer argued that his claim is not barred under the doctrine of claim preclusion
15 because the parties are not the same, the claim is not the same, and the previous action was not
16 finally adjudicated on the merits. To the extent that Schaefer seeks review of these issues, I find
17 that his appeal is not in good faith because there is no basis in law or fact to argue that the parties
18 or claim between the two cases are different or that Schaefer's claim was not finally adjudicated
19 on its merits in the prior action.

22 ⁴ ECF No. 24.

23 ⁵ ECF No. 30.

24 ⁶ *Id.*

25 ⁷ 28 U.S.C. § 1915(a)(3).

26 ⁸ *Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002).

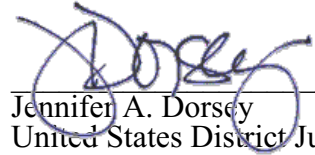
27 ⁹ *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

1 But Schaefer also asked me to craft an exception to the claim-preclusion doctrine for this
2 case because a significant amount of time has lapsed since his prior action, society has changed,
3 the right he seeks to protect is important, and he is not seeking monetary relief. To the extent
4 that Schaefer seeks review of these issues, I find that his appeal is taken in good faith because the
5 appellate court may want to create an exception to the doctrine of claim preclusion—I declined
6 Schaefer’s invitation to do so. Because I find that portions of Schaefer’s appeal are taken in good
7 faith, I conclude that he “is entitled to in forma pauperis status for this appeal *in toto*”¹⁰

8 **Conclusion**

9 Accordingly, IT IS HEREBY ORDERED that Michael Schaefer’s pauper status should
10 **CONTINUE** for this appeal (Ninth Cir. Case No. 17-15961). The Clerk of Court is **DIRECTED**
11 to notify the Ninth Circuit Court of Appeals that this court **DOES NOT** elect to revoke Michael
12 Schaefer’s pauper status.

13 DATED: May 17, 2017.

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16 Jennifer A. Dorsey
17 United States District Judge
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28 ¹⁰ *Hooker*, 302 F.3d at 1092.