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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DAVID SHU,
Plaintiff,
v.
NANCY HUTT, et al.,
Defendants.

Case No. 2:18-cv-00517-RFB-VCF

ORDER

This matter comes before the Court on the Ninth Circuit Court of Appeal’s Referral Notice. ECF No. 21. The Ninth Circuit refers the matter to the Court for the limited purpose of determining if Plaintiff’s in forma pauperis status should continue during his appeal or if Plaintiff’s appeal is frivolous or is taken in bad faith. Id.

“[A]n appeal on a matter of law is frivolous where none of the legal points are arguable on their merits.” Neitzke v. Williams, 490 U.S. 319, 325 (1989). Here, the Court dismissed Plaintiff’s Complaint on only legal bases: (1) Plaintiff’s False Claims Act claim cannot be brought pro se, see United States ex rel. Stoner v. Santa Clara Cnty. of Office of Educ., 502 F.3d 1116, 1126–27 (9th Cir. 2007); (2) Plaintiff’s due process claim is barred by the statute of limitations, see Perez v. Seevers, 869 F.2d 425, 426 (9th Cir. 1989); and (3) Plaintiff’s state-law claims are barred by both the statute of limitations and by the lack of jurisdiction over Defendants, see Nev. Rev. Stat. 11.190(3)(d); see also Nev. Rev. Stat. 11.220. The Court did not allow Plaintiff to amend his Complaint since amendment would be futile. See Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). Because the deficiencies in Plaintiff’s complaint cannot be argued on the merits or cured through amendment of Plaintiff’s Complaint, the Court finds that the pending appeal is frivolous.

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IT IS THEREFORE ORDERED that Plaintiff's in forma pauperis status is REVOKED for purposes of his pending appeal as the appeal is frivolous.

DATED: February 19, 2019.



RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE