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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STEVEN DARBY MCDONALD

Plaintiff,

v.

JAMES EDWARDS, F. JOHN SMITH,

G. PIERCE, SCOTT FRAKES and

K. RAINER,

Defendants.

NO. 2:13-cv-00222-SAB

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

On August 24, 2015, the Ninth Circuit Court of Appeals referred the above-captioned matter to this Court for the limited purpose of determining whether in forma pauperis status should continue for Plaintiff's appeal or whether the appeal is frivolous or taken in bad faith.

Permission to proceed in forma pauperis is a matter of privilege and not a right." *Franklin v. Murphy*, 645 F.2d 1221, 1231 (9th Cir. 1984). 28 U.S.C. § 1915(a)(3) states that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." An in forma pauperis appeal is frivolous and not in good faith if it has "no arguable basis in fact or law." *O'Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990).

In its September 18, 2014 Order, the Court expressed concern that Plaintiff's motive in pursuing this cause of action was to harass Defendants. The

*JLM 3/14/18
MP*

1 Court dismissed Plaintiff's Complaint, but in an abundance of caution, granted
2 him leave to file an Amended Complaint. Rather than follow the Court's order and
3 file an Amended Complaint, Plaintiff filed an appeal to the Ninth Circuit Court of
4 Appeals. The Circuit dismissed the appeal for lack of jurisdiction. Six months
5 passed, and Plaintiff still failed to file an Amended Complaint. Finally, in August,
6 2015, the Court dismissed the action for failure to prosecute and closed the file.
7 ECF No. 133.

8 It is the Court's Order closing the file that Plaintiff is appealing. Such an
9 appeal is frivolous. No reasonable jurist would disagree with the Court's
10 resolution of this matter. No reasonable jurist would conclude that the issues
11 presented in Plaintiff's appeal are adequate to deserve encouragement to proceed
12 further. Accordingly, the Court finds that Plaintiff's appeal currently before the
13 Ninth Circuit Court of Appeals is frivolous and not taken in good faith; and
14 Plaintiff's in forma pauperis status is appropriately revoked. *See* 28 U.S.C. §
15 1915(a)(3); *see also O'Loughlin*, 920 F.2d at 617.

16 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
17 file this Order and provide copies to Plaintiff, counsel and the Ninth Circuit Court
18 of Appeals.

19 **DATED** this 2nd day of September, 2015.



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A handwritten signature in black ink that reads "Stanley A. Bastian". The signature is written in a cursive style and is positioned to the right of the court seal.

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Stanley A. Bastian
United States District Judge

Lonborg, Judyth (ATG)

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Eastern District of Washington

U.S. District Court

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Docket Text:

ORDER REVOKING PLAINTIFF'S IN FORMA PAUPERIS STATUS re [138] 9CCA Order. Signed by Judge Stanley A Bastian. (AY, Case Administrator)

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