

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Rogers v. Lester, et al.

Rogers · No. 2:22-cv-00914-TLN-AC · Decided March 3, 2023

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 KIM EDWARD ROGERS, No. 2:22-cv-00914-TLN-AC 12 Plaintiff, 13 v.
ORDER 14 KATHERINE LESTER, et al., 15 Defendants. 16 17 On February 27, 2023, the Ninth
Circuit referred the matter to this Court for the limited 18 purpose of determining whether
Plaintiff’s in forma pauperis (“IFP”) status should continue on 19 appeal or whether the appeal is
frivolous or taken in bad faith.

(ECF No. 50 (citing 28 U.S.C. § 20 1915(a)(3); *Hooker v. American Airlines*, 302 F.3d 1091, 1092
(9th Cir. 2002)).) 21 “An appeal may not be taken [IFP] if the trial court certifies in writing that it
is not taken 22 in good faith.” 28 U.S.C. § 1915(a)(3). “The test for allowing an appeal [IFP] is
easily 23 met... [t]he good faith requirement is satisfied if the [appellant] seeks review of any issue
that is 24 ‘not frivolous.’” *Gardner v. Pogue*, 558 F.2d 548, 550–51 (9th Cir.

1977) (quoting *Coppedge v. 25 U.S.*, 369 U.S. 438 445 (1962)); see also *Hooker*, 302 F.3d at 1092
(noting that an appeal is taken 26 in “good faith” if it seeks review of “non-frivolous” issues and
holding that if at least one issue or 27 claim is non-frivolous, the appeal must proceed IFP as a
whole). An action is frivolous “where it 28 1 lacks an arguable basis in either law or fact.” *Neitzke*
v. Williams, 490 U.S. 319, 325 (1989).

In 2 | other words, the term “frivolous,” as used in § 1915 and when applied to a complaint,
“embraces 3 | not only the inarguable legal conclusion, but also the fanciful factual allegation.” *Jd.*
4 On January 24, 2023, the magistrate judge issued findings and recommendations. (ECF 5 | No.
39.)

The magistrate judge recommended the case be dismissed for failure to prosecute in 6 | light of
Plaintiff’s refusal to comply with court orders and failure to submit to entrance of a case 7 |
schedule. *Ud.* at 6.) This Court reviewed the relevant filings and adopted the findings and 8 |
recommendations in full and dismissed the action on February 8, 2023. CECE No. 42.)

9 Based on the record before it, the Court cannot conceive of any valid grounds upon which 10 |
an appeal can be based. The Court therefore finds that Plaintiff’s appeal taken from its February 11
8, 2023 Order is frivolous and not taken in good faith. See 28 U.S.C. § 1915(a)(3); *Fed. R. App.*
12 | *P. 24(a)(3)(A)*; *Hooker*, 302 F.3d at 1092; *Neitzke*, 490 U.S. at 325.

Plaintiff's IFP status on 13 || appeal should therefore be revoked. 14 Accordingly, IT IS HEREBY ORDERED that: 15 1. Plaintiff's in forma pauperis status on appeal is hereby REVOKED; and 16 2. The Clerk of the Court is directed to serve this Order on the Ninth Circuit Court of 17 Appeals in Case No. 23-15193. 18 IT IS SO ORDERED. 19 | DATE: March 2, 2023 20 □□ / 21 “ √ Lu 22 ZN Troy L. Nunley» } 23 United States District Judge 24 25 26 27 28