

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**STEPHEN RICHMOND CUMMINGS,**

**Plaintiff,**

**v.**

**Case No: 6:17-cv-1897-Orl-41DCI**

**JAMES FRANCIS CAMERON,  
LIGHTSTORM ENTERTAINMENT,  
INC., SONY PICTURES  
ENTERTAINMENT INC.,  
PARAMOUNT PICTURES CORP.,  
PARAMOUNT HOME  
ENTERTAINMENT, INC. and  
TWENTIETH CENTURY FOX FILM  
CORPORATION,**

**Defendants.**

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**REPORT AND RECOMMENDATION**

This cause comes before the Court for consideration without oral argument on the following motion:

**MOTION:    MOTION TO APPEAL *IN FORMA PAUPERIS* (Doc. 95)**

**FILED:        December 6, 2018**

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**THEREON it is RECOMMENDED that the motion be DENIED.**

This case presents with a long procedural history, highlighted by Plaintiff's attempts to avoid filing a shotgun pleading. Docs. 1; 44; 53. On August 28, 2018, the undersigned found that the operative complaint was a shotgun pleading and recommended that the Court grant Defendants' motion to dismiss and dismiss the operative complaint without prejudice. Doc. 68 (the Report). On October 31, 2018, after considering objections from Plaintiff and Defendants,

the Court entered an order adopting the Report to the extent that it recommended that the operative complaint be dismissed. Doc. 90 (the Order). But, rather than dismissing the operative complaint without prejudice, the Court dismissed the same with prejudice. *Id.*

On November 16, 2018, Plaintiff filed a Notice of Appeal. Doc. 92. In the Notice of Appeal, Plaintiff does not identify what he intends to challenge on appeal. *See id.* Thus, for purposes of this report, the undersigned will assume that Plaintiff will challenge the Court's determination that the operative complaint was a shotgun pleading and dismissal of the case with prejudice.

On December 6, 2018, Plaintiff filed a motion to appeal *in forma pauperis* and an affidavit of indigency. Doc. 95 (the Motion); 95-1. Like the Notice of Appeal, the Motion is silent as to what Plaintiff intends to challenge on appeal. *See* Doc. 95.

An appeal may not be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3). The good faith standard is an objective standard. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). An appeal is not taken in good faith if the issues presented are frivolous. *Id.*

Plaintiff is appealing the Order dismissing the case with prejudice. Docs. 92; 92-1. Given the lack of specificity in the Notice of Appeal and the Motion, the undersigned presumes, for purposes of this report, that Plaintiff will challenge the Court's determination that the operative complaint was a shotgun pleading and its decision to dismiss the case with prejudice. As set forth in the Report and Order, Plaintiff was given an opportunity (and even provided specific directions) to avoid filing a shotgun pleading, but Plaintiff, despite such opportunity, failed to do so, and, thus, failed to sufficiently allege claims upon which relief may be granted. *See* Docs. 68; 90. There is nothing in the Notice of Appeal that demonstrates the Court's bases for dismissing the case with

prejudice were erroneous. Therefore, the undersigned finds the arguments Plaintiff will seemingly raise on appeal are without arguable merit and, thus, the appeal is not taken in good faith.

Accordingly, it is respectfully **RECOMMENDED** that:

1. The Motion (Doc. 95) be **DENIED**;
2. The Court certify the appeal is not taken in good faith; and
3. The Clerk be directed to notify the Eleventh Circuit in accordance with Fed. R. App. P. 24(a)(4).

### **NOTICE TO PARTIES**

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1.

Recommended in Orlando, Florida on December 6, 2018.

  
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DANIEL C. IRICK  
UNITES STATES MAGISTRATE JUDGE

Copies furnished to:

Presiding District Judge  
Counsel of Record  
Unrepresented Party  
Courtroom Deputy