UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

ADRIAN BUSTAMANTE	:	
	:	
v.	:	C.A. No. 06-007S
	:	
ASHBEL T. WALL	:	

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

Pending before the Court is Plaintiff Adrian Bustamante's Motion for Leave to Appeal In Forma Pauperis ("IFP"). (Document No. 43). Because I find that the appeal is groundless and thus not taken in good faith, I recommend that the District Court DENY Plaintiff's Motion.

Plaintiff's right to appeal *in forma pauperis* is governed by 28 U.S.C. § 1915 which provides 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." 28 U.S.C. § 1915(a)(3). "Because the good faith standard is an objective one, an appeal is deemed not taken in good faith if the issues presented are frivolous. An appeal is considered frivolous when it is based on an 'indisputably meritless legal theory or factual allegations that are clearly baseless.'" Lyons v. Wall, No. 04-380, 2007 WL 2067661 at *1 (D.R.I. July 13, 2007) (internal citations omitted).

In the present case, Plaintiff is attempting to appeal out of time. Federal Rule of Appellate Procedure 4(a) sets forth specific requirements that Petitioner failed to follow, thus the appellate court does not have jurisdiction to entertain Petitioner's appeal. The District Court denied Petitioner's request for a Certificate of Appealability for his failure to comply with the mandatory requirements of Fed. R. App. P. 4. Similarly, his failure to comply with those requirements renders

his appeal meritless, and thus, not taken in good faith. Accordingly, this Court recommends that the District Court find that the appeal is not taken in good faith and DENY Plaintiff's Motion to Appeal IFP. (Document No. 43).

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within ten (10) days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
September 9, 2009