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

JEFF S. HARNDEN,

1:02-cv-06529-LJO-GSA-PC

Plaintiff,

ORDER DENYING REQUEST
FOR CERTIFICATE OF APPEALABILITY

vs.

(Doc. 248.)

KEY, VOGEL, and KEENER,

Defendants.

_____ /

Plaintiff is a state prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. On December 15, 2008, jury trial in this action commenced before District Judge Lawrence J. O'Neill. On December 17, 2008, the jury returned a verdict for the Defendants. Judgment in favor of Defendants was entered in this action on December 18, 2008, and the case was closed.

On January 12, 2009, Plaintiff filed a notice of appeal to the Ninth Circuit Court of Appeals and a request for a certificate of appealability. (Docs. 247, 248.)

The requirement for the issuance of a certificate of appealability on appeal arises under 28 U.S.C. § 2253, which provides:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from --

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

1 28 U.S.C. § 2253. Because § 2253 only applies to petitions for writ of habeas corpus, and
2 plaintiff is proceeding with a civil rights action under 42 U.S.C. § 1983, plaintiff's request for a
3 certificate of appealability shall be denied.

4 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for a certificate of
5 appealability, filed on January 12, 2009, is DENIED.

6 IT IS SO ORDERED.

7 **Dated:** April 6, 2009

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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