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

ELONZA JESSE TYLER,)	Case No.: 1:04-cv-06638-LJO-BAM PC
Plaintiff,)	
v.)	ORDER DENYING PLAINTIFF’S MOTION OF
DENNIS C. SMITH, et al.,)	APPEAL OF THE DISTRICT COURT’S ORDER
Defendants.)	DENYING PLAINTIFF’S MOTION FOR
)	SUMMARY JUDGMENT
)	(Doc. 196)
)	

Plaintiff Elonza Jesse Tyler (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Following remand by the Ninth Circuit Court of Appeals, this action is proceeding against Defendant Smith for deliberate indifference in violation of the Eighth Amendment.

On March 1, 2012, Plaintiff filed a motion for summary judgment. Following briefing, on February 25, 2013, the Magistrate Judge issued findings and recommendations that Plaintiff’s motion for summary judgment be denied. (ECF No. 189.) Plaintiff objected to the findings and recommendations. Following de novo review, the Court adopted the findings and recommendations in full on March 14, 2013. (ECF No. 191.)

On March 26, 2013, Plaintiff filed a notice of appeal to the Ninth Circuit Court of Appeals. (ECF No. 192.) On April 25, 2013, the Ninth Circuit Court of Appeals dismissed the appeal for lack of jurisdiction. (ECF No. 195.) Thereafter, Plaintiff filed the instant motion entitled “Notice of

1 Motion and Motion of Appeal of the District Court’s Order Denying Plaintiff’s Motion for Summary
2 Judgment In Re: CV-06638-LJO-BAM.” (ECF No. 196.)

3 Based on the motion, it appears that Plaintiff requests that this case to be heard by a three-
4 judge court pursuant to 28 U.S.C. § 2284. Section 2284, Title 28 of the United States Code governs
5 three-judge courts. Subsection (a) states in pertinent part: “A district court of three judges shall be
6 convened when otherwise required by Act of Congress.” Plaintiff argues that his appeal of the Court’s
7 order denying him summary judgment should be heard by a three-judge panel because he is a state
8 prisoner and he is a member of the class action lawsuit Plata v. Brown, Jr., et al. Although he
9 references Plata, Plaintiff cites to no Act of Congress indicating that his appeal of the order denying
10 summary judgment on his deliberate indifference claim should be heard by a three-judge court.
11 Accordingly, Plaintiff’s motion is HEREBY ORDERED denied.

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14 IT IS SO ORDERED.

15 Dated: May 14, 2013

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