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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TRAVIS RAY THOMPSON,	CASE NO. 1:07-cv-00572-AWI-BAM PC
Plaintiff,	ORDER DENYING PLAINTIFF’S MOTION FOR
	A RULING ON MOTION TO RELAX RULE 8
v.	(ECF No. 122)
KERNAN, et al.,	
Defendants.	

Plaintiff Travis Ray Thompson (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On July 12, 2012, the Ninth Circuit affirmed in part, reversed in part, and remanded this action for the Court to consider Plaintiff’s claims that accrued after he filed his initial complaint. (ECF No. 101.) On July 16, 2012, Plaintiff’s third amended complaint was dismissed, with leave to amend, for failure to comply with the Federal Rules of Civil Procedure. (ECF No. 104.) On August 8, 2012, the Ninth Circuit granted Plaintiff’s request for an extension of time to file a motion for a hearing en banc. (ECF No. 109.) On August 10, 2012, Plaintiff filed a motion to relax the strict requirement of Rule 8. (ECF No. 110.) On August 23, 2012, this action was stayed pending resolution of Plaintiff’s petition for en banc review. Plaintiff was advised that he would be given a deadline for filing a fourth amended complaint once the mandate from the Ninth Circuit issues.

The filing of a notice of appeal generally divests a district court of jurisdiction to determine the “substantial rights” at issue in an action during the pendency of the appeal. Pyrodyne Corp. v. Pyrotronics Corp., 847 F. 2d 1398, 1403 (9th Cir. 1988). In this instance, the order which is being

1 appealed granted Defendants' motion for summary judgment and this action was closed.
2 Subsequently, the action was stayed due to the lack of jurisdiction to determine the "substantial
3 rights" at issue during the pendency of the appeal .

4 Since this action is stayed no motions shall be considered until Plaintiff's appeal has been
5 exhausted and the stay is lifted. Accordingly, Plaintiff's motion for a ruling on the previously filed
6 motion is HEREBY DENIED.

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8 IT IS SO ORDERED.

9 **Dated: November 15, 2012**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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