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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VALENTINE UNDERWOOD,

Plaintiff,

v.

S. MARTIN, et al.,

Defendants.

Case No. 1:08-cv-00986-BAM-PC

ORDER DENYING REQUEST TO FILE
SECOND NOTICE OF APPEAL

(ECF NO. 163)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983. The parties have consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c).¹

This action proceeds on Plaintiff's excessive force claim against Defendants Martin, Northcutt, Caviness, Trujillo and Truitt. On March 26, 2015, an order was entered, granting in part Defendants' motion for summary judgment, dismissing Plaintiff's retaliation claims. (ECF No. 153.) Plaintiff filed a Notice of Appeal, which was dismissed by the Ninth Circuit Court of Appeals on September 8, 2015. (ECF No. 162.) The Ninth Circuit granted Plaintiff's request for voluntary dismissal.

On November 2, 2015, Plaintiff filed a motion in this Court requesting leave to file a

¹ Plaintiff filed a consent to proceed before a magistrate judge on August 11, 2008 (ECF No. 4). Defendants consented on May 31, 2011 (ECF No. 97).

1 second appeal. In his motion, Plaintiff indicates that he filed the notice of voluntary dismissal
2 because he was placed in administrative segregation (AdSeg) and did not have access to his
3 property. Because he did not have access to his property, Plaintiff could not meet the filing
4 deadline for his opening brief. Plaintiff was eventually cleared of charges and his property was
5 returned to him. Plaintiff filed a request in the Ninth Circuit, seeking withdrawal of his notice of
6 voluntary dismissal, and indicating that he would be able to file his opening brief on time.

7 On November 13, 2015, an order was entered by the Ninth Circuit Court of Appeals,
8 construing Plaintiff's request to disregard his notice of voluntary dismissal as a motion to
9 reinstate the appeal. So construed, the motion was denied. The court ordered that all other
10 pending motions were denied as moot, and that the appeal remains closed, as plaintiff was
11 appealing from a non-appealable order. Plaintiff's November 2, 2015, motion requesting leave
12 to file a second notice of appeal filed in this Court is therefore moot.

13 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for leave to file a second
14 notice of appeal is denied as moot.
15 IT IS SO ORDERED.

16 Dated: November 16, 2015

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE