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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Gerald Lee Miller, Jr.,

vs.

O. Rufion et al.,

Plaintiff,

Defendant.

CASE NO. 08cv1233

ORDER RE: REQUEST FOR
STATUS REPORT

I.

INTRODUCTION

On December 23, 2010, Gerald Lee Miller, Jr. (“Plaintiff”), proceeding *pro se* and *in forma pauperis* and currently incarcerated at Calipatria Correctional Facility, filed a request seeking from this Court a status report and attempting to “give notice to appeal any dismissal by this court on the deliberate indifference to his serious medical needs against all defendants.” (Doc. No. 115 at p. 1.)

II.

DISCUSSION AND ORDER THEREON

A. Status Report

In the request, Plaintiff contends a “prison official stated to the Plaintiff that this case has been dismissed.” (Doc. No. 115 at p. 1.) Further, Plaintiff contends he has been unable to confirm the prison official’s statement because Plaintiff “has not been receiving his legal mail from this court . . .” (Doc. No. 115 at p. 1.) Plaintiff, therefore, requests a status report from the Court.

1 A review of the record shows this case is not closed. At the present time, the docket lists
2 three pending matters: (1) Defendant’s Motion for Summary Judgment [Doc. Nos. 65 and 101]; (2)
3 Plaintiff’s Motion for Order for Law Library and Order Stopping Prison Official From Removing
4 Court Paper from Plaintiff’s Filing with this Court [Doc. No. 104]; (3) Plaintiff’s re-submitted
5 Motion/Request for Declaratory Relief Pursuant to Federal Rules of Civil Procedure Rule 57 [Doc.
6 No. 108].

7 **B. Notice of Appeal**


8 Additionally, in his request, Plaintiff attempts to “give notice to appeal any dismissal by this
9 court on the deliberate indifference to his serious medical needs against all defendants.” (Doc. No.
10 115 at 1). As discussed above, a motion for summary judgment is pending and the challenge to
11 Plaintiff’s deliberate indifference claim has not yet been adjudicated. Thus, Plaintiff’s attempted
12 notice of appeal is premature. *See* 1-1 *Constitutional Rights of Prisoners* § 1.3.2 (Matthew Bender,
13 2007) (“[A]n appeal can be made only from a final judgment.”).

14 **C. Conclusion**

15 The Court has advised Plaintiff of the status of this matter as requested. Any further
16 questions regarding this case may be directed to the Magistrate Judge’s law clerk at (619) 557-
17 6624.

18 **IT IS SO ORDERED.**

19 DATED: January 5, 2011

20 
21 Hon. William McCurine, Jr.
22 U.S. Magistrate Judge, U.S. District Court
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