UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

ANTHONY CRAIG HUCKABEE, Plaintiff,) Case No.: 1:09-cv-00749-LJO-BAM (PC)) Appeal No. 14-15068
v. MEDICAL STAFF at CSATF, et al.,	ORDER DISREGARDING MOTION FOR CERTIFICATE OF APPEALABILITY (ECF No. 109)
Defendants.	ORDER DIRECTING CLERK OF COURT TO SERVE COPY TO NINTH CIRCUIT COURT OF APPEALS

Plaintiff Anthony Craig Huckabee ("Plaintiff") is a state prisoner, currently proceeding pro se, in this civil rights action pursuant to 42 U.S.C. § 1983.

On August 21, 2013, the Magistrate Judge issued Findings and Recommendations that the motion to dismiss filed by Defendants Diaz, Wu, Bhatt and Nguyen be granted in part and denied in part. (ECF No. 75.) On October 17, 2013, Plaintiff filed objections to the Findings and Recommendations. (ECF No. 94.) The district court considered Plaintiff's objections and partially adopted the Findings and Recommendations on December 10, 2013. Pursuant to that order, the Court (1) dismissed Defendant Warden Diaz from this action; (2) dismissed Plaintiff's state law causes of action; (3) dismissed Plaintiff's claims against Defendants Nguyen and Wu for events occurring prior to April 23, 2005; and (4) dismissed Plaintiff's claims against Defendant Bhatt as barred by the statute of limitations. (ECF No. 96.)

On December 26, 2013, Plaintiff filed a motion for reconsideration of the district court's order partially adopting the findings and recommendations. (ECF No. 101.) The motion for reconsideration currently is pending.

Thereafter, on January 13, 2014, Plaintiff field a notice of interlocutory appeal to the Court of Appeals for the Ninth Circuit, along with a motion for the issuance of a certificate of appealability pursuant to Federal Rule of Appellate Procedure 22(b). (ECF Nos. 108, 109.)

Rule 22 of the Federal Rules of Appellate Procedure requires that an applicant who files a notice of appeal in a habeas proceeding must obtain a certificate of appealability under 28 U.S.C. § 2253(c), or a statement why a certificate should not issue, from the district judge who rendered judgment in the action. Fed. R. App. P. 22(b). The district clerk must send the certificate or statement to the court of appeals along with the notice of appeal. Id. Plaintiff has requested a certificate of appealability for the notice of appeal he filed in this action on January 13, 2014. However, Plaintiff's appeal concerns a civil rights action under 42 U.S.C. § 1983, not a habeas proceeding. Therefore, Rule 22 does not apply to Plaintiff's appeal, and Plaintiff's application for a certificate of appealability shall be disregarded. Plaintiff is advised that his appeal was processed and forwarded to the Ninth Circuit on January 14, 2014. (ECF No. 110.)

Accordingly, IT IS HEREBY ORDERED that:

- 1. Plaintiff's Motion for Issuance of a Certificate of Appealability is DISREGARDED; and
 - 2. The Clerk is DIRECTED to serve a copy of this order on the Ninth Circuit.

IT IS SO ORDERED.

Dated: **January 24, 2014**

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