

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

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

7 Rule 22 of the Federal Rules of Appellate Procedure requires that an applicant who files a
8 notice of appeal in a habeas proceeding must obtain a certificate of appealability under 28 U.S.C. §
9 2253(c), or a statement why a certificate should not issue, from the district judge who rendered
10 judgment in the action. Fed. R. App. P. 22(b). The district clerk must send the certificate or statement
11 to the court of appeals along with the notice of appeal. Id. Plaintiff has requested a certificate of
12 appealability for the notice of appeal he filed in this action on January 13, 2014. However, Plaintiff's
13 appeal concerns a civil rights action under 42 U.S.C. § 1983, not a habeas proceeding. Therefore,
14 Rule 22 does not apply to Plaintiff's appeal, and Plaintiff's application for a certificate of appealability
15 shall be disregarded. Plaintiff is advised that his appeal was processed and forwarded to the Ninth
16 Circuit on January 14, 2014. (ECF No. 110.)

17 Accordingly, IT IS HEREBY ORDERED that:

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

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22 IT IS SO ORDERED.

23 Dated: January 24, 2014

24 /s/ Barbara A. McAuliffe
25 UNITED STATES MAGISTRATE JUDGE
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