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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KRISHNA REDDY,

Plaintiff,

v.

PRECYSE SOLUTIONS LLC, et al.,

Defendants.

Case No. 1:12-cv-02061-AWI-SAB

ORDER

Deadline: February 18, 2014

On January 3, 2014, Plaintiff filed a motion to set aside and vacate the order dismissing this action and a notice of appeal. (ECF Nos. 21-23.) On January 15, 2014, District Judge Anthony W. Ishii issued an order vacating the dismissal of this action and ordering Plaintiff to file an amended complaint or notify the Court of her desire to proceed on the cognizable claims within thirty days. (ECF No. 27.) Plaintiff filed an amended notice of appeal on January 21, 2014. (ECF No. 29.)

The courts of appeals have jurisdiction over all final decisions of the district court. 28 U.S.C. § 1291. Generally, “[o]nce a notice of appeal is filed, the district court is divested of jurisdiction over the matters being appealed.” National Ass’n of Home Builders v. Norton, 325 F.3d 1165, 1167 (9th Cir. 2003) (quoting Natural Res. Defense Council v. Southwest Marine, Inc., 242 F.3d 1163, 1166 (9th Cir.2001)). However, “[w]hen a Notice of Appeal is defective in that it refers to a non-appealable interlocutory order, it does not transfer jurisdiction to the

1 appellate court, and so the ordinary rule that the district court cannot act until the mandate has
2 issued on the appeal does not apply.” Nascimento v. Dummer, 508 F.3d 905, 908 (9th Cir. 2007).

3 In this instance, Plaintiff is appealing orders denying appointment of counsel, permission
4 to use the Electronic Case File system, a stay pending appeal, and transfer of this action. (ECF
5 No. 29.) None of these are final orders of the district court which are appealable, and this Court
6 is not deprived of jurisdiction during the pendency of Plaintiff’s appeal. See In re Westwood
7 Shake & Shingle, Inc., 971 F.2d 387, 389-90 (9th Cir. 1992) (appointment of counsel); Kasey v.
8 Molybdenum Corp. of America, 408 F.2d 16, 18 (9th Cir. 1969) (transfer to another district);
9 Mayacamas Corp. v. Gulfstream Aerospace Corp., 806 F.2d 928, 930 (9th Cir. 1986) (stay of
10 action).

11 Accordingly, Plaintiff is HEREBY ORDERED to (a) file an amended complaint curing
12 the deficiencies identified by the Court in its April 12, 2013 order, or (b) notify the Court in
13 writing that she does not wish to file an amended complaint and is willing to proceed only against
14 Precyse Solutions, LLC for those claims found to be cognizable thirty days from the date of
15 service of the January 15, 2014 order. Plaintiff is ordered to either amend her complaint or
16 notify the court of her intent to proceed **on or before February 18, 2014**. If Plaintiff fails to
17 comply with this order, this action shall be dismissed without prior notice for failure to prosecute.

18 IT IS SO ORDERED.

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20 Dated: January 23, 2014


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UNITED STATES MAGISTRATE JUDGE