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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HORTENSE WHITE,
Plaintiff,
vs.
TRENONE VALARIE, et al.,
Defendants.

1:13-cv-00157-AWI-GSA-PC
ORDER CONSTRUING PLAINTIFF'S
DOCUMENT FILED ON SEPTEMBER 23,
2013, AS A NOTICE OF APPEAL, IN
COMPLIANCE WITH THE NINTH
CIRCUIT'S ORDER OF OCTOBER 22,
2013 IN APPEAL NO. 13-16718
(Docs. 55, 60.)
ORDER VACATING FINDINGS AND
RECOMMENDATION ISSUED ON
NOVEMBER 8, 2013 AS MOOT
(Doc. 61.)
ORDER FOR CLERK TO:
(1) REFLECT NOTICE OF APPEAL ON
COURT DOCKET (Doc. 60);
(2) FORWARD NOTICE OF APPEAL
TO NINTH CIRCUIT (Doc. 60);
(3) SERVE A COPY OF THIS ORDER
ON THE NINTH CIRCUIT

I. BACKGROUND

Hortense White ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. This case was dismissed on August

1 30, 2013, with prejudice, for failure to state a claim upon which relief may be granted under §
2 1983, and judgment was entered on August 30, 2013. (Docs. 53, 54.)

3 On October 22, 2013, the Ninth Circuit issued an order dismissing Plaintiff's Appeal
4 No. 13-16718. (Doc. 55.) In the order, the Ninth Circuit directed its Clerk to "transmit
5 appellant's response to this court's September 11, 2013 order to show cause, received in this
6 court on September 23, 2013, to the district court for filing as a notice of appeal from the final
7 judgment entered in the district court on August 30, 2013." (Id.)

8 The district court received appellant's response from the Ninth Circuit's Clerk on or
9 about November 6, 2013 and filed it on September 23, 2013. (Doc. 60.) However, the district
10 court inadvertently construed the document as a Motion for Extension of Time to File an
11 Appeal. (Id.) On November 8, 2013, the court issued findings and a recommendation,
12 recommending that Plaintiff's Motion for Extension of Time be denied. (Doc. 61.)

13 **Discussion**

14 The district court now recognizes that, pursuant to the Ninth Circuit's order of
15 September 11, 2013, the document filed on September 23, 2013, Document 60 on the district
16 court's docket, should have been construed as a Notice of Appeal. Therefore, the court shall
17 now construe Document 60 as a Notice of Appeal, and the Clerk shall be directed to forward
18 the Notice of Appeal to the Ninth Circuit for processing.

19 In light of the fact that Document 60 is now construed as a Notice of Appeal, the
20 findings and recommendation issued on November 8, 2013, are moot and shall be vacated.

21 **III. CONCLUSION**

22 Based on the foregoing, IT IS HEREBY ORDERED that:

23 1. Pursuant to the Ninth Circuit's order of September 11, 2013 in Appeal No. 13-
24 16718, the document filed as Document 60 at the district court on September 23, 2013 is now
25 construed as a Notice of Appeal by Plaintiff from the final judgment entered in the district court
26 on August 30, 2013;

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1 2. The Clerk is directed to reflect on the court’s docket that Document 60 is now
2 construed as a Notice of Appeal, forward the Notice of Appeal to the Ninth
3 Circuit for processing, and serve a copy of this order on the Ninth Circuit; and

4 3. The Findings and Recommendation issued on November 8, 2013, are
5 **VACATED** as moot.

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9 **IT IS SO ORDERED.**

10 Dated: **December 6, 2013**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE