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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 IRVIN VAN BUREN,

11 Plaintiff,

12 v.

13 C. WADDLE, et al.,

14 Defendants.
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CASE NO. 1:14-cv-01894-DAD-MJS (PC)

**ORDER DENYING AS MOOT
PLAINTIFF'S MOTION TO WITHDRAW
NOTICE OF APPEAL**

(ECF No. 72)

16 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil
17 rights action brought pursuant to 42 U.S.C. § 1983. The case proceeds on Plaintiff's first
18 amended complaint ("FAC") against Defendants Neibert, Ronquillo, and Walinga for
19 excessive force under the Eighth Amendment and against Defendant Waddle for
20 excessive force and failure to protect under the Eighth Amendment. (ECF No. 7.)

21 Pursuant to an order dated October 11, 2016, Defendant Lesniak was terminated
22 from the case. (ECF No. 63.) On November 7, 2016, Plaintiff filed a notice of appeal of
23 the Court's order. (ECF No. 69.) Now pending before the Court is Plaintiff's November
24 30, 2016 motion to withdraw his notice of appeal as premature. (ECF No. 72.)

25 However, on December 14, 2016, the Ninth Circuit Court of Appeals dismissed
26 Plaintiff's appeal for lack of jurisdiction. (ECF No. 73.) Judgment was entered on January
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1 6, 2017. (ECF No. 75.) Accordingly, IT IS HEREBY ORDERED that Plaintiff's instant
2 motion to withdraw his appeal is DENIED as moot.

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4 IT IS SO ORDERED.

5 Dated: January 17, 2017

/s/ Michael J. Seng
6 UNITED STATES MAGISTRATE JUDGE
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