6 7 8 9 10 11 BARRY L. BROOKINS, 12 Plaintiff, 13 vs. 14 RAJENDRA DWIVEDI,

Defendant.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

1:18-cv-00645-DAD-GSA-PC Appeal case no. 21-16578

ORDER DENYING PLAINTIFF'S MOTION OF DISCOVERY AS MORE PROPERLY BROUGHT BEFORE THE NINTH CIRCUIT COURT OF APPEALS (ECF No. 100.)

ORDER FOR CLERK TO SERVE THIS ORDER ON THE NINTH CIRCUIT COURT OF APPEALS

Barry L. Brookins ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On September 7, 2021, this case was dismissed as barred by the statute of limitations, judgment was entered and the case was closed. (ECF Nos. 93, 94.) On September 24, 2021, Plaintiff filed a notice of appeal to the Ninth Circuit Court of Appeals which was processed to the Ninth Circuit and assigned case number 21-16578. (ECF Nos. 95, 96, 98.)

On October 4, 2021, Plaintiff filed a motion of discovery. (ECF No. 100.) In the motion, Plaintiff requests the court to consider arguments and evidence in opposition to the court's order dismissing this case.

Given that this case was dismissed on September 24, 2021, and that Plaintiff's appeal is now pending at the Ninth Circuit Court of Appeals, this court shall deny Plaintiff's motion of discovery as more properly brought before the Ninth Circuit Court of Appeals.

Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:

- 1. Plaintiff's motion of discovery, filed on October 4, 2021, is denied as more properly brought before the Ninth Circuit Court of Appeals; and
- 2. The Clerk is directed to serve a copy of this order on the Ninth Circuit Court of Appeals.

IT IS SO ORDERED.

Dated: October 5, 2021 /s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE