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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

FREDY L. GOMEZ,

No. CIV S-08-1317-LKK-CMK-P

Petitioner,

vs.

ORDER

D.K. SISTO, et al.,

Respondents.

\_\_\_\_\_ /

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner’s second motion for a stay-and-abeyance order (Doc. 39). Petitioner’s first motion for a stay-and-abeyance order was denied on February 20, 2009 (see order at Doc. 27). Petitioner filed an interlocutory appeal of that order (see Doc. 28) and the appeal has been processed to the Ninth Circuit Court of Appeals. Because plaintiff has appealed the denial of a stay-and-abeyance order, this court lacks jurisdiction to consider the current motion so long as the appeal is pending. For this reason, petitioner’s motion will be denied.

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1                   Accordingly, IT IS HEREBY ORDERED that petitioner's second motion for a  
2 stay-and-abeyance order (Doc. 39) is denied for lack of jurisdiction.

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5 DATED: October 1, 2009

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7 **CRAIG M. KELLISON**  
8 UNITED STATES MAGISTRATE JUDGE

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