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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN MCCLINTOCK,
Plaintiff,
v.
COLOSIMO, et al.,
Defendants.

No. 2:13-cv-0264 TLN DAD P

ORDER

Plaintiff is a state prisoner proceeding pro se with this civil rights action. On July 29, 2014, this court denied plaintiff's request for appointment of counsel. On August 4, 2014, plaintiff filed a notice of interlocutory appeal of the order, and on August 13, 2014, this court processed the appeal to the Ninth Circuit Court of Appeals. While that appeal was pending, plaintiff filed a motion to stay these proceedings. Before the court had an opportunity to rule on plaintiff's motion, however, the Ninth Circuit dismissed plaintiff's interlocutory appeal for lack of jurisdiction because the order plaintiff sought to challenge is not final or appealable.

Under these circumstances, the court will deny plaintiff's motion for a stay as having been rendered moot. In addition, the court observes that plaintiff has not filed an opposition to defendants' pending motion for summary judgment based on plaintiff's alleged failure to exhaust administrative remedies prior to filing suit as required. In the interest of justice, the court will grant plaintiff an additional thirty days to file an opposition to defendants' pending motion.

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for a stay of this action and related motion for clarification (Doc. Nos. 38 & 42) are denied as moot; and
2. Within thirty days of the date of service of this order plaintiff shall file an opposition to defendants' pending motion for summary judgment. Plaintiff's failure to file an opposition will be deemed as a statement of non-opposition and shall result in a recommendation that this action be dismissed pursuant Federal Rule of Civil Procedure 41(b).

Dated: October 28, 2014



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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