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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EZELL ANDERSON, JR.,
Plaintiff,
v.
UNITED STATES OF AMERICA,
Defendant.

No. 2:14-cv-2307 JAM CKD

ORDER

Defendant’s motion for summary judgment came on regularly for hearing on October 26, 2016. Dale McKinney appeared for plaintiff. Alyson Berg appeared telephonically for defendant. Upon review of the docket, and good cause appearing, THE COURT FINDS AS FOLLOWS:

Plaintiff’s counsel has requested additional time to file supplemental opposition to the motion for summary judgment. Because counsel has just recently substituted in as counsel of record for plaintiff, the court will allow supplemental briefing.

Plaintiff has filed a motion to stay pending interlocutory appeal.¹ Plaintiff fails to demonstrate good cause for issuance of a stay and the motion will therefore be denied.

¹ As correctly noted by defense counsel at the hearing, plaintiff’s notice of interlocutory appeal does not deprive the District Court of jurisdiction to proceed on motions properly before it. See Ruby v. Secretary of U.S. Navy, 365 F.2d 385, 389 (9th Cir. 1966).

1 Plaintiff has filed an in forma pauperis affidavit in which he states that he receives
2 monthly military retirement payment of \$1,351 and social security payment of \$1,035. Pursuant
3 to federal statute, a filing fee of \$350.00 is required to commence a civil action in federal district
4 court. 28 U.S.C. § 1914(a). In addition, a \$50.00 general administrative fee for civil cases must
5 be paid. 28 U.S.C. § 1914(b). The court may authorize the commencement of an action “without
6 prepayment of fees and costs or security therefor, by a person who makes affidavit that he is
7 unable to pay such costs or give security therefor.” 28 U.S.C. § 1915(a). The amount of
8 plaintiff’s income shows that plaintiff is able to pay the filing fee and costs. Thus, plaintiff has
9 made an inadequate showing of indigency. See Alexander v. Carson Adult High Sch., 9 F.3d
10 1448 (9th Cir. 1993); California Men’s Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991);
11 Stehouwer v. Hennessey, 841 F. Supp. 316, (N.D. Cal. 1994).

12 This matter was initially referred to the magistrate judge for pretrial management because
13 plaintiff was proceeding pro se. See Local Rule 302(c)(21). By order filed October 25, 2016,
14 counsel was substituted in for plaintiff. Because plaintiff is now represented by counsel, pretrial
15 matters, other than discovery motions, should now be noticed before the District Judge assigned
16 to this action. The magistrate judge shall continue to perform all duties described in Local Rule
17 302(c)(1)-(20). The pending motion for summary judgment shall remain before the undersigned
18 for issuance of findings and recommendations.

19 Accordingly, IT IS HEREBY ORDERED that:

20 1. No later than November 2, 2016, plaintiff may file supplemental opposition to the
21 motion for summary judgment. No later than November 7, 2016, defendant may file a
22 supplemental reply. The matter shall thereafter stand submitted.

23 2. Plaintiff’s motion to stay (ECF No. 66) is denied.

24 3. Plaintiff’s motion to proceed in forma pauperis (ECF No. 69) is denied;

25 4. This matter is referred back to the District Judge assigned to this action; upon
26 submission of the supplemental briefing, the undersigned will issue findings and
27 recommendations on the pending motion for summary judgment; and

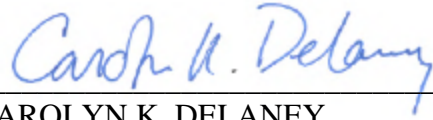
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5. Henceforth the caption on documents filed in this action shall be

No. 2:14-cv-2307 JAM CKD.

Dated: October 26, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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