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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GREGORY NICHOLAS STESHENKO,

No. C 09-5543 RS

Plaintiff,

v.

**ORDER VACATING JUDGMENT
ENTERED IN FAVOR OF HOSPITAL
DEFENDANTS AND STRIKING COST
BILL, WITHOUT PREJUDICE**

THOMAS MCKAY, et al.,

Defendants.

_____ /

On February 4, 2014, judgment was entered in favor of the Hospital Defendants, pursuant to an order filed the same day granting their motion for summary judgment. Neither the judgment nor any order, however, included an express finding under Rule 54(b) of the Federal Rules of Civil Procedure that final judgment should be entered as to “fewer than all the parties” because “there is no just reason for delay.” In response to plaintiff’s filing of a notice of appeal, the Ninth Circuit has now concluded no appealable order or judgment exists in the absence of such a finding, and the appeal has been dismissed.

Although judgment was entered in favor of the Hospital Defendants with the expectation that it would be immediately appealable, upon express consideration of the standards of Rule

1 54(b), no reason appears why it is not in the interest of justice to delay entry of judgment until
2 conclusion of the proceedings as to all defendants. Accordingly, the judgment entered on
3 February 4, 2014, already determined by the Ninth Circuit not to represent an appealable
4 judgment, is vacated. In light of these developments, the prior denial of plaintiff's motion to
5 strike the Hospital Defendants' cost bill must be reconsidered. As the judgment has been vacated,
6 the cost bill is premature. It is therefore stricken, without prejudice to the Hospital Defendants'
7 right to seek costs at such time as final judgment is entered in their favor.¹

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9 IT IS SO ORDERED.

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11 Dated: 2/26/14



12 RICHARD SEEBORG
13 UNITED STATES DISTRICT JUDGE

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¹ While this order was being prepared, plaintiff filed a motion for leave to seek reconsideration, both of the denial of his motion to strike the cost bill, and of the granting of summary judgment to the Hospital Defendants. The first request is moot, in light of this order. As to the second request, plaintiff has presented no grounds that would support reconsidering the summary judgment order.