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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ERIC E. QUINTON,

vs.

I. CLAY, Warden,

Petitioner,

Respondent.

CASE NO. 07cv0361-LAB (WMc)

**ORDER DENYING MOTION FOR
CERTIFICATE OF
APPEALABILITY**

[Dkt. no. 60]

On March 17, 2008, the Court denied the Petition without prejudice. That order permitted Petitioner to conduct additional discovery and, if he wished, to file a motion for leave to seek reconsideration. On May 19, 2008, Petitioner's motion for leave to seek reconsideration was accepted for filing. Before the Court could rule on that motion, however, he appealed. The Court denied his request for a certificate of appealability as to that appeal on October 15, 2008. That appeal is still pending before the Ninth Circuit. Because it was clear the appeal deprived this Court of jurisdiction to decide Petitioner's motion for reconsideration, the Court on March 5, 2009 denied the motion without prejudice (Docket no. 58 ("March 5 Order")).

Then on March 26, Petitioner filed a notice of appeal of the March 5 Order, followed on March 27 by a motion for certificate of appealability. While the March 5 Order denied Plaintiff's request for leave to seek reconsideration, it did so without prejudice in view of the

1 Court's lack of jurisdiction. Although the order explained the Court would be inclined to deny
2 him leave to seek reconsideration, it also held that the Court lacked jurisdiction to do so at
3 this time. The March 5 Order therefore does not operate as a final judgment.

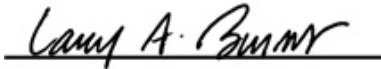
4 It is unclear whether the Ninth Circuit will deny the appeal and petition outright or deny
5 the appeal and remand. If and when the Ninth Circuit remands, Petitioner can then attempt
6 to show why the Court can and should entertain a renewed motion for leave to file a motion
7 for reconsideration.

8 As the Court previously explained, because this Court has not yet issued a final
9 judgment, the Court of Appeals would lack jurisdiction in this matter. See 28 U.S.C. § 1291.
10 Even if the Court of Appeals had jurisdiction over the non-final order issued March 5, 2009,
11 jurists of reason would not find the Court's decision debatable or wrong. *Slack v. McDaniel*,
12 529 U.S. 473, 484 (2000).

13 The certificate of appealability is therefore **DENIED**.

14
15 **IT IS SO ORDERED.**

16 DATED: March 30, 2009

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18 **HONORABLE LARRY ALAN BURNS**
19 United States District Judge

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