

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 JEHAN ZEB MIR,  
12 Plaintiff,  
13 v.  
14 KIMBERLY KIRCHMEYER et al.,  
15 Defendants.

Case No.: 3:12-cv-02340-GPC-AGS

**ORDER DENYING PLAINTIFF'S EX  
PARTE APPLICATION FOR AN  
ORDER TO CLERK OF THE  
COURT TO RE-OPEN THE CASE**

[ECF No. 299.]

17  
18 On October 20, 2017, Plaintiff Dr. Jehan Zeb Mir filed a Notice and Ex-Parte  
19 Application for an Order to Clerk of the Court to Re-Open the Case. Dkt. No. 299. The  
20 Court previously denied Plaintiff's Ex Parte Application for an Order to Stay Proceedings  
21 and Amend Order Granting Defendants' Motion for Summary Judgment, Dkt. No. 292,  
22 and denied without prejudice Plaintiff's Motion for Change of Venue. Dkt. No. 294.  
23 On September 26, 2017, the Court granted Defendants' Motion for Summary Judgment<sup>1</sup>  
24 and denied Plaintiff's Motion for Summary Judgment. Dkt. No. 288.

25  
26 <sup>1</sup> While Defendants' motion was titled "Motion for Summary Judgment or, in the Alternative, Summary  
27 Adjudication of the Issues," the Court's order was not a partial grant of summary judgment (summary  
28

1 Plaintiff requests that the Court order the Clerk to re-open the case. Dkt. No. 299 at  
2 1. Plaintiff contends that the case was erroneously closed because the Court's grant of  
3 summary adjudication did not dispose of all of the issues in the case. This interpretation  
4 is erroneous as the Court granted *summary judgment* as to the entirety of the case and  
5 disposed of all remaining issues in the case.

6 The Court has already explained that the sole remaining claim for the Court to  
7 address in its Order Granting Defendants' Motion for Summary Judgment was Plaintiff's  
8 Section 1983 due process claim. *See* Dkt. No. 295 (quoting Dkt. No. 169 order granting  
9 motion to dismiss Fourth Amended Complaint that stated the only remaining claim was  
10 [p]laintiff's Section 1983 claim for prospective relief"). Accordingly, the sole remaining  
11 issue for the Court to address in its Order Granting Defendants' Motion for Summary  
12 Judgment was this due process claim. Because the Court granted summary judgment as  
13 to Defendants on this claim, there are no remaining issues in this case. The Clerk  
14 correctly issued a judgment on September 26, 2017. Dkt. No. 289.

15 Second, the Court will decline to entertain Plaintiff's request to re-open the case  
16 because his case is currently on appeal before the Ninth Circuit. *See* Dkt. No. 290 (notice  
17 of appeal to Ninth Circuit); Dkt. No. 296 (assigning case no. 17-56576); Dkt. No. 297  
18 (appellate briefing schedule). Once a notice of appeal is filed, the district court is  
19 divested of jurisdiction over the matters being appealed. *Nat. Res. Def. Council, Inc. v.*  
20 *Sw. Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001). This rule is judge-made; its  
21 purpose is to promote judicial economy and avoid the confusion that would ensue from  
22 having the same issues before two courts simultaneously. *Masalosalo v. Stonewall Ins.*  
23 *Co.*, 718 F.2d 955, 956 (9th Cir. 1983). The principle of exclusive appellate jurisdiction is

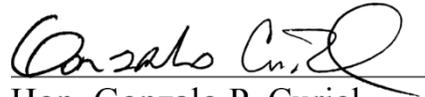
24  
25  
26 \_\_\_\_\_  
26 adjudication), but rather a grant of summary judgment in its entirety as to all remaining issues in the  
27 case.  
28

1 not, however, absolute. *Masalosalo*, 718 F.2d at 956. The district court retains  
2 jurisdiction during the pendency of an appeal to act to preserve the status quo. *Hoffman*  
3 *v. Beer Drivers & Salesmen's Local Union No. 888*, 536 F.2d 1268, 1276 (9th Cir.1976).  
4 In order to preserve the status quo during the pendency of the appeal, the court will  
5 accordingly decline to re-open the case.

6 Accordingly, because (1) the district court's Dkt. No. 288 order disposed of all  
7 remaining issues in the case and (2) there is an active pending appeal in this case, the  
8 Court will **DENY** Plaintiff's Ex Parte Application for an Order to Clerk of the Court to  
9 Re-open the Case.

10 **IT IS SO ORDERED.**

11  
12  
13 Dated: October 24, 2017

  
14 Hon. Gonzalo P. Curiel  
15 United States District Judge  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28