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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Michael Salman and Suzanne Salman,
9 husband and wife,

No. CV 12-1219-PHX-JAT

10 Plaintiffs,

ORDER

11 v.

12 City of Phoenix, a municipal corporation of
13 the State of Arizona,

14 Defendant.
15

16 Pending before the Court is Plaintiffs' Emergency Motion for Preliminary
17 Injunction. (Doc. 44). On June 15, 2012, this Court denied Plaintiffs' Motions for a
18 Temporary Restraining Order and a Preliminary Injunction and dismissed this case
19 without prejudice. (Doc. 36). On July 3, 2012, Plaintiffs filed a Notice of Appeal with
20 the Ninth Circuit Court of Appeals. (Doc. 40). Plaintiffs also sought emergency
21 injunctive relief before the Court of Appeals. The Court of Appeals denied Plaintiffs'
22 Motion for Emergency Motion for Injunctive Relief "without prejudice to its renewal
23 following presentation to the district court." (Doc. 42 at 1). Plaintiffs then re-filed their
24 Motion for Preliminary Injunction in this Court. (Doc. 44).

25 It appears that Plaintiffs attempted to appeal to the Court of Appeals under Ninth
26 Circuit Rule 3-3 by titling the caption of their Notice of Appeal "Preliminary Injunction
27 Appeal." However, because this entire action has been dismissed on the merits, the Court
28 of Appeals noted that, in reality, this is not an appeal of a denial of a preliminary

1 injunction, but instead is an appeal of the entire case. To that end, the Court of Appeals
2 confirmed the prior briefing schedule for the merits of the appeal.

3 The Court of Appeals went on to note that Plaintiffs could seek a stay or
4 injunction pending appeal under Federal Rule of Appellate Procedure 8(a). Pursuant to
5 Federal Rule of Appellate Procedure 8(a)(1), to obtain a stay or injunction from the Ninth
6 Circuit Court of Appeals while an appeal is pending, “[a] party must ordinarily move first
7 in the district court.” Fed. R.App. P. 8(a)(1)(C), as Plaintiffs have now done. Plaintiffs
8 do not attempt to satisfy the test for a stay pending appeal under Federal Rule of
9 Appellate Procedure 8(a). Instead, Plaintiffs re-filed with this Court what they had
10 originally filed with the Ninth Circuit Court of Appeals, which is essentially an attempt to
11 appeal the denial of the original preliminary injunction motion.

12 At the district court level, the Court analyzes a request for a stay or injunction
13 pending appeal under Federal Rule of Civil Procedure 62. Pursuant to Federal Rule of
14 Civil Procedure 62(c), while an appeal is pending, a district court “may suspend, modify,
15 restore, or grant an injunction on terms for bond or other terms that secure the opposing
16 party’s rights.” Fed.R.Civ. P.62(c). Rule 62(c) codifies the exception to the general rule
17 of exclusive appellate jurisdiction. *McClatchy Newspapers v. Cent. Valley*
18 *Typographical Union No. 46*, 686 F.2d 731, 734 (9th Cir. 1982). Rule 62(c) “does not
19 restore jurisdiction to the district court to adjudicate anew the merits of the case.” *Id.*

20 The Supreme Court has held that “[u]nder both [Federal Rule of Civil Procedure
21 62(c) and Federal Rule of Appellate Procedure 8(a)], . . . the factors regulating the
22 issuance of a stay are generally the same: (1) whether the stay applicant has made a
23 strong showing that he is likely to succeed on the merits; (2) whether the applicant will be
24 irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure
25 the other parties interested in the proceeding; and (4) where the public interest lies.”
26 *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (internal citations omitted).

27 To find that Plaintiffs have made a strong showing that they were likely to succeed
28 on the merits, the Court would have to reconsider its previous Order that Plaintiffs’

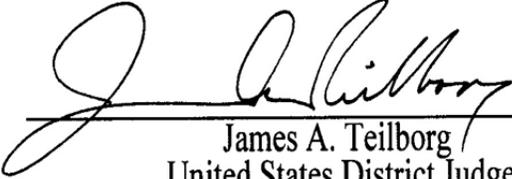
1 claims are barred by either res judicata, *Heck v. Humphrey*, 512 U.S. 477 (1994), and/or
2 the *Rooker-Feldman* doctrine. Because Plaintiffs' present motion does not state any new
3 reasons that they are likely to succeed on the merits that were not already asserted in their
4 prior motions for temporary restraining order and preliminary injunction, this Court
5 cannot find that Plaintiffs are likely to succeed on the merits of their appeal. Because
6 Plaintiffs must meet all four prongs of the *Hilton* test to obtain Rule 62(c) relief, the
7 Court need not examine the other three prongs of the *Hilton* test.

8 Based on the foregoing,

9 **IT IS ORDERED** that Plaintiffs' Emergency Motion for Preliminary Injunction
10 (Doc. 44) is denied.

11 Dated this 9th day of July, 2012.

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James A. Teilborg
United States District Judge