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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

Morris Rodgers,)	No. CV 1-06-1083-JAT
Plaintiff,)	ORDER
vs.)	
Ruben Reynaga, et al.,)	
Defendants.)	

Pending before the Court are Plaintiff Morris Rodgers’ Motion for Relief from Final Order and Judgment (Doc. # 41), and Plaintiff’s Request for Judicial Notice (Doc. # 44) in support of his Rule 60(b) motion. For the reasons that follow, the Court denies Plaintiff’s Rule 60(b) motion, as well as his request for judicial notice.

On September 16, 2009, this Court issued an Order dismissing Plaintiff’s claims without prejudice against all Defendants for Plaintiff’s failure to exhaust his available administrative remedies. (Doc. # 37.) On September 17, the Clerk of the Court issued a judgment dismissing this case. On September 28, Plaintiff filed a notice of appeal to the Ninth Circuit Court of Appeals. (Doc. # 39.) On October 2, Plaintiff filed his Rule 60(b) motion.

“The filing of a notice of appeal divests the district court of jurisdiction.” *Gould v. Mut. Life Ins. Co. of N.Y.*, 790 F.2d 769, 772 (9th Cir. 1986). “To seek Rule 60(b) relief during the pendency of an appeal, the proper procedure is to ask the district court whether

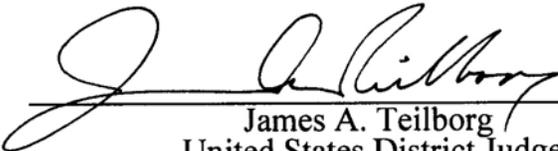
1 it wishes to entertain the motion, or to grant it, and then move [the appellate] court, if
2 appropriate, for remand of the case.” *Williams v. Woodford*, 384 F.3d 567, 586 (9th Cir.
3 2004) (quotations omitted). Because Plaintiff filed his Rule 60(b) motion after he filed his
4 notice of appeal, and because Plaintiff failed to follow the required procedure outlined in
5 *Williams* in order to revest this Court with jurisdiction to consider Plaintiff’s Rule 60(b)
6 motion, the Court is without jurisdiction to consider Plaintiff’s motion.

7 Accordingly,

8 **IT IS ORDERED** that Plaintiff Morris Rodgers’ Motion for Relief from Final Order
9 and Judgment (Doc. # 41) is denied.

10 **IT IS FURTHER ORDERED** that Plaintiff’s Request for Judicial Notice (Doc. # 44)
11 is denied.

12 DATED this 10th day of June, 2010.

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17 James A. Teilborg
18 United States District Judge
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