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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL HUDSON,

CASE NO. 1:08-cv-00249-AWI JLT PC

Plaintiff,

**ORDER DENYING PLAINTIFF’S
MOTION FOR JUDGMENT AS A
MATTER OF LAW PURSUANT
TO RULE 50**

v.

**TERRY BRIAN and
ROBERT VOLKER,**

(Document #86)

Defendants.

On February 2, 2012, a jury returned a verdict in favor of Defendants in this action. On February 8, 2012, Plaintiff filed a motion for judgment as a matter of law pursuant to Rule 50 of the Federal Rules of Civil Procedure. Plaintiff then filed an appeal. A review of the docket in this action reveals that Plaintiff’s Rule 50 motion remains pending. While the filing of a notice of appeal generally divests a district court of jurisdiction, Rule 62.1 of the Federal Rules of Civil Procedure allows the court jurisdiction to address a pending Rule 50 motion. See Fed. R. Civ. P. 62.1(a)(2).

Motions for judgment as a matter of law are governed by Rule 50. Rule 50(a) governs pre-verdict motions while Rule 50(b) applies to post-verdict motions. Rule 50(a) allows the court to resolve an issue against a party or grant a motion for a judgment as a matter of law if, after a party has been fully heard on an issue, “the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue.” Fed. R. Civ. Pro. 50(a). A motion for judgment as a matter of law pursuant to Rule 50(b) is appropriate when the

1 evidence permits only one reasonable conclusion, and that conclusion is contrary to that of the
2 jury. Martin v. Cal. Dep't of Veterans Affairs, 560 F.3d 1042, 1046 (9th Cir. 2009).

3 The procedural requirements for filing a motion for a judgment as a matter of law are
4 clearly set forth in Rule 50(b), and read as follows:

5 **(b) Renewing the Motion After Trial; Alternative Motion for a New Trial.** If
6 the court does not grant a motion for judgment as a matter of law made under
7 Rule 50(a), the court is considered to have submitted the action to the jury subject
8 to the court's later deciding the legal questions raised by the motion. No later than
9 28 days after the entry of judgment--or if the motion addresses a jury issue not
10 decided by a verdict, no later than 28 days after the jury was discharged--the
11 movant may file a renewed motion for judgment as a matter of law and may
12 include an alternative or joint request for a new trial under Rule 59. In ruling on
13 the renewed motion, the court may:

- 14 (1) allow judgment on the verdict, if the jury returned a verdict;
- 15 (2) order a new trial; or
- 16 (3) direct the entry of judgment as a matter of law.


17 Fed. R. Civ. Pro. 50. The Ninth Circuit has strictly construed Rule 50(b) and held the “failure to
18 file a Rule 50(a) motion precludes consideration of a Rule 50(b) motion for judgment as a matter
19 of law.” Tortu v. Las Vegas Metropolitan Police Dept., 556 F.3d 1075, 1083 (9th Cir. 2009); see
20 also Nitco Holding Corp. v. Boujikian, 491 F.3d 1086, 1089-90 (9th Cir. 2007) (finding appellant
21 waived challenge under Rule 50(b) by not properly bringing motion pre-verdict motion pursuant
22 to Rule 50(a)).

23 Plaintiff did not move for judgment as a matter of law under Rule 50(a) prior to the close
24 of the case and before the verdict. Thus, Plaintiff is foreclosed from moving for judgment as a
25 matter of law at this point in the proceedings.

26 Accordingly, Plaintiff’s motion for judgment as a matter of law pursuant to Rule 50 is
27 DENIED.

28 IT IS SO ORDERED.

Dated: January 7, 2013



UNITED STATES DISTRICT JUDGE