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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

STEVEN WILLIAMS,	CASE NO. 1:09-cv-00551-AWI-GBC PC
Plaintiff,	ORDER GRANTING DEFENDANTS’
v.	MOTION TO STRIKE AND STRIKING
D. ZANCHI,	PLAINTIFF’S MOTION FOR
Defendant.	RECONSIDERATION
	(ECF Nos. 33, 34)

Plaintiff Steven Williams (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action was proceeding on Plaintiff’s complaint filed on March 24, 2009, against Defendant D. Zanchi for retaliation. (ECF No. 1.) On April 14, 2010, Defendant filed a motion to dismiss and a motion to declare Plaintiff a vexatious litigant. (ECF Nos. 18, 19.) The Court adopted the findings and recommendations recommending granting the motion to dismiss on December 3, 2010, and judgment was entered. (ECF Nos. 28, 29.) Plaintiff filed a timely notice of appeal on December 17, 2010. (ECF No. 30.) On February 17, 2011, Plaintiff filed a motion for relief from judgment pursuant to Fed. R. Civ. Proc. 60(b). (ECF No. 33.) On March 7, 2011, Defendants filed a motion to strike for lack of jurisdiction. (ECF No. 34.)

In general, Plaintiff’s timely filing of the notice of appeal from the judgment divested this Court of jurisdiction. See Laurino v. Syringa General Hosp., 279 F.3d 750 , 755 (9th Cir. 2002); Pope v. Savings Bank of Puget Sound, 850 F.2d 1345, 1347 (9th Cir. 1988). However, Rule 4 of the Federal Rules of Appellate Procedure allows the court to rule on certain motions regardless of

1 whether the plaintiff has filed a notice of appeal. See Fed. R. App. Pro. 4(a)(4). Plaintiff's motion
2 was filed pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Because the motion was
3 **not** filed within 28 days after the entry of judgement, this court maintains no jurisdiction to decide
4 Plaintiff's motion. See Fed. R. App. Pro. 4(a)(4)(vi).

5 Accordingly, Defendants' motion to strike is HEREBY GRANTED and Plaintiff's motion
6 for relief from judgment is HEREBY ORDERED STRICKEN from the record for lack of
7 jurisdiction.

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9 IT IS SO ORDERED.

10 Dated: March 31, 2011

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13 CHIEF UNITED STATES DISTRICT JUDGE
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