

1 On October 18, 2011, the Magistrate Judge dismissed Plaintiff's complaint with prejudice
2 for failure to state a claim and entered judgment. (ECF Nos. 13, 14.) On June 20, 2016, Plaintiff
3 filed a motion for relief from the Court's October 18, 2011 order. (ECF No. 16.) On December
4 20, 2016, the Court issued an order denying Plaintiff's motion as untimely. (ECF No. 17.)
5 Plaintiff now appeals the Court's order denying his motion. (ECF No. 18.)

6 Plaintiff failed to file a motion for relief within the time periods prescribed in Federal Rule
7 of Civil Procedure 60(b). Motions made under Rule 60(b)(1)-(3) must be filed no more than one
8 year after the entry of the judgment or order. Fed. R. Civ. P. 60(c)(1). All other motions under
9 Rule 60(b) must be made within a "reasonable time." *Id.* Plaintiff did not file his motion for relief
10 from the Court's October 18, 2011 order until almost five years after the entry of the judgment,
11 well beyond the time limits permitted under Rule 60(c)(1). Plaintiff did not even inquire about the
12 status of his case until more than four years had passed following the entry of the judgment in his
13 case. Plaintiff's appeal of the Court's order, which resulted from Plaintiff's own inaction, is
14 therefore frivolous.

15 Accordingly, the Court HEREBY ORDERS that:

- 16 1. This matter is declared frivolous;
- 17 2. In accordance with 28 U.S.C. § 1915(a)(3), Plaintiff is not entitled to proceed in forma
18 pauperis in Appeal No. 17-15098, filed January 12, 2017;
- 19 3. As required by Federal Rules of Appellate Procedure 24(a)(4), this Order serves as
20 notice to the parties and the United States Court of Appeals for the Ninth Circuit of the
21 finding that Plaintiff is not entitled to proceed in forma pauperis for this appeal; and
- 22 4. The Clerk of the Court is directed to serve a copy of this Order on Plaintiff and the
23 United States Court of Appeals for the Ninth Circuit.

24
25 IT IS SO ORDERED.

26 Dated: January 26, 2017

27 /s/ Barbara A. McAuliffe
28 UNITED STATES MAGISTRATE JUDGE