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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SUSAN MAE POLK,
Plaintiff,
v.
MARY LATTIMORE et al.,
Defendants.

No. 1:12-cv-01156-DAD-BAM

ORDER DENYING PLAINTIFF’S MOTIONS
FOR RELIEF FROM FINAL JUDGMENT

(Doc. No. 91)

Plaintiff Susan Mae Polk is appearing *pro se* and *in forma pauperis* in the civil rights action pursuant to 42 U.S.C. § 1983. On February 21, 2017, the court adopted in part the assigned magistrate judge’s findings and recommendations and, accordingly, dismissed this action for failure to state a claim upon which relief may be granted and for failure to comply with Rule 8(a) and 18(a) of the Federal Rules of Civil Procedure. (Doc. No. 87.) Judgment was entered in accordance with that order. (Doc. No. 88.)

Following dismissal of this action and entry of final judgment, on April 3, 2017, plaintiff filed the instant motion for relief from judgment under Rule 60(b)(1) and (2) of the Federal Rules of Civil Procedure. (Doc. No. 91.) Thereafter, plaintiff also filed a notice of appeal with the United States Court of Appeals for the Ninth Circuit. (Doc. No. 92.) Plaintiff’s appeal is now pending.

1 Before addressing the substance of plaintiff’s motion, the court must consider whether it
2 has jurisdiction to entertain such motion while plaintiff’s appeal is pending. Generally, the filing
3 of a notice of appeal divests the district court of jurisdiction over the matters appealed. *Townley*
4 *v. Miller*, 693 F.3d 1041, 1042 (9th Cir. 2012) (citing *Davis v. United States*, 667 F.2d 822 (9th
5 Cir. 1982)). Nevertheless,

6 If a timely motion is made for relief that the court lacks authority to
7 grant because of an appeal that has been docketed and is pending,
8 the court may: (1) defer considering the motion; (2) deny the
9 motion; or (3) state either that it would grant the motion if the court
of appeals remands for that purpose or that the motion raises a
substantial issue.

10 Fed. R. Civ. P. 62.1(a); *see also Simpson v. Evans*, 525 F. App’x 535, 536 (9th Cir. 2013)
11 (holding that a district court retained jurisdiction to deny a timely-filed motion for relief during
12 the pendency of the petitioner’s appeal, pursuant to Rule 62.1(a)(2)).¹ Consequently, this court
13 retains jurisdiction to deny plaintiff’s motion for relief from judgment, which it does for the
14 reasons discussed below.

15 LEGAL STANDARD

16 Rule 60(b) of the Federal Rules of Civil Procedure provides in relevant part:

17 On motion and just terms, the court may relieve a party or its legal
18 representative from a final judgment, order, or proceeding for the
following reasons:

- 19 (1) mistake, inadvertence, surprise, or excusable neglect;
20 (2) newly discovered evidence that, with reasonable diligence,
21 could not have been discovered in time to move for a new trial
under Rule 59(b);

22 * * *

23 A motion under Rule 60(b)(1) or (2) must be made no more than a year after the entry of the
24 judgment. Fed. R. Civ. P. 60(c).

25 Generally speaking, a motion for reconsideration “should not be granted . . . unless the
26 district court is presented with newly discovered evidence, committed clear error, or if there is an

27 _____
28 ¹ Citation to this unpublished Ninth Circuit opinion is appropriate pursuant to Ninth Circuit Rule
36-3(b).

1 intervening change in the controlling law.” *389 Orange St. Partners v. Arnold*, 179 F. 3d 656,
2 665 (9th Cir. 1999) (citing *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F. 3d 1255, 1263 (9th Cir. 1993));
3 accord *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir.
4 2009).² Reconsideration of a prior order is an extraordinary remedy “to be used sparingly in the
5 interests of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of*
6 *Bishop*, 229 F. 3d 877, 890 (9th Cir. 2000) (citation omitted); see also *Harvest v. Castro*, 531
7 F.3d 737, 749 (9th Cir. 2008) (addressing reconsideration under Rule 60(b)). In seeking
8 reconsideration under Rule 60, the moving party “must demonstrate both injury and
9 circumstances beyond his control.” *Harvest*, 531 F.3d at 749 (internal quotation marks and
10 citation omitted).

11 DISCUSSION

12 Plaintiff moves to set aside the court’s judgment on several bases.

13 First, plaintiff contends she has come upon “newly discovered evidence” since she last
14 filed objections to the magistrate judge’s findings and recommendations. (Doc. No. 91 at 1–2.)
15 However, plaintiff appears to cite specific allegations she already recited in her October 2, 2016
16 objections (see Doc. No. 86), without explaining whether such allegations were newly discovered
17 since final judgment was entered in this case, or why she could not have discovered those
18 allegations with reasonable diligence prior to entry of judgment. See *Harvest*, 531 F.3d at 749.
19 In its order dismissing the case, the court noted that it fully considered plaintiff’s objections, and
20 it further concluded that such objections failed to address or cause reason to disturb a finding that
21 plaintiff’s fourth amended complaint failed to comply with Rule 8(a) and 18(a) of the Federal
22 Rules of Civil Procedure. (Doc. No. 87 at 3.) Accordingly, plaintiff’s motion for relief from
23 judgment will be denied on this basis.

24 ////

25 ² Furthermore, the Local Rules of this court require, in relevant part, that in moving for
26 reconsideration of an order denying or granting a prior motion, a party must show “what new or
27 different facts or circumstances are claimed to exist which did not exist or were not shown”
28 previously, “what other grounds exist for the motion,” and “why the facts or circumstances were
not shown” at the time the substance of the order which is objected to was considered. Local
Rule 230(j).

