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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN LUCAS,

 Plaintiff,

 v.

DONNY YOUNGBLOOD, et al.,

 Defendants.

No. 1:18-cv-0654-DAD-JLT

ORDER DENYING PLAINTIFF’S MOTIONS
FOR INDICATIVE RULING

(Doc. Nos. 55, 57)

Before the court are plaintiff John Lucas’s motions for indicative ruling. (Doc. Nos. 55, 57.) The two motions are substantively identical.¹ Defendants filed an opposition to plaintiff’s motion on November 21, 2019. (Doc. No. 56.) On November 25, 2019 the court vacated the noticed hearing date pursuant to Local Rule 230(g) and took the motion under submission. (Doc. No. 58.) On December 2, 2019, plaintiff filed a reply. (Doc. No. 60.)

BACKGROUND

In his first amended complaint filed in this action, plaintiff asserted that defendants violated his rights by refusing to take custody of his ex-wife whom he had placed under a citizen’s arrest for allegedly committing perjury during family law proceedings. (Doc. No. 21.)

¹ It appears plaintiff filed his motion initially on November 18, 2019, and after an issue with mail service of his motion, he filed the same motion a second time on November 21, 2019. (See Doc. No. 57 at 11.)

1 On August 10, 2018, defendants moved to dismiss plaintiff's first amended complaint. (Doc.
2 Nos. 22, 23.) The undersigned referred defendants' motion to the assigned magistrate judge,
3 (Doc. No. 30), who issued findings and recommendations on September 18, 2018, recommending
4 defendants' motion be granted and that plaintiff's complaint be dismissed with prejudice because
5 plaintiff had failed to allege facts to support his claims and the granting of leave to amend would
6 be futile (Doc. No. 39). On December 5, 2018, the undersigned adopted the magistrate judge's
7 findings and recommendations in full, dismissing plaintiff's first amended complaint without
8 further leave to amend and directing the Clerk of the Court to close this case. (Doc. No. 46.)
9 Accordingly, judgment was entered on December 5, 2018. (Doc. No. 47.)

10 Plaintiff appealed to the Ninth Circuit, filing a notice of appeal on December 20, 2018.
11 (Doc. No. 49.) Nearly a year later, on November 18, 2019 and November 21, 2019, plaintiff filed
12 his motions for an indicative ruling. (Doc. Nos. 55, 57.) On November 26, 2019, the Ninth
13 Circuit affirmed this court's order dismissing plaintiff's first amended complaint without leave to
14 amend. (Doc. No. 59.)

15 LEGAL STANDARD

16 "The filing of a notice of appeal generally divests the district court of jurisdiction over the
17 matters appealed." *McClatchy Newspapers v. Cent. Valley Typographical Union No. 46, Int'l*
18 *Typographical Union*, 686 F.2d 731, 734 (9th Cir. 1982). Under Federal Rule of Civil Procedure
19 62.1, courts can make an indicative ruling when a party files "a timely motion . . . for relief that
20 the court lacks authority to grant because of an appeal that has been docketed and is pending."
21 Fed. R. Civ. P. 62.1(a); *Best Odds Corp. v. iBus Media Ltd. (Best Odds Corp. II)*, 655 F. App'x
22 582, 583 (9th Cir. 2016).² Where a party timely moves for relief that the court cannot grant due
23 to a pending appeal, Rule 62.1 provides that the court may: "(1) defer considering the motion; (2)
24 deny the motion; or (3) state either that it would grant the motion if the court of appeals remands
25 for that purpose or that the motion raises a substantial issue." Fed. R. Civ. P. 62.1(a). A request
26 for an indicative ruling is not a standalone motion; it accompanies an underlying motion that the

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28 ² Citation to this unpublished Ninth Circuit opinion is appropriate pursuant to Ninth Circuit Rule 36-3(b).

1 movant wants the court to consider despite the appeal. Where no such underlying motion is
2 timely filed, Rule 62.1 does not apply. *Best Odds Corp. II*, 655 F. App'x at 583 (holding district
3 court did not err in denying motion for an indicative ruling because plaintiff “did not file any []
4 timely motion for relief” and “[t]hus, Rule 62.1 was not applicable”). Similarly, once the
5 appellate court issues a decision ending the appeal, the court’s jurisdiction to rule on the
6 underlying motion is restored, and the request for an indicative ruling is rendered moot. *See*
7 *Smith & Nephew, Inc. v. Arthrex, Inc.*, No. 3:04-cv-00029-MO, 2015 WL 3423024, at *1 (D. Or.
8 May 19, 2015) (denying as moot defendant’s motion for indicative ruling after Federal Circuit
9 issued a mandate affirming the court’s prior decision and ending the appeal).

10 ANALYSIS

11 Plaintiff filed his motions for an indicative ruling while his appeal of the court’s order
12 dismissing his case was pending in the Ninth Circuit. Because the Ninth Circuit has now issued
13 its decision affirming this court’s order dismissing plaintiff’s complaint with prejudice and ending
14 the appeal, Rule 61.2 does not apply, and plaintiff’s motion is now moot. *See Fed. R. Civ. P.*
15 *62.1(a); Smith & Nephew, Inc.*, 2015 WL 3423024 at *1.

16 Additionally, plaintiff’s motion for an indicative ruling fails to articulate any underlying
17 motion for relief. Plaintiff has submitted a proposed order which states, “this Court will grant
18 Plaintiff’s motion pursuant to Federal Rules of Procedure Rule 62.1 and proceed to rule upon
19 Plaintiff’s Motion to Amend Pleadings pursuant to Federal Rules of Civil Procedure Rule 60(b).”
20 (Doc. No. 57 at 14.) However, plaintiff has not provided the court with a Rule 60(b) motion or
21 otherwise set forth the grounds on which he should be relieved from the final judgment. As best
22 the court can tell, the relief plaintiff seeks is for the court to allow him to amend his complaint to
23 allege another incident of defendants refusing to act on his delegation of authority to perform a
24 citizen’s arrest—this time of a crop-dusting pilot who plaintiff claims sprayed pesticide on
25 plaintiff’s person and property on July 27, 2018. (Doc. No. 57 at 1–3.)

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1 If the court construes plaintiff’s filing as a motion under Rule 60(b) for relief from judgment—
2 which appears to be plaintiff’s intention—plaintiff has still failed to articulate any “newly
3 discovered evidence that, with reasonable diligence, could not have been discovered in time to
4 move for a new trial under Rule 59(b).”³ See Fed. R. Civ. P. 60(b)(2); see also *Best Odds Corp. I*,
5 2015 WL 3468917 at *2 (applying Rule 60(b) analysis even though motion for indicative relief
6 did not invoke Rule 60(b) and denying plaintiff’s motion for indicative ruling). Plaintiff has also
7 not articulated “any other reason that justifies relief,” see Fed. R. Civ. P. 60(b)(2), beyond
8 asserting that his moving papers “raise a *substantial issue*: Defendants’ repeated misapplication
9 of Fourth Amendment probable cause to citizens’ arrests,” (Doc. No. 60 at 3), which speaks to a
10 court’s options under Rule 62.1 for indicative rulings, but not to the grounds for the granting of
11 relief under Rule 60(b).

12 Moreover, Rule 60(c) requires that a Rule 60(b) motion “be made within a reasonable
13 time.” Fed. R. Civ. P. 60(c)(1). Plaintiff does not explain how his motions were made within a
14 reasonable time. He filed the motions on November 18, 2019 and November 21, 2019—nearly a
15 year after judgment was entered in this case on December 5, 2018—and he seeks leave to amend
16 his complaint to add allegations about a “crop duster spraying pesticide on plaintiff’s person and
17 property on July 27, 2018,” (Doc. No. 60 at 3)—an event that allegedly occurred well before
18 judgment was entered in this action.⁴ Thus, the court concludes that in addition to not sufficiently
19 articulating any basis for relief under Rule 60(b), plaintiff’s motions were also not made within a
20 reasonable time.

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22 ³ Even if the court construed plaintiff’s motions as seeking leave to amend under Rule 15, no
23 such relief could be appropriately granted because the court has already dismissed the complaint
24 and judgment has been entered in this case. See *Best Odds Corp. v. iBus Media Ltd. (Best Odds*
25 *Corp. I)*, No. 2:13-cv-02008-RCJ-VC, 2015 WL 3468917, at *2 (D. Nev. June 1, 2015), *aff’d*,
655 F. App’x 582 (9th Cir. 2016) (noting the court “could not simply give leave to amend the
Complaint under Rule 15 even if it had not yet lost jurisdiction to the Court of Appeals”).

26 ⁴ Plaintiff’s reply brief incorrectly states that the crop duster incident occurred on July 27, 2018
27 “after plaintiff’s appeal was docketed . . .” (Doc. No. 60 at 3.) But, plaintiff’s notice of appeal in
28 this case was filed on December 20, 2018, (Doc. No. 49), so the crop duster incident allegedly
occurred nearly five months before plaintiff’s appeal.

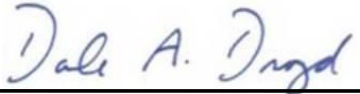
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CONCLUSION

For the reasons stated above, plaintiff's motions for an indicative ruling (Doc. Nos. 55, 57), are denied.

IT IS SO ORDERED.

Dated: **December 3, 2019**


UNITED STATES DISTRICT JUDGE