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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHAD J. ROMINE,  
  
                    Plaintiff,  
  
          v.  
  
BIG O TIRES CORPORATE  
HEADQUARTERS, et al.,  
  
                    Defendant.

No. 2:15-cv-0401-GEB

**RESPONSE TO PLAINTIFF'S MOTION  
TO AMEND THE AMENDED COMPLAINT  
AND RENEW THE RULE 60(B) MOTION**

Pending are Plaintiff's Motion for Leave to Amend the Amended Complaint, (ECF No. 53), and what he characterizes as his Motion to "Renew" his Rule 60(b) motion.<sup>1</sup> (ECF No. 54.) These motions concern a prior pending lawsuit in which Plaintiff's federal claims upon which subject matter jurisdiction was based were dismissed without prejudice and without leave to amend, and in the same order the district judge *sua sponte* dismissed Plaintiff's remaining state claims under 28 U.S.C. 1367(c). (Order 2:1-9, ECF No. 40.)

Plaintiff's referenced pending motions will be stricken because Plaintiff has not shown that the district judge has jurisdiction to consider them in light of Plaintiff's appeal to the Ninth Circuit, (ECF No. 46), in which Plaintiff challenges

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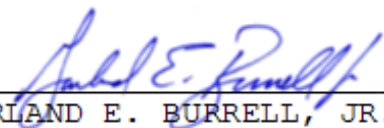
<sup>1</sup> Plaintiff filed a prior Rule 60(b) motion (ECF No. 50) that was denied in an order docketed as ECF No. 51.

1 certain rulings. See, e.g., Griggs v. Provident Consumer Disc.  
2 Co., 459 U.S. 56, 58 (1982) (“[A] federal district court and a  
3 federal court of appeals should not attempt to assert  
4 jurisdiction over a case simultaneously. The filing of a notice  
5 of appeal . . . confers jurisdiction on the court of appeals and  
6 divests the district court[.]”); Pro Sales, Inc. v. Texaco,  
7 U.S.A., 792 F.2d 1394, 1396 n.1 (9th Cir. 1986) (stating that a  
8 district court has no jurisdiction to amend its judgment after a  
9 notice of appeal had been filed); Moore v. Brewster, 96 F3d 1240,  
10 1246 (9th Cir. 1996) (stating that a district court has no  
11 jurisdiction to rule on a motion to amend the pleadings after an  
12 appeal from a final judgment has been filed).

13           Since Plaintiff has not shown that the district judge  
14 has jurisdiction to consider the referenced motions, the motions  
15 are stricken.

16 Dated: June 22, 2016

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GARIAND E. BURRELL, JR.  
Senior United States District Judge