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28IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIASECURITIES AND EXCHANGE  
COMMISSION,

No. C 83-00711 WHA

Plaintiff,

v.

JOSEPH S. AMUNDSEN,

Defendant.  
\_\_\_\_\_ /**ORDER DENYING MOTION TO  
VACATE INJUNCTION FOR LACK OF  
SUBJECT-MATTER JURISDICTION  
AND VACATING HEARING**

Defendant Joseph S. Amundsen has filed a motion to vacate the injunction entered in this matter in 1983. The issues raised in this motion are the same as the issues raised in Mr. Amundsen's previous motion to vacate the injunction, which was denied. Mr. Amundsen appealed the denial of that order. That appeal is still pending before our court of appeals. Thus, for the reasons set forth below, the instant motion is **DENIED** for lack of subject-matter jurisdiction.

In the recent order resolving plaintiff's motion for contempt, it was determined that defendant's auditing of financial statements of broker-dealers destined for filing with the Commission constituted appearing or practicing before the Commission (Dkt. No. 39). In that order, Mr. Amundsen was made aware that if he were so inclined, he could file a "cogent and persuasive motion to modify the scope of the injunction" (Dkt. No. 39 at 3). The order also stated that Mr. Amundsen "would be well-advised to retain counsel" to advise him on any such motion. Mr. Amundsen did not retain counsel. He did not file a motion to modify the scope of the

1 injunction. Instead, proceeding *pro se*, he filed another motion to vacate the injunction (Dkt. No.  
2 40).

3 On October 4, 2010, proceeding *pro se*, Mr. Amundsen filed his first motion to vacate the  
4 injunction (Dkt. No. 5). He raised three arguments in favor of vacating the injunction. *First*, that  
5 he had been rehabilitated, as evidenced by his thirty years of “good behavior.” *Second*, that the  
6 injunction was improper in light of the unfulfilled requirements of Section 7 of the Securities Act  
7 of 1933. *Third*, that the Commission had given him bad legal advice regarding the settlement  
8 agreement and that he was denied his “right of due process to understand the judgment” (Dkt. No.  
9 5). Mr. Amundsen’s first motion to vacate the injunction was denied because he did not make a  
10 showing, as is required under Federal Rule of Civil Procedure 60(b)(5), that conditions had  
11 changed, warranting vacating the injunction (Dkt. No. 14). Continuing to proceed *pro se*, Mr.  
12 Amundsen filed a notice of appeal, seeking reversal of that order, raising the same arguments as  
13 he did in the motion to vacate, and also arguing that he had been in compliance with the  
14 injunction. That appeal is still pending.

15 “Once a notice of appeal is filed, the district court is divested of jurisdiction over the  
16 matters being appealed.” *Natural Res. Def. Council v. Sw. Marine, Inc.*, 242 F.3d 1163, 1166 (9th  
17 Cir. 2001). The purpose of this rule is to, “promote judicial economy and avoid confusion that  
18 would ensue from having the same issues before two courts simultaneously. The principle of  
19 exclusive appellate jurisdiction is not, however, absolute. The district court retains jurisdiction  
20 during the pendency of an appeal to act to preserve the status quo.” *Ibid*.

21 Mr. Amundsen’s instant motion to vacate presents the same issues that are currently  
22 pending before our court of appeals. And providing Mr. Amundsen with the relief he seeks —  
23 vacating the injunction — would not be an act to “preserve the status quo.” The instant motion  
24 asserts three bases for vacating the injunction. *First*, Mr. Amundsen argues that the Commission  
25 attorneys provided him with bad legal advice as they “knew or should have know [sic] that there  
26 was no basis in law or in fact for this injunction and were in direct violation of 41 C.F.R. 60.250,  
27 the government’s pledge to help Vietnam Vets.” *Second*, Mr. Amundsen asserts violations of  
28 Section 7 of the Securities Act of 1933 and resulting invalidity of the injunction. *Third*, he argues

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that there is no probable cause to continue the injunction as “there has never been any intent to violate the injunction” (Dkt. No. 40).

Mr. Amundsen’s instant motion to vacate the injunction presents the same issues that are pending on appeal. Thus, Mr. Amundsen’s motion to vacate the injunction is **DENIED** for lack of subject-matter jurisdiction. The hearing set for March 8, 2012, is **VACATED**.

**IT IS SO ORDERED.**

Dated: March 2, 2012.



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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE