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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLARENCE A. BRANCH,
Plaintiff,
v.
STATE OF CALIFORNIA,
Defendant.

Case No. 14-cv-00297-JCS

**ORDER DENYING MOTION TO
AMEND**

Re: Dkt. No. 24

Plaintiff Clarence Branch initiated this action on January 17, 2014. On April 28, 2014, the Court entered judgment in favor of Defendant and dismissed the case with prejudice. Almost two years later, on March 16, 2016, Plaintiff filed an appeal to the Ninth Circuit, but it was denied on the basis that it was untimely. *See* Docket No. 19. The Ninth Circuit’s formal mandate was issued on June 9, 2016. Presently before the Court is Plaintiff’s “Motion to Amend,” which the Court construes as a motion for relief from judgment under Rule 60(b) of the Federal Rules of Civil Procedure. The Motion is DENIED.¹

The Ninth Circuit has held that even though appeal of a district court judgment divests the district court of jurisdiction over an action, once the appellate mandate has issued, the district court may consider a Rule 60(b) motion. *See Gould v. Mutual Life Insurance Co. of New York*, 790 F.2d 769 (9th Cir.1986) (“Although language in the cited cases supports the proposition that the district court never regains jurisdiction in the absence of a remand, the better approach is that the district court may consider motions to vacate once the mandate has issued. . . . We agree and adopt the rule that, once the appellate mandate has issued, leave of this court is not required for

¹ Plaintiff has consented to the jurisdiction of the undersigned magistrate judge pursuant to 28 U.S.C. § 626(c).

1 district court consideration of a Rule 60(b) motion.”). Therefore, the undersigned may consider
2 Plaintiff’s motion.

3 Rule 60(b) sets forth a variety of grounds on which the Court may relieve a party from a
4 final judgment. The Court finds, however, that Plaintiff has not identified any of them in his
5 Motion. Nor has he shown that his request was brought within a reasonable time, as required
6 under Rule 60(c). Accordingly, the Motion is DENIED.

7 **IT IS SO ORDERED.**

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9 Dated: November 28, 2016

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JOSEPH C. SPERO
Chief Magistrate Judge

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