

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**NEBRASKA DATA CENTERS, LLC, and
AMERICAN NEBRASKA LIMITED
PARTNERSHIP,**

Plaintiffs,

vs.

**LEO KHAYET, and TIMBER VENTURES,
LLC,**

Defendants.

8:17CV369

**MEMORANDUM
AND ORDER**

This matter is before the Court on the Motion for Reconsideration, ECF No. 272, filed by Defendant Leo Khayet. Based on “[c]onstitutional grounds,” Khayet’s Motion asks the Court to reconsider its Memorandum and Order, ECF No. 254, granting Plaintiffs’ Motion for Default Judgment. ECF No. 272. He also seeks relief from the accompanying Default Judgment, ECF No. 255. For the reasons stated below, the Motion will be denied.

Khayet filed multiple notices of appeal in this case, ECF Nos. 262 & 267, before he filed the pending Motion for Reconsideration, and, generally, “the filing of a notice of appeal ‘confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.’” *In re Fisette*, 695 F.3d 803, 806 (8th Cir. 2012) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). However, because the Court construes Khayet’s Motion for Reconsideration as seeking relief under Federal Rule of Civil Procedure 59(e) or Rule 60(b), or both, it must rule on the Motion pursuant to Federal Rule of Appellate Procedure 4(a)(4)(B)(i). *Smith v. Missouri*, 804 F.3d 919 (8th Cir. 2015) (per curiam) (“Because [the] NOA will not

become effective until after the District Court has ruled on [the] request for Rule 60(b) relief, we lack jurisdiction over the appeal at this time.”).

To the extent Khayet’s Motion seeks relief under Federal Rule of Civil Procedure 59(e), it is untimely. The Court entered judgment by default against Khayet on September 5, 2018, and he filed the pending Motion for Reconsideration on October 29, 2018. Fed. R. Civ. P. 59(e) (“A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.”). To the extent Khayet’s Motion seeks relief under Federal Rule of Civil Procedure 60(b), he has not demonstrated that he is entitled to any relief thereunder. See Def.’s Br., ECF No. 273. Accordingly,

IT IS ORDERED: The Motion for Reconsideration, ECF No. 272, filed by Defendant Leo Khayet, is denied.

Dated this 7th day of November, 2018.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge