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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GEORGE A. TOLIVER,

Plaintiff(s),

v.

NEVADA DEPARTMENT OF
CORRECTIONS, et al.,

Defendant(s).

Case No. 2:15-CV-1672 JCM (NJK)

ORDER

Presently before the court is pro se plaintiff George Toliver's motion to reopen case. (ECF No. 25). Defendant Nevada Department of Corrections ("NDOC") filed a response. (ECF No. 28). Plaintiff has not replied, and the time for doing so has since passed.

Also before the court is plaintiff's "motion for ruling on appeal from State Court." (ECF No. 26). Defendants have not filed a response, and the time to do so has since passed.

I. Facts

On February 22, 2016, plaintiff filed an amended complaint against defendant. (ECF No. 8). On July 6, 2016, this court entered an order granting the parties' stipulation of dismissal with prejudice based upon a settlement,¹ and the case was terminated. (ECF No. 20.)

The settlement agreement entered into between the parties contains a "Future Jurisdiction for Enforcement Actions" clause,

In the event that either party feels that the opposing party is not living up to their end of the bargains contained herein and wishes to institute an enforcement action, such an action must be filed in the Nevada state district court as a contract action, in the venue where the inmate is currently housed. Both parties understand that this

¹ A copy of the settlement is attached to defendant's response as Exhibit B. See (ECF No. 28-2).

1 provision acts as a forum selection clause, and that Nevada rules of contract will
2 apply to the enforcement action. Where state law is to be applied, this Agreement,
3 or the relevant portions thereof, shall be construed, interpreted, and enforced in
accordance with the laws, rules of procedure, and/or common law of the State of
Nevada.

4 (ECF No. 28-2 at 3).

5 In the instant action, plaintiff argues that defendant failed to honor the terms of the
6 settlement, and seeks reinstatement of his prior lawsuit on the basis of contractual repudiation.

7 (ECF No. 25 at 2).

8 **II. Discussion**

9 Plaintiff's motions request (1) that this court re-open plaintiff's case against, among others,
10 the Nevada Department of Corrections; and (2) that this court exercise appellate review over an
11 adverse state court judgment. The court will address these requests in turn.

12 i. Motion to re-open

13 "When a district court dismisses an action with prejudice pursuant to a settlement
14 agreement, federal jurisdiction usually ends." *Kelly v. Wengler*, 822 F.3d 1085, 1094 (9th Cir.
15 2016). Here, the parties negotiated within their agreement to adjudicate future enforcement actions
16 in state district court. (ECF No. 28-2 at 3). Therefore, this court is not the proper forum for
17 bringing an enforcement action.² See *Kelly*, 822 F.3d at 1094. Plaintiff's motion to re-open the
18 case will be denied.

19 ii. Motion to review a state court judgment

20 A federal district court ordinarily does not possess appellate jurisdiction over a state district
21 court's judgments. As the Ninth Circuit explained in *Carmona v. Carmona*, 603 F.3d 1041 (9th
22 Cir 2010), "de facto" appeals of state court judgments are prohibited by the Rooker-Feldman
23 doctrine. *Id.* at 1050. "A suit brought in federal district court is a 'de facto appeal' forbidden by
24 Rooker-Feldman when 'a federal plaintiff asserts as a legal wrong an allegedly erroneous decision
25 by a state court, and seeks relief from a state court judgment based on that decision.'" *Id.* (citing
26 *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003)).

27
28 ² Further, defendant's response alleges that plaintiff is currently litigating its claims in state
court (ECF No. 28 at 2-3), which provides an additional reason why this court is not a proper
forum.

1 Here, plaintiff's motion requests this court to review an allegedly erroneous state court
2 judgment that plaintiff claims harmed him. Under the Rooker-Feldman doctrine, this court lacks
3 jurisdiction to review such a judgment.³ See Carmona, 603 F.3d at 1051. Plaintiff's "motion for
4 ruling on appeal from State Court" will therefore be denied.

5 **III. Conclusion**

6 Accordingly,

7 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff's motion to
8 reopen case (ECF No. 25) be, and the same hereby is, DENIED.

9 IT IS FURTHER ORDERED that plaintiff's "motion for ruling on appeal from State
10 Court" (ECF No. 26) be, and the same hereby is, DENIED.

11 DATED December 1, 2017.

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14 UNITED STATES DISTRICT JUDGE

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28 ³ Although the Ninth Circuit has cautioned that "the Rooker-Feldman doctrine is a fairly narrow preclusion doctrine," *id.*, the court believes it applies to plaintiff's motion.