| Kinford v. Pi | cock et al | |
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| 10 | STEVEN KINFORD, |) |
| 11 | Plaintiff, |) |
| 12 | VS. | 3:15-cv-00512-RCJ-WGC |
| 13 | | ORDER |
| 14 | JAMES PINCOCK et al., | |
| 15 | Defendants. |) |
| 16 | |) |
| 17 | Plaintiff and Defendants in state con | out alloging Fighth Amondment violations and |
| 18 | | urt alleging Eighth Amendment violations and |
| 19 | negligence under state law based on allegedly defective facial reconstruction surgery. | |
| 20 | Defendants removed. The Court granted Defendants' motion to dismiss at the recommendation | |
| 21 | of the Magistrate Judge. The Magistrate Judge had recommended dismissal of the action with | |
| 22 | prejudice but also recommended keeping the case open to give Plaintiff an opportunity to amend | |
| 23 | to make allegations of unlawful retaliation as | gainst two new defendants. The Court nominally |
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| 25 | adopted the recommendation in full but in su | ubstance rejected it in part, ordering the Clerk to |
| 26 | close the case. | |
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After filing a notice of appeal, Plaintiff asked the Court to clarify the procedural posture of the case. The Court interpreted the motion as a motion for relief from judgment under Rule 60(a). The Court had lost jurisdiction to the Court of Appeals, however, and could only make an indicative ruling under Rule 62.1. The Court indicated that if the Court of Appeals were to remand for the purpose of ruling on the motion, the Court would rule that it made an oversight as contemplated under Rule 60(a) when it dismissed without leave to amend to make allegations of unlawful retaliation against the two proposed defendants. The Court of Appeals has now so remanded, and the Court now so rules.

CONCLUSION

IT IS HEREBY ORDERED that the Motion for Relief from Judgment (ECF No. 51) and the Motion to File Amended Complaint (ECF No. 56) are GRANTED.

IT IS FURTHER ORDERED that the Clerk shall DETACH and FILE the Third Amended Complaint (ECF No. 56-1), and the Magistrate Judge shall PREPARE a report and recommendation under 28 U.S.C. § 1915A in the ordinary course.

IT IS FURTHER ORDERED that the Motion for Appointment of Counsel (ECF No. 55) is DENIED.

IT IS SO ORDERED.

Dated this 12th day of April, 2017.

ROBERT C. JONES United States District Judge