

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

|                                   |   |                    |
|-----------------------------------|---|--------------------|
| FRED SMITH,                       | ) |                    |
|                                   | ) |                    |
| Plaintiff,                        | ) |                    |
|                                   | ) |                    |
| vs.                               | ) | NO. CIV-16-1135-HE |
|                                   | ) |                    |
| JAMES DRAWBRIDGE, <i>et al.</i> , | ) |                    |
|                                   | ) |                    |
| Defendants.                       | ) |                    |

**ORDER**

This case involves claims asserted by plaintiff Smith, a state prisoner appearing *pro se*, asserting various violations of federal law. After adopting reports from a U.S. Magistrate Judge, the court dismissed certain claims and granted summary judgment as to the remaining ones. [Doc. Nos. 49 & 78]. The court entered judgment in favor of defendants on June 13, 2018. [Doc. Nos. 78 & 79]. Plaintiff appealed from the judgment. [Doc. #80].

Plaintiff has now filed what he terms an objection to the report, presumably referring to the second report [Doc. #76] adopted by the court. The objection raises various further arguments going to the merits of his claims.


The pertinent report of the magistrate judge has already been adopted, and this new objection to it is not timely. Further, as plaintiff's new arguments appear to go to the merits of the previous decision, the pendency of the appeal deprives this court of authority to address his further arguments. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58-61 (1982) (“[t]he filing of a notice of appeal is an event of jurisdictional

significance—it 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 addition, even viewing defendant’s objection as a Rule 60(b) motion, no persuasive basis for relief under that rule is stated. *See* Fed.R.Civ.P. 62.1; *see also* Aldrich Enters., Inc. v. United States, 938 F.2d 1134, 1143 (10th Cir. 1991).

Plaintiff’s objection and/or motion [Doc. #88] is **DENIED**.

**IT IS SO ORDERED.**

Dated this 16th day of November, 2018.

  
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JOE HEATON  
CHIEF U.S. DISTRICT JUDGE