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UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

SEP 1 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MUHAMMAD KHAN,

Plaintiff-Appellant,

v.

SAP LABS, LLC,

Defendant-Appellee,

and

JEWELL PARKINSON; et al.,

Defendants.

No. 23-15591

D.C. No. 5:18-cv-07490-BLF
Northern District of California,
San Jose

ORDER

Info

10/1/23

Before: NGUYEN, FRIEDLAND, and SUNG, Circuit Judges.

The mandate issued on June 26, 2023. Upon review of appellant's late motion for reconsideration, we decline to reconsider the June 2, 2023 order, and deny the motion (Docket Entry No. 14). *See* 9th Cir. R. 27-10. The court considered appellant's response to the court's April 28, 2023 order to show cause prior to the June 2, 2023 order. This appeal remains closed.

No further filings will be entertained in this closed case.

UNITED STATES COURT OF APPEALS

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JUN 2 2023

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U.S. COURT OF APPEALS

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No. 23-15591

D.C. No. 5:18-cv-07490-BLF
Northern District of California,
San Jose

ORDER

Before: NGUYEN, FRIEDLAND, and SUNG, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the notice of appeal, served on April 9, 2023 and filed on April 19, 2023, was not filed or delivered to prison officials within 30 days after the district court's post-judgment order entered on March 6, 2023, denying appellant's motion to alter or amend the judgment. *See* 28 U.S.C. § 2107(a); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional); *see also* Fed. R. App. P. 26(b)(1) (court of appeals may not extend time to file a notice of appeal except as authorized in Rule 4); *Bowles v. Russell*, 551 U.S. 205 (2007) (court lacks authority to create equitable exceptions

to jurisdictional requirement of timely notice of appeal). Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 28 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MUHAMMAD KHAN,

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and

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Defendants.

No. 23-15591

D.C. No. 5:18-cv-07490-BLF
Northern District of California,
San Jose

ORDER

The district court's post-judgment order denying appellant's motion to alter or amend the judgment was entered on the docket on March 6, 2023. Appellant's notice of appeal was dated April 9, 2023, and received by the district court on April 28, 2023. Accordingly, the record suggests that this court may lack jurisdiction over this appeal because the notice of appeal was not filed or delivered to prison officials within 30 days after entry of the district court's judgment. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A), 4(c); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional); *Houston v. Lack*, 487 U.S. 266, 270 (1988) (notice of appeal deemed filed when it was delivered to prison authorities for forwarding to the

court). The record does not reflect that appellant has filed a motion in the district court to extend the time for appeal. *See* Fed. R. App. P. 4(a)(5), 26(b)(1).

Within 21 days after the date of this order, appellant must move for voluntary dismissal of the appeal, or show cause why it should not be dismissed for lack of jurisdiction. If appellant elects to show cause, a response may be filed within 10 days after service of the memorandum.

If appellant does not comply with this order, the Clerk will dismiss this appeal pursuant to Ninth Circuit Rule 42-1.

Briefing is suspended pending further order of the court.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Delaney Andersen
Deputy Clerk
Ninth Circuit Rule 27-7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MUHAMMAD KHAN,
Plaintiff,

v.

SAP LABS, LLC,
Defendant.

Case No. 18-cv-07490-BLF

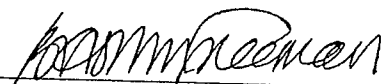
**ORDER TERMINATING PLAINTIFF'S
FOLLOW UP MOTION FILED
JULY 14, 2023**

[Re: ECF 199]

The United States Court of Appeals for the Ninth Circuit has dismissed Plaintiff's appeal from this Court's adverse judgment and denial of Plaintiff's motion to alter or amend judgment. *See* USCA Order, ECF 194. The mandate issued on June 26, 2023. *See* Mandate, ECF 196. As a result, this Court lacks jurisdiction to grant Plaintiff an extension of time to file an appeal or any other relief, which the Court explained in its order issued on July 6, 2023. *See* Order Advising that Court Lacks Jurisdiction, ECF 198.

In light of the foregoing, Plaintiff's Follow Up Motion filed on July 14, 2023, seeking an update regarding his prior motion for an extension of time to appeal, is TERMINATED. It appears from Plaintiff's Follow Up Motion that he has not received the Court's order issued on July 6, 2023, even though the docket reflects that the order was mailed to him on July 6, 2023. The Clerk shall mail Plaintiff another copy of the July 6, 2023 order, along with a copy of the present order. This order terminates ECF 199.

Dated: July 18, 2023


BETH LABSON FREEMAN
United States District Judge

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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 SAN JOSE DIVISION
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8 MUHAMMAD KHAN,
9 Plaintiff,

10 v.

11 SAP LABS, LLC,
12 Defendant.
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14

Case No. 18-cv-07490-BLF

**ORDER ADVISING THAT COURT
LACKS JURISDICTION TO
CONSIDER PLAINTIFF'S MOTION
FOR EXTENSION OF TIME TO FILE
APPEAL; AND TERMINATING
MOTION**

[Re: ECF 197]

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16 This Court entered judgment for Defendants and against Plaintiff on August 30, 2022, and
17 denied Plaintiff's motion to alter or amend judgment on March 6, 2023. *See* Jud., ECF 179;
18 Order, ECF 190. Plaintiff filed a notice of appeal on April 19, 2023, acknowledging that the
19 notice of appeal was "delayed" but requesting that it be considered on several grounds, including
20 an asserted delay in receiving the order denying his motion to alter or amend judgment, medical
21 issues, and the fact that the jail typewriter was broken. *See* Not. of Appeal, ECF 191.

22 On June 2, 2023, the United States Court of Appeals for the Ninth Circuit dismissed
23 Plaintiff's appeal for lack of jurisdiction on the ground that the appeal was untimely. *See* USCA
24 Order, ECF 194. The Ninth Circuit stated that the 30-day deadline for appeal is jurisdictional and
25 that courts lack authority to create equitable exceptions. *See id.* The Ninth Circuit's mandate
26 issued on June 26, 2023. *See* Mandate, ECF 196.

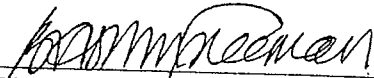
27 On June 30, 2023, Plaintiff filed a motion before this Court seeking an extension of time to
28 file his appeal. *See* Pl.'s Mot. for Extension, ECF 191. This Court is without jurisdiction to grant

1 the requested relief. The rule of mandate doctrine prohibits a lower court from taking any action
2 that contradicts the mandate of an appellate court. *See Hall v. City of Los Angeles*, 697 F.3d 1059,
3 1067 (9th Cir. 2012) (“A district court that has received the mandate of an appellate court cannot
4 vary or examine that mandate for any purpose other than executing it.”). Accordingly, this Court
5 cannot take any action contradicting the Ninth Circuit’s mandate giving effect to its June 2, 2023
6 judgment dismissing Plaintiff’s appeal as untimely.

7 Plaintiff’s motion for an extension of time to appeal is TERMINATED.

8 **IT IS SO ORDERED.**

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10 Dated: July 6, 2023

11 
12 BETH LABSON FREEMAN
13 United States District Judge
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**Additional material
from this filing is
available in the
Clerk's Office.**