VIII. Table of Appendicies

No: 17-2492

United States Court Of Appeals
For The Third Circuit

Erwin LeJon-Twin: El. *In Propria Persona, Sui Juris, In-Full-Life*

Petitioner / Plaintiff / Appellant,

v.

Joseph Marino, *Director - Human Resources for Impax Laboratories, Inc., formerly CorePharma, LLC.*

Respondent / Appellee.

On Appeal From the United States District Court for the

District of New Jersey at Newark. File No: 2:16-cv-02292-KM-MAH

Kevin McNulty, District Judge

Submitted: January 4, 2018

Decided and Filed: January 8, 2018

Before: JORDAN, RESTREPO, and SCIRICA, Circuit Judges

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-2492

ERWIN LEJON-TWIN EL,
Appellant

v.

JOE MARINO, Director, Human Resources;
IMPAX LABORATORIES, f/k/a Corepharma LLC

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. No. 2-16-cv-02292)
District Judge: Honorable Kevin McNulty

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 4, 2018
Before: JORDAN, RESTREPO, and SCIRICA, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for District of New Jersey and was submitted pursuant to Third Circuit LAR 34.1(a) on January 4, 2018. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgments of the District Court entered May 1, 2017, June 8, 2017 and August 7, 2017, be and the same are hereby affirmed. Costs taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Acting Clerk

Dated: January 8, 2018

Certified as a true copy and issued in lieu of a formal mandate on February 23, 2018

Teste: Patricia S. Dodszuweit
Clerk, U.S. Court of Appeals for the Third Circuit

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-2492

ERWIN LEJON-TWIN EL,
Appellant

v.

JOE MARINO, Director, Human Resources;
IMPAX LABORATORIES, f/k/a Corepharma LLC

On Appeal from the United States District Court
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(D.N.J. No. 2-16-cv-02292)
District Judge: Honorable Kevin McNulty

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 4, 2018
Before: JORDAN, RESTREPO, and SCIRICA, Circuit Judges

(Opinion filed: January 8, 2018)

OPINION*

PER CURIAM

Plaintiff-appellant Erwin LeJon-Twin El, proceeding pro se, appeals the District Court's denial of his motion to amend his complaint and numerous post-judgment

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

motions. El contends that his former employer, Impax Laboratories, Inc., and its Director of Human Resources, Joseph Marino, violated federal and state law when they refused to issue his paychecks under the name that he currently uses rather than the name he used when he was hired.[1]

The District Court dismissed El's initial complaint without prejudice for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), on defendants' motion. El then sought leave to amend his complaint, which the District Court denied. It dismissed his case with prejudice by order entered on May 1, 2017, holding that the amendment would be futile where El's allegations would still not survive a motion to dismiss under Rule 12(b)(6).

El subsequently filed a motion to reassign the case to another judge. The District Court construed his request as a motion under Federal Rule of Civil Procedure 60(b) and denied it by order entered on June 8, 2017. El then filed a series of motions essentially seeking reconsideration of the District Court's prior decisions and a stay of the case pending appeal. The District Court denied these motions on August 7, 2017. El timely appealed the District Court's decisions dismissing his case with prejudice and denying his post-judgment motions.[2]

[1] El was hired under the name Erwin Hilton; he currently uses the name Erwin LeJon-Twin El. See, e.g., Appellant's Br. at 12, 15.

[2] El's two notices of appeal only address the District Court's post-judgment decisions. However, his appellate brief suggests that he also seeks review of the District Court's underlying denial of his motion for leave to amend his complaint and subsequent

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. "[W]e review the District Court's denial of [a motion for] leave to amend for abuse of discretion, and review de novo its determination that amendment would be futile." See U.S. ex rel. Schumann v. Astrazeneca Pharm. L.P., 769 F.3d 837, 849 (3d Cir. 2014).

We review the District Court's post-judgment decisions for abuse of discretion. See Lazaridis v. Wehmer, 591 F.3d 666, 669 (3d Cir. 2010) (motions for reconsideration under Rule 59(e)); Budget Blinds, Inc. v. White, 536 F.3d 244, 251 (3d Cir. 2008) (motions for reconsideration under Rule 60(b)(1)-(3), (5)-(6)); Imprisoned Citizens Union v. Ridge, 169 F.3d 178, 189 (3d Cir. 1999) (motions to stay). "A district court abuses its

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dismissal of his case with prejudice. See Appellant's Br. at 18-19. El filed his initial Rule 60(b) motion on May 11, 2017, within 28 days of the District Court's May 1, 2017 dismissal, which tolled his time to appeal the underlying judgment. See Fed. R. App. P. 4(a)(4)(A)(vi). His subsequent notice of appeal, filed within 30 days of the District Court's denial of his Rule 60(b) motion, was thus timely for both the dismissal of his case and the denial of his Rule 60(b) motion. See id.; Fed. R. App. P. 4(a)(1)(A); Fed. R. Civ. P. 6(a)(1)(C). Although Federal Rule of Appellate Procedure 3(c)(1)(B) requires parties to specify the judgments that they wish to appeal, we have a heightened duty to construe notices of appeal by pro se litigants liberally. See Gov't of Virgin Islands v. Mills, 634 F.3d 746, 751 (3d Cir. 2011). Thus, we will address the District Court's decision to deny El's motion to amend his complaint as well as its post-judgment decisions.

In his appellate brief, El states that he also seeks reversal of the District Court's February 14, 2017 decision to dismiss his complaint without prejudice. The District Court granted him leave to amend his complaint, and he chose not to pursue several claims in his amended complaint. Thus, to the extent that El challenges the dismissal of claims that appeared only in his initial complaint, he has failed to raise them with the District Court and thus has waived those issues on appeal. See Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc., 482 F.3d 247, 253 (3d Cir. 2007) (explaining that a plaintiff "can hardly fault the [District] Court for not granting relief it never requested" and that if the plaintiff "had knowledge of facts that would cure the defects in its complaint, it should have asserted them before now").

discretion when it bases its decision upon a clearly erroneous finding of fact, an erroneous conclusion of law, or an improper application of law to fact." Cox v. Horn, 757 F.3d 113, 118 (3d Cir. 2014). For the reasons that follow, we will affirm the District Court's decisions.

A. Motion for Leave to Amend

The District Court correctly determined that granting El leave to amend his complaint would be futile because his proposed amended complaint would not survive dismissal. In his proposed complaint, El claimed that defendants' decision to issue his paychecks in the name that was on record with the Social Security Administration and the Internal Revenue Service violated his rights under a number of statutes and the Constitution. This complaint was El's second attempt to state a claim that would survive dismissal.

Courts "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). However, "undue delay, bad faith, dilatory motive, prejudice, [or] futility" could all "justify a denial of leave to amend." Shane v. Fauver, 213 F.3d 113, 115 (3d Cir. 2000). "'Futility' means that the complaint, as amended, would fail to state a claim upon which relief could be granted" under the standard of Federal Rule of Civil Procedure 12(b)(6). Id. In evaluating whether a plaintiff has stated a claim upon which relief could be granted, "we accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." Bronowicz v. Allegheny

Cty., 804 F.3d 338, 344 (3d Cir. 2015) (internal quotation mark omitted).

El's amended complaint primarily relies on statutes which regulate government actors. First, the Privacy Act of 1974 and its implementing regulations at 49 C.F.R. § 802.7(d) and (e) relate to how federal agencies collect, use, and disseminate private information about individuals. See 5 U.S.C. § 552a. The Religious Land Use and Institutionalized Persons Act also regulates activities by the government, not private actors. See 42 U.S.C. §§ 2000cc, 2000cc-1. The activities of the Government Accountability Office are regulated by 4 C.F.R. §§ 83.9 and 83.10. The Secretary of the Treasury is authorized to collect taxes pursuant to 26 U.S.C. § 6301. The statute that would permit El to bring a Fourth Amendment claim for civil damages, 42 U.S.C. § 1983, would only apply if defendants were state actors. See U.S. Const. amend. IV; Benn v. Universal Health Sys., Inc., 371 F.3d 165, 169 (3d Cir. 2004).

A number of other statutes upon which El relies in his complaint are plainly inapplicable to his claims: 18 U.S.C. §§ 241, 242, and 1001 are criminal statutes which cannot form the basis of El's civil lawsuit; 1 U.S.C. § 8 is a rule of construction that includes a "born-alive infant" within the meaning of the words "person," "human being," "child," and "individual" with respect to Congressional Acts or rules and regulations enacted by administrative agencies; and 28 C.F.R. § 25.7 is one of a series of regulations implementing the National Instant Criminal Background Check System under the Brady Handgun Violence Prevention Act, see 28 C.F.R. § 25.1. The Patient Protection and Affordable Care Act includes a provision that prohibits retaliation against whistleblowers who disclose violations of the Act under certain circumstances. See 15 U.S.C. § 2087. El has not alleged that his employer retaliated against him for taking any such actions, and regardless, his remedy under that statute would first require him to file an administrative complaint with the Secretary of Labor. See id. § 2087(b)(1).

El also relies on defendant Impax's employee code of conduct, which does not create a federal right of action against his private employer. Neither does a 1787 treaty between the United States and Morocco.

Finally, El claims that defendants violated N.J. Admin. Code. 12:55-2.4, a state regulation governing the time and mode of wage payments following the termination or voluntary departure of an employee. The District Court declined to assert supplemental jurisdiction over this purely state law claim where El could not state any federal claims. See 28 U.S.C. § 1367(c)(3).

El challenges the District Court's conclusion that defendants are "non-State actors" but does not explain why a private company or its director of human resources would be a government entity or official, respectively. See Appellant's Br. at 11. Defendants are not government actors. The remaining statutes upon which El relies are either entirely inapplicable to his claims or fail to provide a federal right of action for him to pursue. The District Court properly declined to exercise supplemental jurisdiction over El's remaining state law claim as he could not state a federal claim over which the

District Court would have had original jurisdiction.[3] Thus, the District Court did not abuse its discretion in denying El's motion for leave to amend. Such an amendment would have been futile where El's proposed complaint would not survive a Rule 12(b)(6) motion. See Shane v. Fauver, 213 F.3d 113, 115 (3d Cir. 2000).

B. Post-Judgment Motions

After the District Court denied El's motion for leave to amend his complaint and dismissed his case, El filed a motion in which he requested "Judicial Disqualification and Assignment to Another Judge." See J.A. at 139. The District Court explained that because judgment had already been entered in El's case, there were no pending matters from which he could be disqualified and nothing left to reassign to another judge. However, the District Court treated El's motion as a motion for reconsideration because he sought to reopen his case. El also cited Federal Rule of Civil Procedure 60(b) at the end of his motion.

El's only argument in support of reopening his case was that the District Court judge was biased against him, based on a number of answers that the judge provided in his 2011 questionnaire to the Senate Committee on the Judiciary before his nomination

[3] El maintains that because he was granted permission to proceed in forma pauperis, his case should not have been dismissed. See Appellant's Br. at 17-18. On the contrary, a district court is required to independently screen and dismiss a case where a party proceeding in forma pauperis fails to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B)(ii). Additionally, El contends that he "do[es] not consent . . . to be explicitly bound by the standards set out in [Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)]." See Appellant's Br. at 16. As El has chosen to litigate his claims in federal court, this position is meritless.

was confirmed. For substantially the reasons that the District Court stated in analyzing El's motion, we agree that El's allegation of bias is baseless. See J.A. at 19-22. Rather, El merely seems to disagree with the District Court's prior ruling dismissing his case, which does not show the District Court judge's bias or support reconsideration of the dismissal. See In re Imperial "400" Nat., Inc., 391 F.2d 163, 172 (3d Cir. 1968) ("[A] motion under Rule 60(b) may not be used as a substitute for appeal."). Thus, we find no abuse of discretion in the District Court's denial of El's motion for reconsideration.

The District Court also did not abuse its discretion in denying El's subsequent motions for a stay and for reconsideration.[4] First, before granting the extraordinary remedy of a stay pending appeal, courts consider:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

See Republic of Philippines v. Westinghouse Elec. Corp., 949 F.2d 653, 658 (3d Cir.

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[4] El asks us to correct a repeated typographical error in Impax's former business name in the captions of several of the District Court's decisions. See Appellant's Br. at 18. However, El has not explained how a typographical error in the captions affected the District Court's decisions, or argued that the current defendants are not the parties against whom he wishes to pursue his claims. Because defendants have been properly identified in the District Court docket and on appeal, and there is no dispute as to the identities of the parties, there is no need to remand the case to the District Court to correct any such error. See In re U.S. Healthcare, Inc., 193 F.3d 151, 158 n.2 (3d Cir. 1999). Additionally, El argues that the District Court erroneously identified his surname as "LeJon-Twin El" rather than "El." See Appellant's Amended Notice of Appeal at 6-9. El does not point us to these supposed errors, and upon review of the record, we have been unable to locate any.

1991). As the District Court observed, "it is difficult to imagine what meaningful relief a stay could [have] afford[ed]" El, as its prior orders did not "call upon anyone to do anything." See J.A. at 148. El could not establish either a likelihood of success on the merits or any irreparable injury, given his inability to state a federal claim and his failure to explain why he would suffer any harm by the denial of a stay. On appeal, he has not clarified why he sought a stay of the District Court's orders. We thus agree with the District Court that El failed to demonstrate that he was entitled to a stay.

The District Court also properly denied El's motion seeking "substantive relief" pursuant to Federal Rule of Appellate Procedure 27(a)(2)(B)(iii), which is inapplicable to proceedings in district courts and in any event only describes the documents which must be attached to any appellate "motion seeking substantive relief."

Finally, the District Court did not abuse its discretion in denying El's motions for reconsideration under Federal Rule of Civil Procedure 59(e) and 60(b).[5] As the District Court explained, El's motions attempted to relitigate the substance of his dismissed claims; he did not seek relief based on some extraordinary circumstance. "[M]otions [for reconsideration] are not to be used as an opportunity to relitigate the case; rather, they may be used only to correct manifest errors of law or fact or to present newly discovered evidence. Blystone v. Horn, 664 F.3d 397, 415 (3d Cir. 2011). Therefore, we will affirm

[5] El titled his Rule 59(e) motion as seeking a "new trial" under Rule 59(b). See J.A. at 152. However, El's case never reached trial; thus, the District Court generously construed his filing as a motion for reconsideration under Rule 59(e).

the District Court's orders dismissing El's case and denying his post-judgment motions.

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT
CLERK

UNITED STATES COURT OF APPEALS
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
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February 13, 2018

Mr. William T. Walsh
United States District Court for the District of New Jersey
Martin Luther King Jr. Federal Building & United States Courthouse
50 Walnut Street
PO Box 999
Newark, NJ 07102

RE: Erwin Lejon-Twin El v. Joe Marino, et al
Case Number: 17-2492
District Case Number: 2-16-cv-02292

Dear Mr. Walsh,

Enclosed herewith is the certified judgment together with copy of the opinion or certified copy of the order in the above-captioned case(s). The certified judgment or order is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified judgment or order is also enclosed showing costs taxed, if any.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/ Caitlyn
Case Manager
267-299-4956

cc: Michael H. Dell
Erwin Lejon-Twin El
Mary B. Rogers

No: 2:16-cv-02292-KM-MAH

United States District Court For The District of New Jersey at Newark

Erwin LeJon-Twin: El. *In Propria Persona, Sui Juris, In-Full-Life*

Petitioner / Plaintiff,

v.

Joseph Marino, *Director - Human Resources for Impax Laboratories, Inc., formerly CorePharma, LLC.*

Respondent / Defendant.

Opinion and Order from the United States District Court for the

District of New Jersey at Newark. File No: 2:16-cv-02292-KM-MAH

Kevin McNulty, District Judge

Decided and Filed: August 7, 2017

KEVIN MCNULTY, District Judge

Appendix B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ERWIN LEJON-TWIN EL, **Plaintiff,** **v.** **JOE MARINO, Director, Human Resources, and IMPAX LABORATORIES, f/k/a CarePharma,** **Defendants.**	Civ. No. 16-2292 (KM) (MAH) **OPINION**

KEVIN MCNULTY, U.S.D.J.:

The plaintiff has filed a complaint for damages against his employer. I dismissed the original complaint without prejudice to a motion to amend. (ECF nos. 50, 51) On April 28, 2017, I denied plaintiff's motion to file an amended complaint and dismissed the action with prejudice. (ECF nos. 55, 56). The file was closed.

Two weeks later, on May 11, 2017, the plaintiff moved to disqualify me and reassign the case to another judge. (ECF no. 57) On May 23, 2017, he made a second submission in further support of that application. (ECF no. 58) The file was reopened for consideration of the motion. On June 7, 2017, I denied plaintiff's motion to reassign the case to another judge. (ECF no. 59) Again, the file was closed.

On July 5, 2017, plaintiff filed several motions supported by a single affidavit (ECF no. 61-1): (a) a Motion Seeking Substantive Relief (ECF no. 60); (b) a Motion for Stay of an Order Pending Appeal (ECF no. 61); (c) a Motion Seeking Relief of an Order (ECF no. 62); and (d) a Motion for New Trial (ECF no.

63).[1] The defendants have filed a response (ECF no. 69), and the plaintiff has filed a reply (ECF no. 70).

On July 10, 2017, the plaintiff filed a notice of appeal to the United States Court of Appeals for the Third Circuit. (ECF no. 65; assigned USCA Case No. 17-2942) The Court of Appeals entered an order staying the appeal pending this Court's decision on the motions filed on July 5, 2017. (ECF no. 68) *See* Fed. R. App. P. 4(a)(4) (listing certain district court motions that delay the running of the time to appeal).

For the following reasons, the motions (ECF nos. 60, 61, 62, 63) are DENIED.

A. Motion Seeking Substantive Relief

Plaintiff has filed a Motion Seeking Substantive Relief pursuant to Fed. R. App. P. 27(a)(2)(B)(iii). (ECF no. 60) That Rule governs motions made to the Court of Appeals, seeking relief from the Court of Appeals. The motion is not properly before this federal district court. Accordingly, plaintiff's motion (ECF no. 60) is DENIED without prejudice to renewal in the proper Court.[2]

B. Motion for Stay of an Order Pending Appeal

On July 10, 2017, plaintiff filed a notice of appeal. In anticipation of that filing, plaintiff filed a motion, pursuant to Fed. R. App. P. 8(a)(1), for stay of an order pending appeal. (ECF no. 61) Under that Rule, prior to moving the Court of Appeals for a stay:

> A party must ordinarily move first in the district court for the following relief:

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1 The plaintiff filed a fifth motion, to proceed *in forma pauperis* on appeal. (ECF no. 64). I have already granted it. (ECF no. 67).

2 The relief sought seems to be an order "granting Plaintiff the fact amount owed to Plaintiff by the defendants." (ECF no. 60 at 2) Thus the motion may be a redundant statement that plaintiff wishes to appeal my dismissal of the case. Construed liberally as a motion to *this* Court for reconsideration of the order of dismissal, it is covered by my discussion in section C and particularly in section D, *infra*.

> (A) a stay of the judgment or order of a district court pending appeal;
>
> (B) approval of a supersedeas bond; or
>
> (C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

Id.

"[T]he standard for obtaining a stay pending appeal is essentially the same as that for obtaining a preliminary injunction." *Conestoga Wood Specialities Corp. v. Secretary of U.S. Dept. of Health and Human Services*, 2013 WL 1277419 at *1 (3d Cir. Feb. 8, 2013). Like most preliminary injunctions, a stay pending appeal is governed by four equitable factors:

"(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;

(2) whether the applicant will be irreparably injured absent a stay;

(3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and

(4) where the public interest lies."

Nken v. Holder, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (line breaks added for clarity)). *Accord Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004).[3]

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[3] Although all the factors are relevant, the first two are critical. A court may not grant injunctive relief, "regardless of what the equities seem to require," unless plaintiffs carry their burden of establishing both a likelihood of success and irreparable harm. *Adams*, 204 F. 3d at 484; *accord Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 197 (3d Cir. 1990) (placing particular weight on the probability of irreparable harm and the likelihood of success on the merits, stating: "[W]e cannot sustain a preliminary injunction ordered by the district court where either or both of these prerequisites are absent." (quoting *In re Arthur Treacher's Franchisee Litigation*, 689 F.2d 1137, 1143 (3d Cir.1982)); *Morton v. Beyer*, 822 F.2d 364, 367 (3d Cir.1987); *Freixenet, S.A. v. Admiral Wine & Liquor Co.*, 731 F.2d 148, 151 (3d Cir.1984); *American Express*, 669 F.3d at 366, 374. *See also Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 21 (2008) (holding it was error to water down the irreparable harm requirement from "likelihood" to "possibility," even where likelihood of success

Plaintiff's motion does not make any persuasive showing of likelihood of success on the merits; at best it rehashes the arguments already rejected by the Court, for the reasons expressed in prior opinions. (ECF nos. 50, 55)

Nor is there any showing of irreparable injury. This is an action in which the plaintiff sought damages. By definition, the court's denial of damages is an injury that can be remedied by an award of damages. And an injury that can be redressed by damages is the very essence of an injury that is not irreparable, and cannot be the subject of equitable relief.[4]

Indeed, it is difficult to imagine what meaningful relief a stay could afford. The order(s) appealed from dismissed a claim for damages and denied a post-judgment motion for reassignment of the case to a different judge. Such orders do not call upon anyone to do anything. It is unclear what, if anything, needs to be stayed, even from the plaintiff's point of view. Plaintiff fails to

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was strong); *Talbert v. Corizon Medical,* 608 F. App'x 86, 2015 WL 3544517 (3d Cir. June 8, 2015) (summarily affirming denial of preliminary injunction based on lack of irreparable harm).

4 This Court has often addressed the issue of when a preliminary injunction to prevent immediate irreparable harm is justified and conversely, when other remedies such as money damages are adequate to compensate a plaintiff for past harm. The law in that respect is clear in this Circuit:

> In order to demonstrate irreparable harm the plaintiff must demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial. The preliminary injunction must be the *only* way of protecting the plaintiff from harm. *See e.g., Weinberger v. Romero–Barcelo,* 456 U.S. 305 [102 S. Ct. 1798, 72 L.Ed.2d 91] (1982); *Continental Group, Inc. v. Amoco Chemicals Corp.,* 614 F.2d 351, 356 and n. 9 (3d Cir. 1980).

Instant Air Freight Co. v. C.F. Air Freight, Inc., 882 F.2d 797, 801 (3d Cir. 1989) (emphasis added). In *ECRI v. McGraw–Hill, Inc.,* 809 F.2d 223, 226 (3d Cir. 1987) (citations omitted) we stated:

> Establishing a risk of irreparable harm is not enough. A plaintiff has the burden of proving a "clear showing of immediate irreparable injury." The "requisite *92 feared injury or harm must be irreparable—not merely serious or substantial," and it "must be of a peculiar nature, so that compensation in money cannot atone for it."

Campbell Soup Co. v. ConAgra, Inc., 977 F.2d 86, 91–92 (3d Cir. 1992).

specify what it is that he wishes to stay or why a stay is needed. There is, for example, no judgment imposing liability on plaintiff from which he might seek temporary protection. It is difficult to imagine any threat to the status quo during the pendency of the appeal. Simply put, I see no purpose in granting this motion, and plaintiff has not identified any.

Accordingly, the motion to stay an order pending appeal (ECF no. 61) is DENIED.

C. Motion Seeking Relief of an Order

Plaintiff has filed a Motion Seeking Relief of an Order pursuant to Fed. R. Civ. P. 60(b)(1), (2), and (3). (ECF no. 62) In particular, plaintiff seeks "relief from the Order entered by the United States District Court on June 7, 2017," denying his motion to disqualify me and reassign the case to another judge. However, he also generally appears to seek relief from the dismissal of his complaint. I will construe the motion liberally to encompass both. For the following reasons, however, plaintiff's Rule 60(b) motion must be denied.

Federal Rule of Civil Procedure 60(b) provides that "the court may relieve a party . . . from final judgment, order or proceeding" under certain circumstances. The general purpose of Rule 60(b) is "to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice must be done." *Walsh v. Krantz,* 423 F. App'x 177, 179 (3d Cir. 2011) (per curiam) (quoting *Boughner v. Sec'y of Health, Educ. & Welfare,* 572 F.2d 976, 977 (3d Cir. 1978)). "Rule 60(b) is a provision for extraordinary relief and may be raised only upon a showing of exceptional circumstances." *Mendez v. Sullivan,* 488 F. App'x 566, 568 (3d Cir. 2012) (per curiam) (citing *Sawka v. Healtheast, Inc.*, 989 F.2d 138, 140 (3d Cir. 1993)).

Plaintiff argues that:

> "The defendants have shown mistake in an employment contract, bias, extrinsic fraud and misrepresentation toward Plaintiff by failing to reimburse plaintiff a check cashing fee imposed by defendants financial institution, retaining a live

> payroll check, failure to fully update and correct the former employee's personal information, etc., non[e] of these issues were examined by Judicial Officer, Hon. Kevin McNulty, albeit, absent an expert opinion, constituting a mistake of law and are grounds for relief from the Order entered by the United States District Court on June 7, 2017 . . . .

(Plaintiff's Affidavit, ECF no. 61-1, ¶ 5)

Plaintiff first cites Rule 60(b)(1) and (3), the provisions for relief from a final judgment, or proceeding, based on "mistake, inadvertence, surprise, or excusable neglect," and "fraud, misrepresentation, or misconduct by an opposing party." These provisions, however, do not grant a second chance to relitigate the substance of a dismissed action; rather, they create an opportunity for relief based on extraordinary and extenuating circumstances. For example, under Rule 60(b)(1), "courts have held that a party should not be deprived of the opportunity to present the merits of the claim because of a technical error or slight mistake by the party's attorney." 11 Wright, Miller & Kane, *Federal Practice and Procedure,* § 2858 (3d ed.). Similarly, under Rule 60(b)(3), "the fraud must have prevented the moving party from fully and fairly presenting his case . . . . The motion will be denied if it is merely an attempt to re-litigate the case or if the court otherwise concludes, as is most commonly true, that fraud or misrepresentation or other misconduct has not been established." *Id.* § 2860.

Here, plaintiff quotes the language of Rule 60, but the substance of his motion is just a restatement of his allegations against the defendants, which have already been fully and fairly considered. The "misconduct" that he alleges consists of the conduct alleged in his Complaint. The injuries to which he refers all flow from the premise—rejected as a matter of law—that his employer was required to maintain tax and payroll records under his new name. The reference to the lack of an "expert opinion" is difficult to interpret, but irrelevant; because the claims failed as a matter of law, there was no need for witnesses, expert or otherwise. The grounds asserted are plainly insufficient under Rules 60(b)(1) and (3).

Plaintiff also cites to Rule 60(b)(2) to support his motion. Rule 60(b)(2) is grounds for relief from a final judgment based on "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)[.]" "Rule 60(b)(2) 'requires that the new evidence (1) be material and not merely cumulative, (2) could not have been discovered before trial through the exercise of reasonable diligence and (3) would probably have changed the outcome of the trial. Any party requesting such relief 'bears a heavy burden.'" *Floorgraphics Inc. v. News Am. Mktg. In-Store Servs., Inc.*, 434 F. App'x 109, 111 (3d Cir. 2011) (internal quotation marks and citation omitted).

First, with regard to the denial of the post-judgment motion to reassign the case to another judge, plaintiff's affidavit does not include any additional relevant evidence. As to that issue, then, Rule 60(b)(2) is clearly inapplicable.

Second, as for the dismissal of plaintiff's complaint for failure to state a claim, the submission of additional evidence would be irrelevant. For purposes of the Rule 12(b)(6) motion to dismiss, I *accepted* the facts alleged in the complaint as true and drew all reasonable inferences in favor of the plaintiff. Nevertheless, I found that plaintiff failed to state a legally cognizable claim. Additional evidence supporting allegations that I already assumed to be true would have no impact at all on that conclusion.

Additionally, plaintiff asserts that the defendants did not "oppose [plaintiff's] motion for judicial disqualification and recusal." (Plaintiff's Affidavit ¶ 6) That, however, is not grounds for relief under Rule 60.

Accordingly, plaintiff's Motion for Relief of an Order (ECF no. 62) is DENIED.

D. Motion for a New Trial

Plaintiff also moves for a new trial pursuant to Fed. R. Civ. P. 59(b). (ECF no. 63) Because there was no trial in this case, I will liberally construe plaintiff's motion as a motion for reconsideration pursuant to Rule 59(e) and Local Civil Rule 7.1. In any event, plaintiff appears to believe that, by filing his motion within 28 days of this Court's June 7, 2017 Order, he is entitled to a new trial or reconsideration. That is not so; there is a threshold showing required, and plaintiff has not met it.

Pursuant to Local Civil Rule 7.1(i), a party moving for reconsideration must "set[ ] forth concisely the matter or controlling decisions which the party believes the Judge or Magistrate Judge has overlooked[.]" L. Civ. R. 7.1(i). Motions for reconsideration "are not to be used as an opportunity to relitigate the case; rather, they may be used only to correct manifest errors of law or fact or to present newly discovered evidence." *Blystone v. Horn*, 664 F.3d 397, 415 (3d Cir. 2011) (citing *Howard Hess Dental Labs., Inc. v. Dentsply Int'l Inc.*, 602 F.3d 237, 251 (3d Cir. 2010)); *see also N. River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995).

"Accordingly, a judgment may be altered or amended [only] if the party seeking reconsideration shows at least one of the following grounds: '(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.'" *In re Certain Consol. Roflumilast Cases*, No. CV1503375FLWDEA, 2017 WL 2399571, at *2 (D.N.J. June 2, 2017) (quoting Blystone, 664 F.3d at 415).

Plaintiff cites no intervening change in the controlling law, nor does he cite any new evidence. He does claim the need to correct a "mistake of law":

> "The defendants have shown mistake in an employment contract, bias, extrinsic fraud and misrepresentation toward Plaintiff by failing to reimburse plaintiff a check cashing fee

> imposed by defendants financial institution, retaining a live payroll check, failure to fully update and correct the former employee's personal information, etc., non[e] of these issues were examined by Judicial Officer, Hon. Kevin McNulty, albeit, absent an expert opinion, constituting a mistake of law and are grounds for relief from the Order entered by the United States District Court on June 7, 2017 . . . .

(Plaintiff's Affidavit, ECF no. 61-1, ¶ 5)

Plaintiff is mistaken. I did consider all of the allegations in his original complaint and in his proposed amended complaint. I found them deficient as a matter of law. (ECF nos. 50, 55) Plaintiff has failed to demonstrate a clear error of law or a need to prevent manifest injustice.

"[A] motion for reconsideration should not provide the parties with an opportunity for a second bite at the apple." *Tischio v. Bontex, Inc.*, 16 F. Supp. 2d 511, 533 (D.N.J. 1998) (citation omitted). For a plaintiff who simply disagrees with this Court's decision, the appellate process, not a Rule 59(e) motion, is the appropriate path.

Accordingly, plaintiff's Motion for a New Trial (ECF no. 63) is DENIED.

CONCLUSION

For the foregoing reasons, the plaintiff's Motion Seeking Substantive Relief (ECF no. 60) is DENIED without prejudice to refiling in the Court of Appeals; the plaintiff's Motion for Stay of an Order Pending Appeal (ECF no. 61) is DENIED; the plaintiff's Motion Seeking Relief of an Order (ECF no. 62) is DENIED; and the plaintiff's Motion for New Trial (ECF no. 63) is DENIED. A separate Order accompanies this opinion.

August 7, 2017

KEVIN MCNULTY
United States District Judge

> imposed by defendants financial institution, retaining a live payroll check, failure to fully update and correct the former employee's personal information, etc., non[e] of these issues were examined by Judicial Officer, Hon. Kevin McNulty, albeit, absent an expert opinion, constituting a mistake of law and are grounds for relief from the Order entered by the United States District Court on June 7, 2017 . . . .

(Plaintiff's Affidavit, ECF no. 61-1, ¶ 5)

Plaintiff is mistaken. I did consider all of the allegations in his original complaint and in his proposed amended complaint. I found them deficient as a matter of law. (ECF nos. 50, 55) Plaintiff has failed to demonstrate a clear error of law or a need to prevent manifest injustice.

"[A] motion for reconsideration should not provide the parties with an opportunity for a second bite at the apple." *Tischio v. Bontex, Inc.*, 16 F. Supp. 2d 511, 533 (D.N.J. 1998) (citation omitted). For a plaintiff who simply disagrees with this Court's decision, the appellate process, not a Rule 59(e) motion, is the appropriate path.

Accordingly, plaintiff's Motion for a New Trial (ECF no. 63) is DENIED.

CONCLUSION

For the foregoing reasons, the plaintiff's Motion Seeking Substantive Relief (ECF no. 60) is DENIED without prejudice to refiling in the Court of Appeals; the plaintiff's Motion for Stay of an Order Pending Appeal (ECF no. 61) is DENIED; the plaintiff's Motion Seeking Relief of an Order (ECF no. 62) is DENIED; and the plaintiff's Motion for New Trial (ECF no. 63) is DENIED. A separate Order accompanies this opinion.

August 7, 2017

Kevin McNulty

KEVIN MCNULTY
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ERWIN LEJON-TWIN EL, **Plaintiff,** **v.** **JOE MARINO, Director, Human Resources, and IMPAX LABORATORIES, f/k/a CarePharma,** **Defendants.**	Civ. No. 16-2292 (KM) (MAH) **ORDER**

The plaintiff having filed (a) a Motion Seeking Substantive Relief (ECF no. 60); (b) a Motion for Stay of an Order Pending Appeal (ECF no. 61); (c) a Motion Seeking Relief of an Order (ECF no. 62); and (d) a Motion for New Trial (ECF no. 63); and the defendants having filed a response (ECF no. 69); and the plaintiff having filed a reply (ECF no. 70); and the Court having reviewed the submissions and the case file, and considered the matter without oral argument; for the reasons expressed in the accompanying Opinion, and good cause appearing therefor;

IT IS this 7th day of August, 2017,

ORDERED as follows:

1. The Clerk shall reopen the file.
2. The plaintiff's Motion Seeking Substantive Relief (ECF no. 60) is DENIED without prejudice;
3. The plaintiff's Motion for Stay of an Order Pending Appeal (ECF no. 61) is DENIED;
4. The plaintiff's Motion Seeking Relief of an Order (ECF no. 62) is DENIED;
5. The plaintiff's Motion for New Trial (ECF no. 63) is DENIED; and

6. The Clerk shall re-close the file.

KEVIN MCNULTY
United States District Judge

No: 2:16-cv-02292-KM-MAH

United States District Court For The District of New Jersey at Newark

Erwin LeJon-Twin: El. *In Propria Persona, Sui Juris, In-Full-Life*

Petitioner / Plaintiff,

v.

Joseph Marino, *Director - Human Resources for Impax Laboratories, Inc., formerly CorePharma, LLC.*

Respondent / Defendant.

Order from the United States District Court for the

District of New Jersey at Newark. File No: 2:16-cv-02292-KM-MAH

Kevin McNulty, District Judge

Granting Plaintiff Leave To Proceed In Forma Pauperis on Appeal

Decided and Filed: September 14, 2017

KEVIN MCNULTY, District Judge

Appendix C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ERWIN LEJON-TWIN EL Plaintiff, v. JOE MARIO, et al Defendants.	Civil Action No. 16-2292 (KM) **ORDER**

Plaintiff having filed a Motion seeking leave to Proceed In Forma Pauperis on appeal and relying on Plaintiff's Affidavit in support thereof (ECF No. 75),

IT IS on this 14th day of September, 2017,

ORDERED that Plaintiff's Motion seeking leave to Proceed In Forma Pauperis on appeal is granted.

KEVIN MCNULTY
U.S. District Judge

No: 2:16-cv-02292-KM-MAH

United States District Court For The District of New Jersey at Newark

Erwin LeJon-Twin: El. *In Propria Persona, Sui Juris, In-Full-Life*

Petitioner / Plaintiff,

v.

Joseph Marino, *Director - Human Resources for Impax Laboratories, Inc., formerly CorePharma, LLC.*

Respondent / Defendant.

Order from the United States District Court for the

District of New Jersey at Newark. File No: 2:16-cv-02292-KM-MAH

Kevin McNulty, District Judge

Granting Plaintiff Leave To Proceed In Forma Pauperis on Appeal

Decided and Filed: July 17, 2017

KEVIN MCNULTY, District Judge

Appendix D

Peace Be On Those Who Follow The Right Guidance!
Moorish Divine and National Movement, Act 6
United States District Court For The District of New Jersey [Newark]
File Number: 2:16-cv-02292-KM-MAH
New Jersey state Republic

Plaintiff:	) Civil Action:
Moorish-American National,	) Notice of Motion Seeking Leave To
Erwin LeJon-Twin El,	) Proceed In Forma Pauperis [Appeal],
In Propria Persona, Sui Juris,	) pursuant to, Federal Rules of Appellete
v.	) Procedure, Rule 24(a).
Defendant(s):	)
Joseph Marino, Director,	)
Human Resources, and, Impax	)
Laboratories, Inc.,	) Hon. Jose L. Linares, Chief Judge
formerly,	) District Judge Kevin McNulty
CorePharma LLC	) Magistrate Judge Michael A. Hammer
	) William T. Walsh - Clerk

Notice to the Agent is Notice to the Principal and Notice to the Principal is Notice to the Agent Applicable to all successors and assigns

PLEASE TAKE NOTICE that I, Erwin LeJon-Twin El, *In Propria Persona, Sui Juris,* Petitioner / Plaintiff / Appellant, will move before Hon. Kevin McNulty, United States District Court Judicial Officer, on August 7,

IFP GRANTED

SO ORDERED

Kevin McNulty

Kevin McNulty, U.S.D.J.

Date: 7/17/2017

Peace Be On Those Wh[illegible]w The Right Guidance!
Moorish Divine and National Movement, Act 6
United States District Court For The District of New Jersey [Newark]
File Number: 2:16-cv-02292-KM-MAH
New Jersey state Republic

2017 at 9:00 a.m., or as soon as may be heard, for an Order: (1) granting Plaintiff leave to appeal *In Forma Pauperis*.

PLEASE TAKE FURTHER NOTICE that in support of my motion, I will rely on the attached Affidavit of Poverty Accompanying Motion For Permission to Appeal In Forma Pauperis.

PLEASE TAKE FURTHER NOTICE that Plaintiff / Petitioner / Movent / Appellant, request oral argument.

[illegible] El 03 July 2017
(Autograph) (Date)

Moorish-American National,
Erwin LeJon-Twin El, *In Propria Persona, Sui Juris,*
Solicitor / Petitioner / Appellant
care of, Post Office Box 3064
Plainfield Territory, New Jersey state Republic
Postal Road Exempt [07063]

No: 17-2492

United States Court Of Appeals
For The Third Circuit

Erwin LeJon-Twin: El. *In Propria Persona, Sui Juris, In-Full-Life*

Petitioner / Plaintiff / Appellant,

v.

Joseph Marino, *Director - Human Resources for Impax Laboratories, Inc., formerly CorePharma, LLC.*

Respondent / Appellee.

On Appeal From the United States District Court for the

District of New Jersey at Newark. File No: 2:16-cv-02292-KM-MAH

Kevin McNulty, District Judge

Petition For Rehearing En Banc: DENIED

Submitted: January 19, 2018

Decided and Filed: February 5, 2018

Before: JORDAN, et al., Circuit Judges

Appendix E

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-2492

ERWIN LEJON-TWIN EL,
Appellant

v.

JOE MARINO, Director, Human Resources;
IMPAX LABORATORIES, f/k/a Corepharma LLC

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. Civil Action No. 2-16-cv-02292)
District Judge: Honorable Kevin McNulty

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN, GREENAWAY, JR., VANASKIE, SHWARTZ, RESTREPO, BIBAS, and SCIRICA* Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is DENIED.

BY THE COURT

s/ Kent A. Jordan
Circuit Judge

DATED:

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* Judge Scirica's vote is limited to panel rehearing only.

CJG/cc: Erwin Lejon-Twin El
Michael H. Dell, Esq.
Mary B. Rogers, Esq.

No: ______________

In the
Supreme Court of the United States

Erwin LeJon-Twin: El. *In Propria Persona, Sui Juris, In-Full-Life*
Petitioner,

v.

Joseph Marino, *Director - Human Resources for Impax Laboratories, Inc., formerly CorePharma, LLC.*
Respondent.

Proposed Order: On Petition Seeking Leave for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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Proposed Order

Notice to Agent is Notice to Principal and Notice to Principal is Notice to Agent Applicable to all Successors and Assigns

PLEASE TAKE NOTICE that Petitioner, Erwin LeJon-Twin: El, *In Propria Persona, Sui Juris, In-Full-Life,* having filed a Petition / Motion Seeking Leave for Writ of Certiorari to the United States Court of Appeals for the Third Circuit in the United States Supreme Court and relying on the content of the petition for a writ of certiorari and appendicies thereof,

It is on this _______ day of ________________, 20____,

ORDERED that Petitioners' Petition / Motion Seeking Leave for Writ of Certiorari is granted.

____

Supreme Court Clerk / Supreme Court Justice