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11 UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 13 SOUTHERN DIVISION

14 PAMELA BARNETT, ALAN KEYES,) No. SACV 09-00082 DOC (ANx)
 15 *et al.*,)
)
 16 Plaintiffs,) DATE: January 25, 2009
) TIME: 8:30 a.m.
 17 v.) CTRM: 9D
)
 18 BARACK OBAMA, *et al.*)
)
 19 Defendants.) Hon. David O. Carter
)
 20 _____)

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 22 OPPOSITION TO PLAINTIFF'S RULE 60(b) MOTION
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OPPOSITION TO PLAINTIFF'S RULE 60(b) MOTION

I

INTRODUCTION

Plaintiff's motion is the last iteration in a long list of attempts to have this Court's Final Order dismissing the complaint reversed. Like all previous attempts, this too must fail.

Under the Federal Rules, Plaintiff's Rule 60(b) motion is untimely. Further, the claim is barred by res judicata.

This Court properly dismissed the complaint and the Ninth Circuit unanimously affirmed. Nothing contained in Plaintiff's motion raises any serious challenge to the dismissal of the complaint, and the motion should be summarily denied.

II

PROCEDURAL AND FACTUAL HISTORY

On January 20, 2009, Plaintiff Alan Keyes filed a complaint in this Court against President Barack Obama. See Docket No. 1. On July 15, 2009, Plaintiff filed a first amended complaint alleging a violation under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.* ("RICO"). See Docket No. 22, ¶¶ 123-125.

On October 29, 2009, this Court dismissed the first amended complaint, including the RICO claim, with prejudice. See Docket No. 89, 27-28. On December 16, 2009, this Court clarified that its Order dismissing the first amended complaint was without leave to amend and with prejudice. See Docket No. 104. The Order dismissing the first amended complaint was affirmed by the Ninth Circuit. See Docket No. 129.

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1 In this case, much more than a year has passed between the
2 entry of this Court's Order dismissing the complaint on December
3 16, 2009 and the filing of the instant motion on August 13, 2012.
4 Compare Docket Nos. 104 and 130. Under the Federal Rules, the
5 motion is untimely and should be dismissed on this ground alone.
6 American Ironworks & Erectors Inc. v. North American Construction
7 Corp., 248 F.3d 892, 898-899 (9th Cir. 2001); In re, Intl Nutronics,
8 Inc. v. Isomedix, Inc., 28 F.3d 965, 969 (9th Cir. 1994) ("Rule
9 60(b) imposes a one-year limitations period").

10 Accordingly, this Court should deny the motion as time-barred.

11 **B. The Motion Is Barred By Res Judicata**

12 The motion is also barred by the doctrine of res judicata,
13 which bars a subsequent action based on a claim that previously was
14 or could have been litigated in an earlier action between the same
15 parties. Montana v. United States, 440 U.S. 147, 153, 99 S.Ct.
16 970, 59 L.Ed.2d 210 (1979). Res judicata "treats a judgment, once
17 rendered, as the full measure of relief to be accorded between the
18 same parties on the same 'claim' or 'cause of action.'" McClain v.
19 Apodaca, 793 F.2d 1031, 1033 (9th Cir. 1986) (internal citations
20 omitted).

21 Here, all of the elements of res judicata are satisfied. The
22 Plaintiff is the same; the defendant is the same; and the claim is
23 the same. Indeed, Plaintiff acknowledges that the plaintiff,
24 defendant and claim are all identical. See Motion, 2.
25 Furthermore, a motion to dismiss operates as an adjudication on the
26 merits. In re Marino, 181 F.3d 1142, 1144 (9th Cir. 1999) ("a
27 dismissal with prejudice has res judicata effect"). Here, this
28 Court's Order dismissing the first amended complaint with

1 prejudice, including the dismissal of the RICO claim, has been
2 affirmed by the Ninth Circuit.

3 Plaintiff's only explanation for seeking leave to relitigate
4 the RICO claim is based on counsel's failure to adequately plead
5 RICO in the first amended complaint. See Motion, 2. This Court
6 dismissed Plaintiff Keyes' RICO claim against President Obama on
7 the ground that, despite the lapse of six months, Plaintiff still
8 had not stated a RICO claim and finding that "[t]he failure to do
9 so is inexcusable." See Docket No. 89 at 27. Inexcusable failure
10 to sufficiently plead RICO despite the lapse of six months is not
11 cured by the lapse of an additional two and one-half years. In any
12 event, there can be no dispute that a RICO claim by this plaintiff
13 against this defendant was or could have been pled and,
14 accordingly, this claim is barred by res judicata. Montana, 440
15 U.S. at 153; McClain, 793 F.2d at 1033.

16 **IV**

17 **CONCLUSION**

18 Accordingly, based on the alternate and independent grounds
19 that this motion is untimely brought under Rule 60(b) and further
20 that Plaintiff's RICO claim is barred by res judicata, this Court
21 is respectfully requested to deny Plaintiff's motion.

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Respectfully submitted,

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DATED: August 20, 2012

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/s/ Roger E. West

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/s/ David A. DeJute

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