

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

DEC 17 2009

Clerk, U.S. District and
Bankruptcy Courts

Albert Morton,

Plaintiff,

v.

Carlos M. Guiterrez,

Defendant.

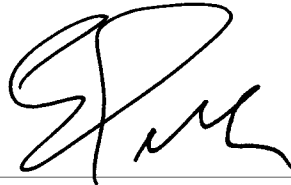
Civil Action No. **09 2382**

MEMORANDUM OPINION

In what is captioned a Complaint, plaintiff moves for relief under Rule 60 of the Federal Rules of Civil Procedure. The Court assumes that plaintiff is seeking relief from the final order issued by this Court on January 31, 2008 in *Morton v. Guiterrez*, Civ. Action No. 07-0751 (JR), which was affirmed by the District of Columbia Circuit by Order of September 4, 2008. *See* Dkt. No. 12 (Order of USCA). Although plaintiff's Rule 60 motion should be filed in the dismissed action, plaintiff has labeled this submission as a complaint and has included an application to proceed *in forma pauperis*. The Court therefore assumes that plaintiff intends to file a new civil action.

Under the principle of *res judicata*, a final judgment on the merits in one action "bars any further claim based on the same 'nucleus of facts'" *Page v. United States*, 729 F.2d 818, 820 (D.C. Cir. 1984) (*quoting Expert Elec., Inc. v. Levine*, 554 F.2d 1227, 1234 (D.C. Cir. 1977)). *Res judicata* bars the relitigation "of issues that were or *could have been raised* in [the prior] action." *Drake v. FAA*, 291 F.3d 59 (D.C. Cir. 2002) (emphasis in original) (*quoting Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 414, 66 L.Ed.2d 308 (1980)); *see I.A.M. Nat'l Pension Fund v. Indus. Gear Mfg. Co.*, 723 F.2d 944, 949 (D.C. Cir. 1983) (noting that *res*

judicata “forecloses all that which might have been litigated previously”). Because the underlying facts of this civil action existed at the time of the prior civil action, plaintiff is foreclosed from litigating the claims anew. A separate Order of dismissal accompanies this Memorandum Opinion.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a final flourish.

United States District Judge

December 13, 2009