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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JAIME L. ZEPEDA,

 Petitioner,

 v.

THE UNITED STATES OF AMERICA
(CONGRESS),

 Respondent.

Case No. 1:13-cv-01086-AWI-BAM-HC

ORDER TERMINATING MOTION FOR RELIEF
FROM JUDGMENT (DOC. 16)

Petitioner is a state prisoner who proceeded pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the Court is Petitioner's motion for relief from the judgment entered in this proceeding on November 15, 2013, pursuant to the Court's dismissal of the petition as successive. (Docs. 11, 12.)

On December 13, 2013, Petitioner filed a notice of appeal from the judgment, and the appeal is presently pending. (Docs. 13, 14.) Thereafter, Petitioner filed the instant motion for relief from the judgment, in which Petitioner challenges the Court's decision dismissing the petition. (Doc. 16, 4.) .

1 The filing of a timely notice of appeal transfers jurisdiction
2 to the appellate court over the appealable orders and judgments that
3 are encompassed by the notice, and it removes jurisdiction from the
4 district court. Trulis v. Barton, 107 F.3d 685, 694 (9th Cir.
5 1995). With respect to this Court's consideration of a motion
6 pursuant to Rule 60 to vacate a judgment that is the subject of a
7 pending appeal, the law has recently been summarized:

8 Once an appeal is filed, the district court no longer has
9 jurisdiction to consider motions to vacate judgment. Gould
10 v. Mut. Life Ins. Co. of N.Y., 790 F.2d 769, 772 (9th
11 Cir.1986). However, a district court may entertain and
12 decide a Rule 60(b) motion after notice of appeal is filed
13 if the movant follows a certain procedure, which is to
14 "ask the district court whether it wishes to entertain the
15 motion, or to grant it, and then move this court, if
16 appropriate, for remand of the case." Id. (internal
17 quotation marks and citations omitted); see also Defenders
18 of Wildlife v. Bernal, 204 F.3d 920, 930 (9th Cir.2000)
19 (holding that a district court order declining to
20 entertain or grant a Rule 60(b) motion is not a final
21 determination on the merits); Scott v. Younger, 739 F.2d
22 1464, 1466 (9th Cir.1984) (holding that the district
23 court's denial of a request to entertain a Rule 60(b)
24 motion is interlocutory and not appealable and that if the
25 court is inclined to grant the motion, the movant first
26 should request limited remand from the appellate court);
27 Crateo, Inc. v. Intermark, Inc. (In re Crateo, Inc.), 536
28 F.2d 862, 869 (9th Cir.1976) (declining to order a remand
after the district court declined to entertain the Rule
60(b) motion).

22 Davis v. Yageo Corp., 481 F.3d 661, 685 (9th Cir. 2007).

23 Here, petitioner's petition was dismissed as successive. This
24 Court lacks jurisdiction over Petitioner's motion. To the extent
25 that Petitioner's motion could be considered a request to this Court
26 to entertain Petitioner's motion, the Court is not inclined to
27 consider or to grant Petitioner's motion for relief from the

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judgment.

Accordingly, the Clerk is DIRECTED to terminate Petitioner's motion for relief from the judgment.

IT IS SO ORDERED.

Dated: February 27, 2014



SENIOR DISTRICT JUDGE