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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

5 **PHILLIP SANDERS,**

6 **Plaintiff,**

7 **v.**

8 **MATTHEW, et al.,**

9 **Defendants.**

1:15-cv-395-LJO-EPG

**MEMORANDUM DECISION AND ORDER RE
PLAINTIFF’S MOTION FOR
RECONSIDERATION (Doc. 11)**

10
11 **I. FACTUAL AND PROCEDURAL BACKGROUND**

12 Plaintiff Phillip Sanders, proceeding *pro se* and *in forma pauperis*, filed this civil rights suit against
13 various individuals involved with his state court criminal proceedings. *See* Doc. 1. The Magistrate Judge
14 screened the complaint under 28 U.S.C. § 1915(e)(2), and dismissed it with leave to amend. Doc. 8. The
15 Magistrate Judge therefore denied Plaintiff’s request for the Court to issue summonses on Defendants.
16 *Id.* at 1-2. Plaintiff then simultaneously filed an interlocutory appeal of that order in the United States
17 Court of Appeals for the Ninth Circuit, as well as a motion for reconsideration of the order in this Court.
18 Docs. 11, 12.¹ Shortly afterward, Plaintiff filed a first amended complaint. Doc. 17.

19 **II. STANDARD OF DECISION**

20 Under 28 U.S.C. § 636(b)(1)(A), the Court reviews the Magistrate Judge’s order to determine
21 whether it is “clearly erroneous or contrary to law.”

22
23 ¹ Despite his appeal, the Court retains jurisdiction to rule on Plaintiff’s motion for reconsideration. *See Leader Nat’l Ins. Co.*
24 *v. Indus. Indem. Ins. Co.*, 19 F.3d 444, 445 (9th Cir. 1994) (holding that under Fed. R. App. Pro. 4(a)(4) court of appeals will
25 hold appeal of order in abeyance while Fed. R. Civ. P. 59(e) motion to reconsider the order is pending in the district court);
Miller v. Marriott Int’l, Inc., 300 F.3d 1061, 1064 (9th Cir. 2002) (“Under [Rule 4(a)(4)(A), the [plaintiffs’] Rule 60(b)
motions prevented the [plaintiffs’] notices of appeal from becoming effective until the district court ruled on the merits of
those motions.”); *see also Barrett v. Oregon*, No. 6:14-cv-1204-HZ, 2015 WL 3823854, at *2 (D. Or. June 19, 2015) (finding
court had jurisdiction to rule on motion for reconsideration of dismissal order that was filed on same day as appeal of
dismissal order).

1 Although Plaintiff does not indicate the basis for his motion, the Court construes the motion to have
2 been brought under Federal Rule of Civil Procedure 59(e) or 60(b), both of which permit the Court to
3 alter or amend any judgment. A district court should not grant a motion for reconsideration under Rule
4 59(e) “absent highly unusual circumstances.” *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir.
5 1999) (internal citations and quotations omitted). “There are four grounds upon which a Rule 59(e)
6 motion may be granted: 1) the motion is necessary to correct manifest errors of law or fact upon which
7 the judgment is based; 2) the moving party presents newly discovered or previously unavailable
8 evidence; 3) the motion is necessary to prevent manifest injustice; or 4) there is an intervening change in
9 controlling law.” *Turner v. Burlington N. Santa Fe R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003) (internal
10 citations and quotations omitted).

11 Rule 60(b) permits relief from final judgments, orders, or proceedings, and may be granted on any
12 one of six grounds:

13 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that,
14 with reasonable diligence, could not have been discovered in time to move for a new trial
15 under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic),
16 misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the
17 judgment has been satisfied, released or discharged; it is based on an earlier judgment that
18 has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any
19 other reason that justifies relief.

16 III. DISCUSSION

17 Plaintiff’s filing the FAC renders his motion for reconsideration moot. “It is well-established in [the
18 Ninth Circuit] that an amended complaint supersedes the original, the latter being treated thereafter as
19 non-existent.” *Ramirez v. Cty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (citations and
20 quotation marks omitted). “In other words, the original pleading no longer performs any function.” *Id.*
21 (citations and quotation marks omitted). As a result, any pleading directed at Plaintiff’s original
22 complaint—including Plaintiff’s motion for reconsideration—is moot. *See id.* The Court therefore
23 DENIES AS MOOT Plaintiff’s motion for reconsideration.²

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25 ² Even if Plaintiff’s motion for reconsideration were not moot, the motion would be denied on the

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court DENIES AS MOOT Plaintiff's motion for reconsideration of
3 the Magistrate Judge's order (Doc. 11).

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5 IT IS SO ORDERED.

6 Dated: March 9, 2016

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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22 merits. Although not particularly clear, at bottom, the basis of the motion is nothing more than
23 Plaintiff's disagreement with the Magistrate Judge's order. Accordingly, Plaintiff has not provided (and
24 the Court cannot discern) any reason that would justify granting relief under Rule 59(e) or 60(b). *See*
25 *United States v. Westlands Water Dist.*, 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001) ("A party seeking
reconsideration must show more than a disagreement with the Court's decision" (citations and quotation
marks omitted)).