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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

NICOLAS DAVID ANDREAS,

Plaintiff,

No. CIV S-09-1207 FCD GGH P

vs.

MATTHEW CATE, et al.,

Defendants.

ORDER

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On August 24, 2009<sup>1</sup>, plaintiff filed a motion to vacate the magistrate judge’s order filed July 30, 2009, granting plaintiff thirty days to file an amended complaint. The court construes plaintiff’s motion to vacate as a request for reconsideration.

Local Rule 72-303(b), states “rulings by Magistrate Judges shall be final if no reconsideration thereof is sought from the Court within ten court days . . . from the date of service of the ruling on the parties.” E.D. Local Rule 72-303(b). Plaintiff’s request for reconsideration of the magistrate judge’s order of July 30, 2009, is therefore untimely.

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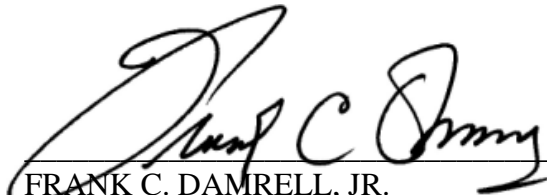
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<sup>1</sup> Pursuant to the mailbox rule, plaintiff filed his motion on August 24, 2009, although it is file stamped August 31, 2009.

1                   Accordingly, IT IS HEREBY ORDERED that:

- 2                   1. Plaintiff's motion to vacate (no. 17) is construed as a request for  
3 reconsideration;  
4                   2. Plaintiff's request for reconsideration is denied;  
5                   3. Plaintiff's amended complaint is due within thirty days of the date of this  
6 order.<sup>2</sup>

7 DATED: September 10, 2009.

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10 FRANK C. DAMRELL, JR.  
11 UNITED STATES DISTRICT JUDGE  
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26 <sup>2</sup> Although plaintiff has filed an interlocutory appeal of the July 30, 2009, order, this appeal does not stay this action. See 28 U.S.C. § 1292.