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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JAMES JOHNSON,

12 Petitioner,

13 v.

14 ANDREW M. SAUL, Commissioner,
15 Social Security Administration,

16 Respondent.

Case No.: 20-CV-747 JLS (AHG)

**ORDER DENYING PETITIONER'S
EX PARTE EMERGENCY MOTION
TO SET ASIDE JUDGEMENT OF
JANUARY 25TH, 2021**

(ECF No. 33)

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18 Presently before the Court is Petitioner James Johnson's Ex Parte Emergency
19 Motion to Set Aside Judgement of January 25th, 2021 ("Mot.," ECF No. 33), which the
20 Court construes as a motion for reconsideration of its January 25, 2021 Order (the "Order,"
21 ECF No. 31). Having carefully considered Petitioner's arguments and the law, the Court
22 **DENIES** the Motion.

23 **BACKGROUND**

24 Petitioner initiated this action on April 20, 2020. *See* ECF No. 1. On June 15, 2020,
25 the Court granted Petitioner's motion to proceed *in forma pauperis* ("IFP") but dismissed
26 without prejudice Petitioner's writs for failure to state a claim. *See generally* ECF No. 11.
27 After seeking and obtaining an extension of time, *see* ECF Nos. 16 and 17, Petitioner filed
28 his Amended Writs on August 18, 2020, *see* ECF No. 19. On January 25, 2021, the Court

1 issued the Order, which screened Petitioner’s Amended Writs and determined that
2 dismissal of the Amended Writs was warranted both for failure to comply with Federal
3 Rule of Civil Procedure 8(a) and for lack of subject matter jurisdiction. *See* Order at 10–
4 24. Petitioner filed the present Motion, seeking reconsideration of the Order, on February
5 19, 2021. *See* ECF No. 33.

6 LEGAL STANDARD

7 Federal Rule of Civil Procedure 59(e) permits a party to move a court to alter or
8 amend its judgment. In the Southern District of California, a party may apply for
9 reconsideration “[w]hensoever any motion or any application or petition for any order or
10 other relief has been made to any judge and has been refused in whole or in part.” Civ.
11 L.R. 7.1(i)(1). The moving party must provide an affidavit setting forth, *inter alia*, “what
12 new or different facts and circumstances are claimed to exist which did not exist, or were
13 not shown, upon such prior application.” *Id.*

14 “A district court may grant a Rule 59(e) motion if it ‘is presented with newly
15 discovered evidence, committed clear error, or if there is an intervening change in the
16 controlling law.’” *Wood v. Ryan*, 759 F.3d 1117, 1121 (9th Cir. 2014) (internal quotation
17 marks omitted) (quoting *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (en
18 banc)) (emphasis in original). “Clear error or manifest injustice occurs when ‘the
19 reviewing court on the entire record is left with the definite and firm conviction that a
20 mistake has been committed.’” *Young v. Wolfe*, CV 07-03190 RSWL-AJWx, 2017 WL
21 2798497, at *5 (C.D. Cal. June 27, 2017) (quoting *Smith v. Clark Cnty. Sch. Dist.*, 727 F.3d
22 950, 955 (9th Cir. 2013)).

23 Reconsideration is an “extraordinary remedy, to be used sparingly in the interests of
24 finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229
25 F.3d 877, 890 (9th Cir. 2000). Ultimately, whether to grant or deny a motion for
26 reconsideration is in the “sound discretion” of the district court. *Navajo Nation v. Norris*,
27 331 F.3d 1041, 1046 (9th Cir. 2003) (citing *Kona Enters.*, 229 F.3d at 883). A party may
28 not raise new arguments or present new evidence if it could have reasonably raised them

1 earlier. *Kona Enters.*, 229 F.3d at 890 (citing *389 Orange St. Partners v. Arnold*, 179 F.3d
2 656, 665 (9th Cir. 1999)).

3 ANALYSIS

4 Petitioner’s Motion requests that the Court “set aside” the Order and “fully
5 reconsider the issues, laws, facts and evidence and special circumstances in the case toward
6 issuing a new ruling based on the merits.” Mot. at 1–2. Petitioner claims that the Court
7 “made oversights, factual errors and mischaracterizations as well as legal errors that ought
8 to be reconsidered.” *Id.* at 2.

9 As an initial matter, Petitioner’s Motion fails to comply with the procedural
10 requirements of Civil Local Rule 7.1(i); however, the Court can and will exercise its
11 inherent authority nonetheless to consider the Motion on its merits. *In re Palomar Crash*
12 *of Jan. 24, 2006*, No. 06-CV-02711-DMS-POR, 2009 WL 10671588, at *1 (S.D. Cal. Jan.
13 21, 2009) (exercising inherent authority to consider motion for reconsideration that
14 indisputably failed to comply with Civil Local Rule 7.1(i)’s procedural requirements).
15 Even so, the Court finds, on the merits, that Petitioner has failed to clear the high bar for
16 reconsideration. Petitioner’s Motion does not identify any newly discovered evidence or
17 intervening changes in controlling law, so it appears Petitioner relies solely on the “clear
18 error” ground for reconsideration. *See generally* Mot.

19 Regarding the Court’s determination that dismissal of the Amended Writs was
20 warranted due to Petitioner’s failure to comply with Rule 8(a), Petitioner claims that “[t]he
21 [C]ourt ignored the fact the Amended Writs page count was nearly in compliance with all
22 Rules (and that a waiver was also granted).” Mot. at 12. He further claims that his
23 voluminous exhibits should not be counted for purposes of the number of pages comprising
24 his filing, that he has “no control over how many pages are included in a single piece of
25 evidence,” and that he “direct[ed] the court to ignore all superfluous exhibits on the system
26 and focus solely on the few cited exhibits.” *Id.* at 12–13 (emphasis omitted).

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1 Contrary to Petitioner’s assertions, however, the Court did not grant Petitioner a
2 blanket waiver to file as many pages as he wishes. Rather, the Order indicated that

3 the Court will not reject Petitioner’s Amended Writs outright
4 solely for exceeding any applicable page count limits. However,
5 to the extent Petitioner’s Third Rule Waiver Motion essentially
6 seeks a waiver of his responsibility to comply with Federal Rule
7 of Civil Procedure 8(a)’s “short and plain statement of the claim”
8 requirement, the Court **DENIES** the Third Rule Waiver Motion,
9 for the reasons provided *infra* at 10–12. The Court reiterates its
entreaty for Petitioner “to be mindful of the Court’s finite
resources.” ECF No. 11 at 3. Sometimes less is more.

10 Order at 3 (citing ECF No. 11 at 3) (emphasis in original). As the Order noted, Rule 8(a)
11 is not limited to the issue of how many pages a pleading spans. *See* Order at 11 (citations
12 omitted). The Order concluded, and Plaintiff does not dispute in his Motion, that not only
13 were the Amended Writs overly long, they were also “repetitious[] and confusing.” *Id.*
14 The Court cited several cases dismissing pleadings where, like Petitioner’s, the facts were
15 scattered throughout a lengthy pleading rather than organized into a “short and plain
16 statement of the claim.” *Id.* at 11–12 (citations omitted).

17 The Court stands by its determination that the Amended Writs fail to comply with
18 Rule 8(a), not only because of their excessive length, but because they are confusing,
19 repetitious, and rambling. *See United States ex rel. Cafasso v. Gen. Dynamics C4 Sys.,*
20 *Inc.*, 637 F.3d 1047, 1058–59 (9th Cir. 2011) (collecting cases). The Court will once again
21 reiterate that it has finite resources coupled with a significant caseload. It is thus incumbent
22 upon Petitioner to present cognizable claims; it is not the province of the Court to sift
23 through unwieldy filings and make Petitioner’s case for him. Thus, the Court finds that its
24 dismissal of the Amended Writs for failure to comply with Rule 8(a) was not clearly
25 erroneous and **DENIES** the Motion on this ground.

26 Given that the Order’s Rule 8(a) ruling was itself an independent and sufficient
27 reason to dismiss the Amended Writs, the Court need not address Petitioner’s numerous,
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1 and often rather discourteous or antagonistic, objections to the Court’s jurisdictional
2 ruling.¹ *See, e.g., Krause v. Yavapai Cty.*, No. CV1908054PCTMTLESW, 2020 WL
3 2512761, at *8 (D. Ariz. May 15, 2020). Nonetheless, the Court will caution Petitioner
4 that, as a pro se litigant, he is bound by the Code of Conduct contained in the Local Rules.
5 *See* S.D. Cal. CivLR 2.1, *available at* [https://www.casd.uscourts.gov/_assets/pdf/rules/](https://www.casd.uscourts.gov/_assets/pdf/rules/2021.03.24%20Local%20Rules.pdf)
6 [2021.03.24%20Local%20Rules.pdf](https://www.casd.uscourts.gov/_assets/pdf/rules/2021.03.24%20Local%20Rules.pdf) (last visited Apr. 2, 2021). Accordingly, Petitioner is
7 reminded that he is expected “to be courteous and respectful to the court and all court and
8 court-related personnel” and “to honor and maintain the integrity of our justice system,
9 including by not impugning the integrity of its proceedings, or its members.” *Id.* at
10 2.1(2)(a), (h). Further, although Petitioner threatens multiple times to appeal the Order,
11 the Court notes for Petitioner’s benefit that a dismissal pursuant to the screening provision
12 of 28 U.S.C. § 1915(e) granting leave to amend is not a final, appealable judgment. *See*
13 *Love v. Hensley*, 292 F. App’x 628, 629 (9th Cir. 2008) (citing *WMX Technologies, Inc. v.*
14 *Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc)).

15 CONCLUSION

16 In light of the foregoing, the Court **DENIES** Petitioner’s Motion (ECF No. 33).

17 Once again, the Court will grant Petitioner one final opportunity to amend his claims
18 to state “a short and plain statement of the claim showing that the pleader is entitled to
19 relief,” Fed. R. Civ. P. 8(a)(2), and adequately to allege a basis for subject matter
20 jurisdiction. Petitioner **MAY FILE** amended writs that cure the deficiencies noted in the
21 Order within sixty (60) days of the electronic docketing of this Order. Any amended filing
22 must be complete in itself without reference to Petitioner’s original or amended Writs.
23 (Although the Court will again permit Petitioner to incorporate previously filed exhibits by
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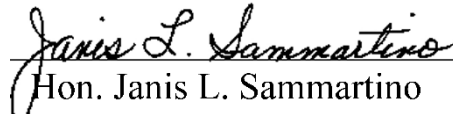
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26 ¹ As just one example, Petitioner’s Motion states: “Does the court truly want Petitioner to submit the
27 current ‘as is’ ruling papers for In Banc Appellate Review or Writ of Certiorari to SCOTUS? Even though
28 all rulings have been against Petitioner, he’s not going to drop whatever professionalism he still has.
Petitioner perceives legal flaws and all judges deserve a right to correct errors before being judged
themselves. [*Petitioner grew up watching ‘Judge Hardy and Son’ and has always admired and respected
most judges as a result—no apologies!*].” Mot. at 4 n.8.

1 reference, the Court once more urges Petitioner to pare down his requests to make them
2 more intelligible and less repetitive.) Any claim not re-alleged in Petitioner’s amended
3 writs will be considered waived. See S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc. v.*
4 *Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading
5 supersedes the original.”); see also *Lacey v. Maricopa Cty.*, 693 F.3d 896, 928 (9th Cir.
6 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an
7 amended pleading may be “considered waived if not repled.”).

8 Should Petitioner fail to file his amended writs within sixty (60) days, the Court will
9 enter a final order dismissing this civil action based both on Petitioner’s failure to state a
10 claim upon which relief can be granted pursuant to 28 U.S.C. § 1915(e)(2) and his failure
11 to prosecute in compliance with a court order requiring amendment. See *Lira v. Herrera*,
12 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not take advantage of the
13 opportunity to fix his complaint, a district court may convert the dismissal of the complaint
14 into dismissal of the entire action.”).

15 **IT IS SO ORDERED.**

16 Dated: April 6, 2021

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18 Hon. Janis L. Sammartino
19 United States District Judge
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