

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**JEREMY SMITH,**

**Plaintiff,**

**v.**

**THOMAS, et al.,**

**Defendants.**

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**CIVIL NO. 3:13-CV-01708**

**(Judge Mariani)**

**MEMORANDUM**

**I. Introduction**

On August 16, 2013, this Court issued an Order adopting the Report and Recommendation of Magistrate Judge Carlson (Doc. 7), overruling Plaintiff's Objections (Docs. 8, 9, 10), and dismissing Plaintiff's Complaint without prejudice. (Doc. 11). The Order also gave Plaintiff leave to file an Amended Complaint on or before September 6, 2013. (*Id.*).

On August 23, 2013, Plaintiff filed a document entitled "Amended Complaint/Objection." (Doc. 12). However, a review of the document shows that it is not an actual amended complaint, and appears to be an additional objection to the Report and Recommendation of the Magistrate Judge. (*Id.*). In the document, it states that Plaintiff "respectfully object Doc. 8, 9, 10 and as well Doc. 1 not to be dismissed and rightfully be

reinstated..." (sic) (*Id.* at 1). As such, we will construe Document 12 on the Docket Sheet as a motion for reconsideration.

## **II. Standard of Review**

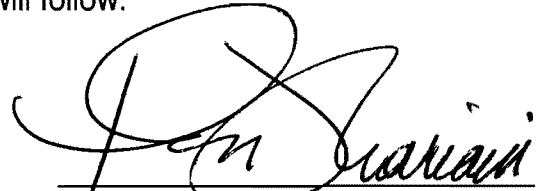
A motion for reconsideration is a mechanism "to correct manifest errors of law or fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir.1985). A motion for reconsideration is generally permitted only upon the basis of three grounds: (1) there is an intervening change in the controlling law; (2) new evidence becomes available; or (3) clear error of law or to prevent manifest injustice. See *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir.1999) (citing *North River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir.1995)).

## **III. Discussion**

In his motion for reconsideration, Plaintiff merely asks us to not dismiss his Complaint because it "is a factual *Bivens* and shall be processed properly with all fairness and justices of the law." (Doc. 12, p. 1). This argument does not form an appropriate basis for a motion for reconsideration. As such, we will deny the motion for reconsideration.

We also note that Plaintiff did not comply with the Court Order granting him leave to file an Amended Complaint *which conforms to the instructions contained within Judge Carlson's Report and Recommendation (Doc. 7)*. Instead, Plaintiff chose to file the document discussed above. Plaintiff will be given an additional amount of time to file an Amended Complaint. If Plaintiff again fails to file an Amended Complaint *that conforms to*

*the instructions contained within Judge Carlson's Report and Recommendation (Doc. 7) he risks dismissal of this action. An appropriate Order will follow.*

A handwritten signature in black ink, appearing to read "R. Mariani", written over a horizontal line.

Robert D. Mariani  
United States District Judge