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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

THEODORE BRITTON YATES,

CASE NO. 1:10-cv-00530-SMS PC

Plaintiff,

ORDER DENYING PLAINTIFF’S MOTION TO  
ALTER JUDGMENT

v.

(ECF No. 75)

C KING,

Defendant.

Plaintiff Theodore Britton Yates (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On May 27, 2011, this action was dismissed for failure to exhaust administrative remedies. (ECF No. 73.) On June 3, 2011, Plaintiff filed a timely motion to alter judgment under Federal Rules of Civil Procedure 59(e). (ECF No. 75.) Plaintiff requests the Court alter judgment to allow him to exhaust his administrative remedies.

“A motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law,” and it “may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.” Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted) (emphasis in original).

Plaintiff does not argue that newly discovered evidence or an intervening change of the law requires reinstatement of this action. All papers and files in this action were considered in deciding

1 the motion to dismiss for failure to exhaust administrative remedies. In his motion filed June 3,  
2 2011, Plaintiff has not demonstrated that he can cure the defects with respect to any federal claim  
3 alleged in his complaint.

4 Accordingly, it is HEREBY ORDERED that Plaintiff's motion to alter judgment, filed June  
5 3, 2011, is DENIED.

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7 IT IS SO ORDERED.

8 **Dated: June 8, 2011**

**/s/ Sandra M. Snyder**  
**UNITED STATES MAGISTRATE JUDGE**

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