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5 **UNITED STATES DISTRICT COURT**

6 **EASTERN DISTRICT OF CALIFORNIA**
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9 BRADY K. ARMSTRONG,) 1:11-cv-01996-LJO-BAM (PC)
10 Plaintiff,)
11 v.) ORDER DENYING PLAINTIFF’S MOTION
12 A. ANDERSON, et al.,) FOR RECONSIDERATION
13 Defendants.) (ECF No. 53)
14)

15 **I. Procedural Background**

16 Plaintiff Brady K. Armstrong (“Plaintiff”), a former state prisoner, proceeded pro se and
17 in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The action proceeded
18 on Plaintiff’s complaint against Defendants Anderson and Adams for violations of the First and
19 Eighth Amendments to the United States Constitution.

20 On July 21, 2014, Defendant Adams filed a motion for summary judgment based on
21 Plaintiff’s failure to exhaust administrative remedies. Plaintiff was provided with notification of
22 the requirements for opposing a motion for summary judgment. (ECF Nos. 38-44.) Plaintiff did
23 not file a timely opposition. As a result, on November 3, 2014, the Magistrate Judge ordered
24 Plaintiff to file an opposition or statement of non-opposition to the summary judgment motion
25 within twenty-one days. The Magistrate Judge warned Plaintiff that his failure to comply with
26 the order would result in dismissal of this action, with prejudice, for failure to prosecute. (ECF
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1 No. 45.) On November 25, 2014, the United States Postal Service returned the Magistrate
2 Judge's order as "Undeliverable, Does not live at this address."

3 On January 9, 2015, the Clerk of the Court updated Plaintiff's address pursuant to a
4 Notice of Change of Address filed in another matter. (ECF No. 49.) The Clerk of the Court also
5 re-served the Magistrate Judge's order requiring Plaintiff to file an opposition or statement of
6 non-opposition to the summary judgment motion within twenty-one days. Plaintiff did not
7 timely respond to the Magistrate Judge's order. Accordingly, on February 9, 2015, the
8 Magistrate Judge issued Findings and Recommendations that this action be dismissed, with
9 prejudice, based on Plaintiff's failure to prosecute and failure to obey a court order. The
10 Findings and Recommendations were served on the parties and contained notice that any
11 objections were to be filed within fourteen (14) days after service. (ECF No. 50.) No objections
12 were filed. Thereafter, on February 27, 2015, the undersigned adopted the Findings and
13 Recommendations in full and dismissed this action, with prejudice, based on Plaintiff's failure to
14 prosecute and failure to obey a court order. (ECF No. 51.) Judgment was entered the same date.
15 (ECF No. 52.)

16 On March 16, 2015, Plaintiff filed the instant motion for an extension of time, which the
17 Court construes as a motion for reconsideration of the order dismissing this action and entry of
18 judgment. (ECF No. 53.)

19 **II. Motion for Reconsideration**

20 A motion for reconsideration, such as that filed by Plaintiff, is treated as a motion to alter
21 or amend judgment under Federal Rule of Civil Procedure 59(e) if it is filed within 28 days after
22 the entry of judgment. United States v. Nutri-cology, Inc., 982 F.2d 394, 397 (9th Cir.1992);
23 Fed. R. Civ. P. 59(e). Plaintiff filed his motion 17 days after entry of judgment.

24 Relief pursuant to Rule 59(e) is appropriate when there are highly unusual circumstances,
25 the district court is presented with newly discovered evidence, the district court committed clear
26 error, or a change in controlling law intervenes. School Dist. No. 1J, Multnomah County, Oregon
27 v. AcandS, Inc., 5 F.3d 1255, 1263 (9th Cir.1993). To avoid being frivolous, such a motion must
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1 provide a valid ground for reconsideration. See MGIC Indem. Corp. v. Weisman, 803 F.2d 500,
2 505 (9th Cir.1986).

3 Here, Plaintiff claims that reconsideration is warranted because he was in the hospital or
4 homeless from August 2014 through January 2015. Plaintiff also claims that reconsideration is
5 warranted because his legal mail was being wrongfully withheld at his sister's address and, at
6 some unknown time, Plaintiff's nephew provided Plaintiff all withheld legal mail sent from this
7 Court from December 2014 through January 15, 2015. Plaintiff also indicates that his mother
8 passed away on February 1, 2015, and his son was hospitalized on March 1, 2015. Plaintiff
9 requests that the Court reconsider his wrongfully dismissed action and allow him a 45-day
10 extension to respond. (ECF No. 53.)

11 The Court has considered Plaintiff's moving papers, but does not find that they support
12 relief under Rule 59(e) due to highly unusual circumstances. Although Plaintiff asserts that he
13 did not receive any of the Court's orders issued between November 2014 and January 2015, this
14 assertion does not explain Plaintiff's failure to respond to the Magistrate Judge's Findings and
15 Recommendations regarding dismissal of this action, which were issued and served by mail to
16 Plaintiff's updated address on February 9, 2015. According to the docket in this matter, Plaintiff
17 made no effort to communicate with the Court or file objections following service of the
18 Findings and Recommendations and he provides no explanation for his failure to do so.

19 Furthermore, Plaintiff's request for reconsideration provides no explanation as to why, in
20 the first instance, he failed to respond to Defendant Adams' motion for summary judgment,
21 which was filed and served on July 21, 2014. Plaintiff vaguely states that he was "within the
22 hospital August 2014-January 2015 and or homeless," but he provides no details or evidentiary
23 support for such statement. (ECF No. 53, p. 1.) Plaintiff also provides insufficient evidence to
24 demonstrate that he was prevented from either responding to the motion for summary judgment
25 or filing a request for an extension of time to respond after service in July 2014.

26 Additionally, Plaintiff does not explain why he made no effort to contact the Court
27 regarding this action between July 2014 and March 2015. Based on the record in this case,
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1 Plaintiff had the apparent ability to contact the Court in connection with a separate action,
2 Armstrong v. Hedgpeth, et al., 1:11-cv-00761-LJO-GSA, in January 2015. (ECF No. 49.)

3 **III. Conclusion and Order**

4 For the reasons stated, Plaintiff's motion for reconsideration, filed on March 16, 2015, is
5 HEREBY DENIED.

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7 IT IS SO ORDERED.

8 Dated: **April 3, 2015**

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