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3 **UNITED STATES DISTRICT COURT**  
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
5

6 **STEVEN R. MILLER,**

7 **Plaintiff,**

8 **v.**

9 **ALBERT NAJERA, et al.,**

10 **Defendants.**  
11

**1:12-cv-01288-LJO-**

**MEMORANDUM DECISION AND  
ORDER DENYING PLAINTIFF’S  
MOTION FOR RECONSIDERATION**

**(ECF No. 94)**

12  
13 **I. INTRODUCTION**

14 On December 26, 2018, Plaintiff Steven Miller filed the instant motion for reconsideration. ECF  
15 No. 94. On December 21, 2017, the Court dismissed Plaintiff’s claims against the County of Fresno for  
16 alleged failure to protect and deliberate indifference while Plaintiff was housed at the Fresno County Jail  
17 because Plaintiff had not fully exhausted the administrative remedies available at that facility. ECF No.  
18 92 at 9-10. The dismissal was without prejudice, *id.* at 13, judgment was entered, and this case was  
19 closed. ECF No. 93. Plaintiff now argues that the Court should reconsider the dismissal, and re-open his  
20 case, because Plaintiff has filed J-105 grievance forms with the Fresno County Jail on October 25, 2018.  
21 ECF No. 94 at 3. Plaintiff was not aware during the pendency of his case that the grievance process was  
22 the appropriate means to redress his injuries, but he has now taken steps to pursue administrative  
23 remedies. He therefore asks for relief from judgment in his case under Federal Rule of Civil Procedure  
24 60(b)(1) due to his “mistake, inadvertence, surprise, or excusable neglect” in not exhausting before  
25 filing his suit.

1 It appears from Plaintiff's representations that his failure to exhaust administrative remedies in  
2 the first instance was due to confusion or a misunderstanding, rather than an attempt to avoid the  
3 administrative processes in place at the Fresno County Jail. Nevertheless, there is no basis for the Court  
4 to grant relief under Rule 60. The Prison Litigation Reform Act requires that administrative remedies be  
5 exhausted before a prisoner may bring an action challenging prison conditions in federal court. 42  
6 U.S.C. § 1997e(a). Courts may not craft exceptions to this requirement. *Ross v. Blake*, 136 S.Ct. 1850,  
7 1856 (2016). Plaintiff has not represented to the Court that the administrative remedy process at Fresno  
8 County Jail has been exhausted, only that he has initiated it by filing J-105 forms. He has not offered  
9 any reason to conclude that administrative remedies have been made unavailable to him. Even if the  
10 administrative process were in fact complete, the appropriate course of action would be for Plaintiff to  
11 file a new complaint, not for the Court to reopen his prior case. "[A] district court must dismiss a case  
12 without prejudice 'where there is no presuit exhaustion,' even if there is exhaustion while suit is  
13 pending." *Lira v. Herrera*, 427 F. 3d 1164, 1170 (9th Cir. 2005). Plaintiff's failure to exhaust his  
14 remedies before filing this case, however understandable, requires dismissal. His remedy is to refile his  
15 complaint after exhausting the Fresno County Jail's administrative process. The Court simply does not  
16 have the legal authority to reopen Plaintiff's case. <sup>1</sup>

## 17 **II. CONCLUSION AND ORDER**

18 For the foregoing reasons, Plaintiff's motion for reconsideration is DENIED.

19 IT IS SO ORDERED.

20 Dated: January 15, 2019

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

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24  
25 <sup>1</sup> Plaintiff appears to have some concerns that the statute of limitation on his claims will expire while he pursues administrative remedies. *See* ECF No. 94 at 6. It is well established "that the applicable statute of limitations must be tolled while a prisoner completes the mandatory exhaustion process." *Brown v. Valoff*, 422 F.3d 926, 943 (9th Cir. 2005).