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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHNNY G. BRIONES,

 Plaintiff,

 v.

R. HAND, et al.,

 Defendants.

1:14-cv-00750-LJO-EPG (PC)

ORDER REQUIRING PLAINTIFF TO
PROVIDE ADDITIONAL EVIDENCE
REGARDING HIS MOTION FOR
RECONSIDERATION
(ECF NO. 52)

Johnny G. Briones (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on May 19, 2014. (ECF No. 1.) On August 19, 2016, defendants Cole, Hendricks, and Hand filed a motion to dismiss for failure to exhaust. (ECF No. 45.) On September 9, 2016, Plaintiff filed non-opposition to the motion, stating that he would not be able to oppose the motion to dismiss in a timely manner. (ECF No. 48.) Therefore, on September 12, 2016, the Court dismissed the case, without prejudice. (ECF No. 49.) On December 14, 2016, Plaintiff filed a “Motion to Examine Administrative Exhaustion in Connection with Plaintiff’s Current Complaint.” (ECF No. 52.) The Court construes this as a motion to reconsider its order

1 dismissing the case.

2 Federal Rule of Civil Procedure 60(b) governs grounds for relief from an order:

3 On motion and just terms, the court may relieve a party or its legal
4 representative from a final judgment, order, or proceeding for the
5 following reasons: (1) mistake, inadvertence, surprise, or excusable
6 neglect; (2) newly discovered evidence that, with reasonable
7 diligence, could not have been discovered in time to move for a
8 new trial under Rule 59(b); (3) fraud (whether previously called
9 intrinsic or extrinsic), misrepresentation, or misconduct by an
opposing party; (4) the judgment is void; (5) the judgment has been
satisfied, released, or discharged; it is based on an earlier judgment
that has been reversed or vacated; or applying it prospectively is no
longer equitable; or (6) any other reason that justifies relief.

10 Thus far, Plaintiff has failed to show that he meets any of the above-mentioned reasons for
11 granting relief from the order dismissing the case. Plaintiff states that he has had extreme health
12 problems, which is why he was unable to oppose the motion to dismiss. Additionally, Plaintiff
13 states that he was not able to appeal his grievance to the third level because he has serious health
14 problems, and because he was in the hospital without his legal property during the time period he
15 had to appeal to the third level. Plaintiff asks the Court to order prison officials to address the
16 merits of his prison grievance, even though it is untimely.

17 On the present record, there appears to be no reason why Plaintiff could not have brought
18 these alleged facts to the Court's attention in response to the motion to dismiss. Plaintiff was able
19 to file a non-opposition, and nothing in the non-opposition suggested that Plaintiff had health
20 problems or that he was in the hospital and did not have access to the legal paperwork at the time
21 he was required to exhaust his administrative remedies. Instead, he simply stated "Plaintiff will
22 not be able to gather any and all documents possible in time before filing opposition pleading is
23 due." (ECF No. 48.) In other words, at the time of filing his non-opposition, Plaintiff knew (or
24 should have known) about all of the issues he is now raising. Plaintiff does not explain why he
25 did not raise his medical situation at that time. The only truly "new" fact presented in the present
26 motion for reconsideration is that Plaintiff now has someone to "assist him to communicate with
27 the court in this matter." (ECF No. 52 at 1.) Plaintiff also now provides the sworn declaration of
28 another prisoner, Troy A. Rhodes, who testifies to his own belief that "Plaintiff has some serious

1 medical problems that may be part of his suffering a stroke,” and that Plaintiff is unable to
2 communicate effectively due to those health issues. (*Id.* at 11-12.) Mr. Rhodes, however, is not a
3 medical professional. Absent medical evidence, the Court cannot evaluate properly Plaintiff’s
4 request for reconsideration.

5 Therefore, the Court will give Plaintiff until February 3, 2017, to submit medical
6 documentation in support of his motion for reconsideration. Plaintiff should submit medical
7 records showing the severity of his condition, including any medical documentation indicating
8 why he might have difficulty communicating, and/or any medical records showing that he was in
9 the hospital or under the care of a physician at the time he was required to oppose the motion to
10 dismiss. After Plaintiff submits the additional evidence, Defendants shall have 14 days to file a
11 response to the motion for reconsideration. If the Court grants the motion for reconsideration, it
12 may request further briefing regarding the pending motion to dismiss, but does not do so at this
13 time.

14
15 IT IS SO ORDERED.

16 Dated: December 22, 2016

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