

1 On September 9, 2017, Plaintiff filed the instant motion for 21-day extension of time.
2 (ECF No. 16.) Plaintiff states that he just received the Court's June 30, 2017 show cause order,
3 which had been mailed to Sacramento.¹ Plaintiff states that he has been at Corcoran since June 9,
4 2017, and seeks another 21-day deadline in this action. (Id.) The Court construes the motion as a
5 motion for reconsideration.

6 The Court has discretion to reconsider and vacate a prior order. Barber v. Hawaii, 42 F.3d
7 1185, 1198 (9th Cir. 1994); United States v. Nutri-cology, Inc., 982 F.2d 394, 396 (9th Cir.
8 1992). Federal Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the
9 district court. The Rule permits a district court to relieve a party from a final order or judgment
10 on grounds of: "(1) mistake, inadvertence, surprise, or excusable neglect . . . or (6) any other
11 reason that justifies relief." Fed. R. Civ. P. 60(b). When filing a motion for reconsideration,
12 Local Rule 230(j) requires a party to show "what new or different facts or circumstances are
13 claimed to exist which did not exist or were not shown upon such prior motion, or what other
14 grounds exist for the motion."

15 The Court finds good cause to grant Plaintiff reconsideration and re-open this action. Fed.
16 R. Civ. P. 60(b). Plaintiff has stated that he did not receive the Court's June 30, 2017 order,
17 which required him to show cause why this action should not be dismissed for failure to exhaust
18 prior to filing suit. The case was ultimately dismissed because Plaintiff never complied with the
19 June 30, 2017 order. Plaintiff should not be penalized for failure to obey a court order that he did
20 not receive in time. Accordingly, Plaintiff's motion shall be granted, and the Court will re-open
21 this action and re-serve the June 30, 2017 order on Plaintiff.

22 Accordingly, IT IS HEREBY ORDERED as follows:

- 23 1. Plaintiff's motion for a 21-day extension of time (ECF No. 16) is GRANTED;
- 24 2. The Clerk of the Court is directed to VACATE the judgment entered on August 3,
25 2017, and re-open this action;

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28 ¹ Plaintiff also states that he is sending back the mail to prove he did not receive it until August 31, 2017, but no documents were attached to the motion.

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3. The Clerk of the Court shall mail Plaintiff a copy of the Court's show cause order issued on June 30, 2017 (ECF No. 12);
4. Within **twenty-one (21) days** from the date of service of this order, Plaintiff shall show cause why this action should not be dismissed, without prejudice, for failure to exhaust prior to filing suit; and
5. If Plaintiff fails to comply with this order, this action will be dismissed, without prejudice, for failure to exhaust prior to filing suit and failure to obey a court order.

IT IS SO ORDERED.

Dated: September 11, 2017

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE