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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL JACOBSEN,
Plaintiff,
v.
MALDINADO,
Defendant.

Case No. 1:17-cv-00101-LJO-BAM (PC)
ORDER DENYING MOTION TO REOPEN
CASE
(ECF No. 58)

Plaintiff Michael Jacobsen (“Plaintiff”) is a former county detainee proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant 42 U.S.C. § 1983. All parties in this action consented to Magistrate Judge jurisdiction. (ECF No. 54.)

On February 14, 2018, Defendant Maldonado filed a motion for summary judgment on the ground that Plaintiff failed to exhaust his administrative remedies. (ECF No. 40.) Plaintiff filed an opposition on February 27, 2018, (ECF No. 41), and Defendant filed a reply on March 5, 2018, (ECF No. 43). On September 25, 2018, the Court granted Defendant’s motion for summary judgment, and judgment was entered accordingly the same day. (ECF Nos. 56, 57.)

Currently before the Court is Plaintiff’s motion seeking to set aside the dismissal of this action, “due to good cause for the lack of prosecution,” filed December 3, 2019. (ECF No. 58.) The Court has received no other communication from Plaintiff regarding this action between entry of judgment on September 25, 2018, and the instant motion.

1 In his motion, Plaintiff states that this action was “dismissed due to lack of prosecution
2 and the time running out on the deadlines & cut off dates.” (ECF No. 58, p. 1.) Plaintiff goes on
3 to explain that due to a combination of re-incarceration, lack of knowledge with legal matters, his
4 inability to find counsel, his house burning up with all of his legal work inside, and various other
5 troubles, he has been unable to prosecute this action. Plaintiff therefore argues that the dismissal
6 of this action should be set aside for good cause for his lack of prosecution. (Id.)

7 “A motion for reconsideration should not be granted, absent highly unusual
8 circumstances, unless the district court is presented with newly discovered evidence, committed
9 clear error, or if there is an intervening change in the controlling law,” Marlyn Nutraceuticals,
10 Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotation marks
11 and citations omitted), and “[a] party seeking reconsideration must show more than a
12 disagreement with the Court’s decision, and recapitulation . . .” of that which was already
13 considered by the Court in rendering its decision, U.S. v. Westlands Water Dist., 134 F. Supp. 2d
14 1111, 1131 (E.D. Cal. 2001) (internal quotation marks and citation omitted). Additionally,
15 pursuant to this Court’s Local Rules, when filing a motion for reconsideration of an order, a party
16 must show “what new or different facts or circumstances are claimed to exist which did not exist
17 or were not shown upon such prior motion, or what other grounds exist for the motion.” Local
18 Rule 230(j).

19 Although Plaintiff states that he is presenting new circumstances to explain his lack of
20 prosecution in this action, warranting reopening of the case, this action was not dismissed based
21 on any lack of prosecution by Plaintiff. As noted above, the Court granted Defendant’s motion
22 for summary judgment on the basis that Plaintiff failed to exhaust his administrative remedies.
23 Plaintiff did not fail to meet any deadlines regarding the summary judgment motion, and he
24 timely filed an opposition to Defendant’s motion for summary judgment before the Court issued
25 its decision. Nothing presented in this new motion supports reconsideration of that order.

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Accordingly, Plaintiff's motion to reopen this action, (ECF No. 58), is HEREBY DENIED. This action remains closed.

IT IS SO ORDERED.

Dated: December 5, 2019

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE