

1 defendant Romero for excessive force and by defendants Romero, Abarra, and La for deliberate
2 indifference to plaintiff's medical needs.

3 After defendants answered the complaint, the court issued a Discovery and Scheduling
4 Order setting a November 18, 2016 deadline for discovery and a February 10, 2017 deadline for
5 pretrial motions. (ECF No. 23.) On July 29, 2016, defendants moved for summary judgment.
6 (ECF No. 24.) Defendants argue that plaintiff failed to exhaust his administrative remedies
7 before filing this action.

8 In a motion filed August 10, 2016, plaintiff sought an order allowing him to have limited
9 correspondence with an inmate witness. (ECF No. 27.) On August 18, 2016, the court denied the
10 motion because plaintiff failed to show the affidavit(s) he sought were relevant to the issues
11 raised by defendants' motion for summary judgment. (ECF No. 29.)

12 In a motion filed September 2, 2016, plaintiff seeks reconsideration of the court's August
13 18 order. (ECF No. 30.) Since then, plaintiff filed an opposition to defendants' summary
14 judgment motion and defendants filed a reply. (ECF Nos. 31, 32.) On November 14, 2016,
15 defendants moved to modify the Discovery and Scheduling Order issued on July 27, 2016. (ECF
16 No. 33.)

17 **Plaintiff's Motion for Reconsideration**

18 The court will reconsider a ruling on a motion upon a showing that "new or different facts
19 or circumstances are claimed to exist which did not exist or were not shown upon such prior
20 motion, or what other grounds exist for the motion; and . . . why the facts or circumstances were
21 not shown at the time of the prior motion." E.D. Cal. R. 230(j). Plaintiff now alleges that inmate
22 witness Liggins, with whom he seeks to communicate, "would assert that he assisted, counseled
23 plaintiff in the exhaustion process due to plaintiff's mental health disabilities . . . [and] would
24 assert why no 3rd level decision was rendered on initial 602 appeal and why complaint was filed
25 when it was." (ECF No. 30 at 1.) According to plaintiff, Liggins' affidavit is necessary to show
26 why plaintiff should be excused from the exhaustion requirement.

27 Plaintiff will only be excused from the exhaustion requirement if he can show the
28 appropriate grievance procedures were "unavailable" to him. See Ross v. Blake, 136 S. Ct. 1850,

1 1859-60 (2016). Plaintiff does not show why inmate Liggins has more knowledge about the
2 availability of the grievance and appeal procedures. In fact, in plaintiff's opposition to the
3 summary judgment motion, plaintiff states that Liggins only helped him file the original 602
4 appeal. (ECF No. 31 at 3.) Plaintiff makes no assertion in the opposition that Liggins was
5 involved in the other aspects of plaintiff's grievance process or that plaintiff himself was unaware
6 of what happened. For these reasons, the court finds plaintiff has failed to show a need to
7 communicate with Liggins to obtain his affidavit to oppose the summary judgment motion.

8 **Defendants' Motion to Modify Discovery and Scheduling Order**

9 On November 14, 2016, defendants filed a motion to modify the Discovery and
10 Scheduling Order to permit additional discovery and pretrial motions after a decision on the
11 pending motion for summary judgment. Defendants argue that they limited their summary
12 judgment motion to exhaustion issues in the interests of most efficiently resolving this action.
13 The court agrees that if defendants' motion for summary judgment is denied, the parties should be
14 permitted further discovery and pretrial motions on the substance of plaintiff's complaint.

15 Accordingly, and good cause appearing, IT IS HEREBY ORDERED as follows:

- 16 1. Plaintiff's September 2, 2016 motion for reconsideration (ECF No. 30) is denied; and
17 2. Defendants' November 14, 2016 motion to modify the Discovery and Scheduling
18 Order is granted. See Fed. R. Civ. P. 16(b)(4). If defendants' summary judgment
19 motion is denied, the court will set new deadlines for discovery and pretrial motions.

20 Dated: December 29, 2016

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

24 DLB:9
25 DLB1/prisoner-civil rights/will0782.recon
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