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3
4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6
7 CLARENCE MCNAIR,

8 Plaintiff,

9 vs.

10 LISA WALSH et al.,

11 Defendants.

3:15-cv-00017-RCJ-WGC

ORDER

12
13 This is a prisoner civil rights case arising from an allegation of deliberate indifference to
14 a serious medical need in violation of the Eighth Amendment. Now pending before the Court is
15 Plaintiff Clarence McNair's ("Plaintiff") motion for reconsideration of the summary judgment
16 against him. (Mot. Recon., ECF No. 53.) Defendants have also filed a motion to extend time with
17 respect to the filing of their response in opposition to the motion to reconsider (Mot. Extend
18 Time, ECF No. 54.)

19 **I. FACTS AND PROCEDURAL BACKGROUND**

20 Plaintiff, a pro se litigant, is an inmate in custody of the Nevada Department of
21 Corrections at the Northern Nevada Correctional Center ("NNCC"). Following screening of the
22 complaint in this case, Plaintiff was permitted to proceed on a single claim: Eighth Amendment
23 deliberate indifference to a serious medical need, based on Plaintiff's placement in
24 administrative segregation and in "Unit 4," which deprived him of access to physical therapy and

1 other necessary medical treatment for rheumatoid arthritis. (*See* Screening Order 3–5, ECF No.
2 20.) On June 21, 2017, the Court accepted and adopted the magistrate judge’s report and
3 recommendation that summary judgment be granted in favor of Defendants, based on Plaintiff’s
4 failure to exhaust the administrative remedies available at NNCC. (Order, ECF No. 51; R. & R.
5 4–5, ECF No. 35.)

6 Plaintiff now moves the Court to reconsider the summary judgment. (Mot. Recon. ECF
7 No. 53.)

8 **II. LEGAL STANDARDS**

9 Granting a motion to reconsider under Federal Rule of Civil Procedure 59(e) is an
10 “extraordinary remedy, to be used sparingly in the interests of finality and conservation of
11 judicial resources.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (quoting 12 James
12 Wm. Moore et al., *Moore's Federal Practice* § 59.30[4] (3d ed. 2000)). “Reconsideration is
13 appropriate if the district court (1) is presented with newly discovered evidence, (2) committed
14 clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in
15 controlling law.” *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263
16 (9th Cir. 1993). In some cases, “other, highly unusual, circumstances” may also warrant
17 reconsideration. *Id.*

18 However, a motion to reconsider “may not be used to raise arguments or present evidence
19 for the first time when they could reasonably have been raised earlier in the litigation.” *Carroll*,
20 342 F.3d at 945; *see also United States v. Lopez-Cruz*, 730 F.3d 803, 811–12 (9th Cir. 2013).
21 Moreover, “[a] motion to reconsider is not a second chance for the losing party to make its
22 strongest case or to dress up arguments that previously failed.” *United States v. Huff*, 782 F.3d
23 1221, 1224 (10th Cir.), *cert. denied*, 136 S. Ct. 537 (2015) (affirming district court’s
24 reconsideration of prior order granting motion to suppress).

1 **III. DISCUSSION**

2 **a. Plaintiff's Motion to Reconsider (ECF No. 53)**

3 The basis for granting Defendants' summary judgment motion was that Plaintiff had not
4 exhausted available administrative remedies at the prison prior to bringing suit. Under the Prison
5 Litigation Reform Act ("PLRA"), "[n]o action shall be brought with respect to prison conditions
6 under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail,
7 prison, or other correctional facility until such administrative remedies as are available are
8 exhausted." 42 U.S.C. § 1997e(a). The U.S. Supreme Court has held that the PLRA requires
9 "proper exhaustion," which includes "using all steps the agency holds out, and doing so properly
10 (so that the agency addresses the issues on the merits)." *Woodford v. Ngo*, 548 U.S. 81, 89
11 (2006). Here, because the undisputed evidence viewed in the light most favorable to Plaintiff
12 showed a failure to exhaust, Defendants were entitled to summary judgment under Rule 56. *See*
13 *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014).

14 In requesting reconsideration of the judgment against him, Plaintiff does not present
15 newly discovered evidence or point to any change in controlling law. Plaintiff does not attempt
16 to show, nor does he even claim, that error was committed in reaching the conclusion that he did
17 not adequately exhaust available administrative remedies at the prison. In granting summary
18 judgment for Defendants, the Court found that Plaintiff filed "numerous grievances that
19 reference his objection to being moved from housing unit 3," but that "none of these were
20 properly taken through all three levels." (R. & R. 5, ECF No. 35.) Moreover, even if the
21 grievances had been completed at all three levels, they only focused on what occurred the day
22 Plaintiff was informed he was being moved out of Unit 3, and failed to address "the subsequent
23 alleged denial of access to physical therapy and exercises," which denial was the sole basis of his
24 only claim. (*Id.*)

