

1 The hearing on Defendants’ motion was set for May 14, 2012. Plaintiff’s
2 opposition was therefore due by April 23, 2012. As of the date of this Order, Plaintiff
3 has not filed an opposition, nor any other filing that could be construed as a request
4 for a continuance. Plaintiff’s failure to oppose may therefore be deemed consent to
5 the granting of Defendants’ Motion. Nevertheless, the Court has carefully considered
6 Defendants’ arguments in support and, for the reasons discussed in Defendants’
7 papers, hereby **GRANTS** Defendants’ Motion for Judgment on the Pleadings. The
8 May 14, 2012 hearing on this matter is **VACATED**, and no appearances are
9 necessary. The Court proceeds to remark briefly on the specific merits of Defendants’
10 Motion.

11 This is not Plaintiff’s first failure to oppose a motion seeking to dispose of
12 Plaintiff’s fourth claim for failure to accommodate under the Fair Employment and
13 Housing Act (“FEHA”) and seventh claim for intentional infliction of emotional
14 distress (“IIED”). On March 5, 2012, Defendants filed a motion for judgment on the
15 pleadings with respect to these claims. (Dkt. No. 13.) On March 19, 2012, following
16 Plaintiff’s failure to oppose Defendants’ motion, the Court granted Defendants’
17 motion for the reasons discussed in the motion and granted Plaintiff 14 days leave to
18 amend. (Dkt. No. 14.) The Court specifically noted in that Order that an amended
19 pleading must “allege additional *facts* necessary to state viable claims for failure to
20 accommodate and intentional infliction of emotional distress.” (*Id.* at 2 (emphasis
21 added).)

22 On April 2, 2012, Plaintiff filed a First Amended Complaint. (Dkt. No. 16.)
23 Despite the Court’s instruction to Plaintiff to allege additional facts supporting his
24 claims, Plaintiff’s First Amended Complaint is nearly identical to Plaintiff’s original
25 complaint. The addition of paragraph 50 to Plaintiff’s failure to accommodate claim
26 does nothing to address the pleading infirmities addressed by Defendants’ motion for
27 judgment on the pleadings, namely that failure to provide additional time to consider a
28 job transfer is not an accommodation under FEHA. (Dkt. No. 13, at 3.) Nor does

1 Plaintiff's addition of allegations to his IIED claim that Defendants failed to
2 "respond[] to plaintiff's repeated requests for additional information between August
3 12, 2010 and August 18, 2010, when Defendant knew or reasonably should have
4 known that Defendant's conduct was causing plaintiff severe emotional distress under
5 the circumstances existing during this time as stated hereinabove" add enough facts to
6 plead outrageous conduct "so extreme as to exceed all bounds of that usually tolerated
7 in a civilized society" sufficient to survive a motion to dismiss. *Davidson v. City of*
8 *Westminster*, 32 Cal. 3d 197, 209 (1982).

9 Viewed together, Plaintiff's failure to meaningfully amend his complaint to
10 state his failure to accommodate and IIED claims and Plaintiff's repeated decision not
11 to oppose Defendants' attacks on these claims suggest that any future attempts to
12 amend these claims would be futile. Plaintiff's fourth claim for failure to
13 accommodate and seventh claim for IIED are therefore **DISMISSED WITH**
14 **PREJUDICE**. See *AE ex rel. Hernandez v. County of Tulare*, 666 F.3d 631, 636 (9th
15 Cir. 2012) ("A district court abuses its discretion by denying leave to amend unless
16 amendment would be futile or the plaintiff has failed to cure the complaint's
17 deficiencies despite repeated opportunities.")

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19 **IT IS SO ORDERED.**

20
21 May 1, 2012

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25 **HON. OTIS D. WRIGHT, II**
26 **UNITED STATES DISTRICT JUDGE**
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