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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANA GRAY,
Plaintiff,
vs.
ROMERO, et al.,
Defendants.

1:13-cv-01473-DAD-GSA-PC
ORDER DENYING PLAINTIFF’S
MOTIONS AS PREMATURE
(ECF Nos. 166, 171, 172.)

Dana Gray (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds on Plaintiff’s Fourth Amended Complaint filed on September 21, 2015, against defendants Dr. V. Romero, Dr. A. Comelli, FNP N. Loadholt, Dr. C. Rebel, John Ziomek, DPM, and Dr. V. Mundunuri, on Plaintiff’s medical claim under the Eighth Amendment. (ECF No. 45.) This case is now in the discovery phase.

On April 29, 2016, defendant Rebel filed a motion to dismiss the claims against him as barred by the statute of limitations. (ECF No. 57.) On August 31, 2016, defendants Mundunuri and Ziomek filed a motion for judgment on the pleadings based on Plaintiff’s failure to exhaust administrative remedies. (ECF No. 122.) These two motions are pending.

On February 9, 2017, February 16, 2017, and February 22, 2017, Plaintiff filed a motion for extension of time to amend the complaint, motion to supplement the complaint, and motion

1 to amend and supplement the complaint, respectively. (ECF Nos. 166, 171, 172.) On February
2 28, 2017, Defendant Rebel filed an opposition to the motion to amend and supplement the
3 complaint. (ECF No. 174.) Defendant Rebel argues that to allow Plaintiff to file a Fifth
4 Amended Complaint at this stage of the proceedings would be prejudicial to him because it
5 would render moot his pending motion to dismiss.

6 Defendant Rebel's argument has merit. Plaintiff's motions are premature at this stage
7 of the proceedings. Until a final ruling is made on defendant Rebel's motion to dismiss and
8 defendants Mundunuri and Ziomek's motion for judgment on the pleadings, Plaintiff may not
9 amend or supplement the complaint.

10 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for extension of time
11 to amend the complaint, motion to supplement the complaint, and motion to amend and
12 supplement the complaint, filed on February 9, 2017, February 16, 2017, and February 22,
13 2017, respectively, are DENIED as premature.

14 IT IS SO ORDERED.

15 Dated: March 2, 2017

16 /s/ Gary S. Austin
17 UNITED STATES MAGISTRATE JUDGE
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